

**DEBT CANCELLATION CLAUSE**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: David Clark**

**This act modifies the Financial Institutions Code and the Utah Consumer Credit Code to provide provisions under which the Commissioner of Financial Institutions may regulate debt cancellation clauses under certain circumstances.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**7-1-103**, as last amended by Chapter 260, Laws of Utah 2000

**7-1-301**, as last amended by Chapter 184, Laws of Utah 1999

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **7-1-103** is amended to read:

**7-1-103. Definitions.**

As used in this title:

(1) (a) "Bank" means a person authorized under the laws of this state, another state, or the United States to accept deposits from the public.

(b) "Bank" does not include:

(i) a federal savings and loan association or federal savings bank;

(ii) a savings and loan association or savings bank subject to Chapter 7;

(iii) an industrial loan corporation subject to Chapter 8;

(iv) a federally chartered credit union; or

(v) a credit union subject to Chapter 9.

(2) "Banking business" means the offering of deposit accounts to the public and the conduct of such other business activities as may be authorized by this title.

(3) (a) "Branch" means a place of business of a financial institution, other than its main office, at which deposits are received and paid.



- 28 (b) "Branch" does not include:
- 29 (i) an automated teller machine, as defined in Section 7-16a-102;
- 30 (ii) a point-of-sale terminal, as defined in Section 7-16a-102; or
- 31 (iii) a loan production office under Section 7-1-715.
- 32 (4) "Commissioner" means the Commissioner of Financial Institutions.
- 33 (5) "Control" means the power, directly or indirectly, to:
- 34 (a) direct or exercise a controlling influence over the management or policies of a
- 35 financial institution, or over the election of a majority of the directors or trustees of an
- 36 institution;
- 37 (b) vote 20% or more of any class of voting securities of a financial institution by an
- 38 individual; or
- 39 (c) vote more than 5% of any class of voting securities of a financial institution by a
- 40 person other than an individual.
- 41 (6) "Credit union" means a cooperative, nonprofit association incorporated under:
- 42 (a) Chapter 9; or
- 43 (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.
- 44 (7) "Debt cancellation clause" means a provision in a loan or other credit agreement
- 45 providing for cancellation or suspension of all or any part of the amount owed or any payments
- 46 due under the agreement at the occurrence of:
- 47 (a) an event specified in the agreement; or
- 48 (b) a circumstance specified in the agreement.
- 49 [~~7~~] (8) "Department" means the Department of Financial Institutions.
- 50 [~~8~~] (9) "Depository institution" means a bank, savings and loan association, savings
- 51 bank, industrial loan corporation, credit union, or other institution that holds or receives
- 52 deposits, savings, or share accounts, or issues certificates of deposit, or provides to its
- 53 customers other depository accounts that are subject to withdrawal by checks, drafts, or other
- 54 instruments or by electronic means to effect third party payments.
- 55 [~~9~~] (10) (a) "Depository institution holding company" means:
- 56 (i) a person other than an individual that has control over any depository institution or
- 57 that becomes a holding company of a depository institution under Section 7-1-703; or
- 58 (ii) a person other than an individual that the commissioner finds, after considering the

59 specific circumstances, is exercising or is capable of exercising a controlling influence over a  
60 depository institution by means other than those specifically described in this section.

61 (b) Except as provided in Section 7-1-703, a person is not a depository institution  
62 holding company solely because it owns or controls shares acquired in securing or collecting a  
63 debt previously contracted in good faith.

64 [~~(10)~~] (11) "Financial institution" means any institution subject to the jurisdiction of  
65 the department because of this title.

66 [~~(11)~~] (12) (a) "Financial institution holding company" means a person, other than an  
67 individual that has control over any financial institution or any person that becomes a financial  
68 institution holding company under this chapter, including an out-of-state or foreign depository  
69 institution holding company.

70 (b) Ownership of a service corporation or service organization by a depository  
71 institution does not make that institution a financial institution holding company.

72 (c) A person holding 5% or less of the voting securities of a financial institution is  
73 rebuttably presumed not to have control of the institution.

74 (d) A trust company is not a holding company solely because it owns or holds 20% or  
75 more of the voting securities of a financial institution in a fiduciary capacity, unless the trust  
76 company exercises a controlling influence over the management or policies of the financial  
77 institution.

78 [~~(12)~~] (13) "Foreign depository institution" means a depository institution chartered or  
79 authorized to transact business by a foreign government.

80 [~~(13)~~] (14) "Foreign depository institution holding company" means the holding  
81 company of a foreign depository institution.

82 [~~(14)~~] (15) "Home state" means:

83 (a) for a state chartered depository institution, the state that charters the institution;

84 (b) for a federally chartered depository institution, the state where the institution's main  
85 office is located; and

86 (c) for a depository institution holding company, the state in which the total deposits of  
87 all depository institution subsidiaries are the largest.

88 [~~(15)~~] (16) "Host state" means:

89 (a) for a depository institution, a state, other than the institution's home state, where the

90 institution maintains or seeks to establish a branch; and

91 (b) for a depository institution holding company, a state, other than the depository  
92 institution holding company's home state, where the depository institution holding company  
93 controls or seeks to control a depository institution subsidiary.

94 [~~16~~] (17) "Industrial loan corporation" means a corporation conducting the business  
95 of an industrial loan corporation under Chapter 8.

96 [~~17~~] (18) "Insolvent" means the status of a financial institution that is unable to meet  
97 its obligations as they mature.

98 [~~18~~] (19) "Institution" means a corporation, limited liability company, partnership,  
99 trust, association, joint venture, pool, syndicate, unincorporated organization, or any form of  
100 business entity.

101 [~~19~~] (20) "Institution subject to the jurisdiction of the department" means an  
102 institution or other person described in Section 7-1-501.

103 [~~20~~] (21) "Liquidation" means the act or process of winding up the affairs of an  
104 institution subject to the jurisdiction of the department by realizing upon assets, paying  
105 liabilities, and appropriating profit or loss, as provided in Chapters 2 and 19.

106 [~~21~~] (22) "Liquidator" means a person, agency, or instrumentality of this state or the  
107 United States appointed to conduct a liquidation.

108 [~~22~~] (23) (a) "Member of a savings and loan association" means:

109 (i) a person holding a savings account of a mutual association;

110 (ii) a person borrowing from, assuming, or becoming obligated upon a loan or an  
111 interest in a loan held by a mutual association; or

112 (iii) any person or class of persons granted membership rights by the articles of  
113 incorporation or the bylaws of an association.

114 (b) A joint and survivorship or other multiple owner or borrower relationship  
115 constitutes a single membership.

116 [~~23~~] (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.

117 [~~24~~] (25) (a) "NOW account" means a savings account from which the owner may  
118 make withdrawals by negotiable or transferable instruments for the purpose of making transfers  
119 to third parties.

120 (b) A "NOW account" is not a demand deposit. Neither the owner of a NOW account

121 nor any third party holder of an instrument requesting withdrawal from the account has a legal  
122 right to make withdrawal on demand.

123 ~~[(25)]~~ (26) "Out-of-state" means, in reference to a depository institution or depository  
124 institution holding company, an institution or company whose home state is not Utah.

125 ~~[(26)]~~ (27) "Person" means an individual, corporation, limited liability company,  
126 partnership, trust, association, joint venture, pool, syndicate, sole proprietorship,  
127 unincorporated organization, or any form of business entity.

128 ~~[(27)]~~ (28) "Receiver" means a person, agency, or instrumentality of this state or the  
129 United States appointed to administer and manage an institution subject to the jurisdiction of  
130 the department in receivership, as provided in Chapters 2 and 19.

131 ~~[(28)]~~ (29) "Receivership" means the administration and management of the affairs of  
132 an institution subject to the jurisdiction of the department to conserve, preserve, and properly  
133 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in  
134 Chapters 2 and 19.

135 ~~[(29)]~~ (30) "Savings account" means any deposit or other account at a depository  
136 institution that is not a transaction account.

137 ~~[(30)]~~ (31) "Savings and loan association" means a mutual or capital stock savings  
138 association, a savings and loan association, a mutual or capital stock savings bank, or a  
139 building and loan association subject to this title, including all federal associations and all  
140 out-of-state associations, as defined in Section 7-7-2.

141 ~~[(31)]~~ (32) "Service corporation" or "service organization" means a corporation or  
142 other business entity owned or controlled by one or more financial institutions that is engaged  
143 or proposes to engage in business activities related to the business of financial institutions.

144 ~~[(32)]~~ (33) "State" means, unless the context demands otherwise, a state, the District of  
145 Columbia, or the territories of the United States.

146 ~~[(33)]~~ (34) "Subsidiary" means a business entity under the control of an institution.

147 ~~[(34)]~~ (35) (a) "Transaction account" means a deposit, account, or other contractual  
148 arrangement in which a depositor, account holder, or other customer is permitted, directly or  
149 indirectly, to make withdrawals by check or other negotiable or transferable instrument, by  
150 payment order of withdrawal, by telephone transfer, by other electronic means, or by any other  
151 means or device for the purpose of making payments or transfers to third persons.

152 (b) "Transaction account" includes:

153 (i) demand deposits;

154 (ii) NOW accounts;

155 (iii) savings deposits subject to automatic transfers; and

156 (iv) share draft accounts.

157 [~~35~~] (36) "Trust company" means a person authorized to conduct a trust business, as  
158 provided in Chapter 5.

159 [~~36~~] (37) "Utah depository institution" means a depository institution whose home  
160 state is Utah.

161 [~~37~~] (38) "Utah depository institution holding company" means a depository  
162 institution holding company whose home state is Utah.

163 Section 2. Section **7-1-301** is amended to read:

164 **7-1-301. Powers and duties of commissioner -- Rulemaking.**

165 Without limiting the other powers, duties, and responsibilities specified in this title, the  
166 commissioner has all the functions, powers, duties, and responsibilities with respect to  
167 institutions, persons, or businesses subject to the jurisdiction of the department contained in  
168 this title, including all of the functions, powers, duties, and responsibilities described in  
169 Subsections (1) through [~~15~~] (16).

170 (1) The commissioner may govern the administration and operation of the department.

171 (2) The commissioner may supervise the conduct, operation, management,  
172 examination, and statements and reports of examinations of financial institutions and other  
173 persons subject to the jurisdiction of the department.

174 (3) (a) The commissioner may authorize a state chartered depository institution to  
175 engage in any activity it could engage in, and to grant to that institution all additional rights,  
176 powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws  
177 of the United States.

178 (b) The commissioner may authorize a depository institution chartered by this state to  
179 engage in any activity that a Utah branch of an out-of-state depository institution of the same  
180 class can engage in, and to grant to the Utah institution all additional rights, powers, privileges,  
181 benefits, or immunities it needs to engage in the activity.

182 (c) In granting authority under this Subsection (3), the commissioner shall consider:

183 (i) the need for competitive equality between institutions chartered by this state and  
184 institutions operating in this state that are chartered by another state or by the federal  
185 government; and

186 (ii) the adverse effect on shareholders, members, depositors, and other customers of  
187 financial institutions chartered by this state if equal power and protection of those institutions,  
188 compared with federally chartered or out-of-state institutions of the same class, are not  
189 promptly available.

190 (4) The commissioner may safeguard the interest of shareholders, members, depositors,  
191 and other customers of institutions and other persons subject to the jurisdiction of the  
192 department.

193 (5) (a) The commissioner may establish criteria consistent with this title to be applied  
194 in granting applications for approval of:

195 (i) a new institution;

196 (ii) a new branch;

197 (iii) the relocation of an office or branch;

198 (iv) a merger;

199 (v) a consolidation;

200 (vi) a change in control of an institution or other person subject to the jurisdiction of  
201 the department; and

202 (vii) other applications specified in this title.

203 (b) The criteria established under Subsection (5)(a) may not be applied to make it more  
204 difficult for a state chartered institution to obtain approval of an application than for a federally  
205 chartered institution in the same class to obtain approval from the appropriate federal  
206 regulatory agency or administrator.

207 (6) (a) The commissioner may protect the privacy of the records of any institution  
208 subject to the jurisdiction of the department pertaining to a particular depositor or other  
209 customer of the institution. Rules adopted under this Subsection (6) shall be consistent with  
210 federal laws and regulations applicable to the institution.

211 (b) Any institution that consents to produce records or that is required to produce  
212 records in compliance with a subpoena or other order of a court of competent jurisdiction or in  
213 compliance with an order obtained pursuant to Sections 78-27-45 through 78-27-50.5 shall be

214 reimbursed for the cost of retrieval and reproduction of the records by the party seeking the  
215 information. The commissioner may by rule establish the rates and conditions under which  
216 reimbursement is made.

217 (7) (a) The commissioner may classify all records kept by institutions subject to the  
218 jurisdiction of the department and to prescribe the period for which each class of records is  
219 retained. Rules adopted under this Subsection (7) for any class of financial institution shall be  
220 consistent with federal laws and regulations applicable to the class.

221 (b) Rules made under Subsection (7)(a) shall provide that:

222 (i) An institution may dispose of any record after retaining it for the period prescribed  
223 by the commissioner for retention of records of its class. If an institution disposes of a record  
224 after the prescribed period, the institution has no duty to produce it in any action or proceeding  
225 and is not liable to any person by reason of that disposition.

226 (ii) Any institution may keep records in its custody in the form of microfilm or  
227 equivalent reproduction. Any such reproduction shall have the same force and effect as the  
228 original and shall be admissible into evidence as if it were the original.

229 (c) In adopting rules under this Subsection (7), the commissioner shall take into  
230 consideration:

231 (i) actions at law and administrative proceedings in which the production of the records  
232 might be necessary or desirable;

233 (ii) state and federal statutes of limitation applicable to the actions or proceedings;

234 (iii) the availability from other sources of information contained in these records; and

235 (iv) other matters the commissioner considers pertinent in formulating rules that  
236 require institutions to retain their records for as short a period as commensurate with the  
237 interest in having the records available of:

238 (A) customers, members, depositors, and shareholders of the institutions; and

239 (B) the people of this state.

240 (8) (a) The commissioner may establish reasonable classes of depository and other  
241 financial institutions including separate classes for savings and loan associations and related  
242 institutions, banks and related institutions, credit unions, and industrial loan corporations.

243 (b) If the restrictions or requirements the commissioner imposes are not more stringent  
244 than those applicable under federal law or regulation to federally chartered institutions of the



245 same class, the commissioner may establish the following for each class in a manner consistent  
246 with this title:

247 (i) eligible classes and types of investments for the deposits and other funds of those  
248 financial institutions;

249 (ii) minimum standards, in amounts sufficient to protect depositors and other creditors,  
250 for the amount and types of capital required to engage in the business conducted by each class  
251 or to obtain a license or to establish a branch or additional office of an institution of each class;

252 (iii) eligible obligations, reserves, and other accounts to be included in the computation  
253 of capital;

254 (iv) minimum liquidity requirements for financial institutions within each class in  
255 amounts sufficient to meet the demands of depositors and other creditors for liquid funds;

256 (v) limitations on the amount and type of borrowings by each class of financial  
257 institution in relation to the amount of its capital and the character and condition of its assets  
258 and its deposits and other liabilities;

259 (vi) limitations on the amount and nature of loans and extensions of credit to any  
260 person or related persons by each class of financial institution in relation to the amount of its  
261 capital; and

262 (vii) limitations on the amount and nature of loans and extensions of credit by a  
263 financial institution or other person within each class to an executive officer, director, or  
264 principal shareholder of:

265 (A) the institution or other person;

266 (B) any company of which the institution or other person is a subsidiary;

267 (C) any subsidiary of the institution or other person;

268 (D) any affiliate of the institution; and

269 (E) a company controlled by an executive officer, director, or principal shareholder of  
270 the institution.

271 (9) The commissioner may define unfair trade practices of financial institutions and  
272 other persons subject to the jurisdiction of the department and to prohibit or restrict these  
273 practices.

274 (10) The commissioner may establish reasonable standards to promote the fair and  
275 truthful advertising of:

- 276 (a) services offered by a financial institution;
- 277 (b) the charges for the services advertised under Subsection (10)(a);
- 278 (c) the interest or other compensation to be paid on deposits or any debt instrument
- 279 offered for sale by the institution;
- 280 (d) the nature and extent of any insurance on deposits, savings accounts, share
- 281 accounts, certificates of deposit, time deposit accounts, NOW accounts, share draft accounts,
- 282 transaction accounts, or any evidence of indebtedness issued, offered for sale, offered to sell or
- 283 sold by any financial institution or other person subject to the jurisdiction of the department;
- 284 and
- 285 (e) the safety or financial soundness of any financial institution or other person subject
- 286 to the jurisdiction of the department.

287 (11) The commissioner may define what constitutes an impairment of capital for each

288 class of financial institution or other person subject to the jurisdiction of the department.

289 (12) The commissioner may designate days on which depository institutions are closed

290 in accordance with Section 7-1-808.

291 (13) The commissioner may regulate the issuance, advertising, offer for sale, and sale

292 of a security to the extent authorized by Section 7-1-503.

293 (14) The commissioner may require the officers of any institution or other person

294 subject to the commissioner's jurisdiction to open and keep a standard set of books, computer

295 records, or both for the purpose of keeping accurate and convenient records of the transactions

296 and accounts of the institution in a manner to enable the commissioner, supervisors, and

297 department examiners to readily ascertain the institution's true condition. These requirements

298 shall be consistent with generally accepted accounting principles for financial institutions.

299 (15) (a) The commissioner has the sole authority and responsibility to regulate the use

300 of a debt cancellation clause, as defined in Section 7-1-103:

- 301 (i) by a financial institution; or
- 302 (ii) in a consumer credit agreement governed by Title 70C, Utah Consumer Credit
- 303 Code.

304 (b) Subject to this Subsection (15), in accordance with Title 63, Chapter 46a, Utah

305 Administrative Rulemaking Act, the commissioner may adopt rules to govern the use of a debt

306 cancellation clause:

307            (i) by a Utah depository institution; or  
308            (ii) in a consumer credit agreement governed by Title 70C, Utah Consumer Credit  
309 Code.  
310            (c) Rules adopted by the commissioner under this Subsection (15) that are applicable to  
311 a Utah depository institution:  
312            (i) may not be more restrictive for a bank or an industrial loan corporation than are  
313 comparable regulations governing the use of debt cancellation clauses by a national bank; and  
314            (ii) may not be more restrictive for a credit union than are comparable regulations  
315 governing the use of a debt cancellation clause by a federal credit union.  
316            [~~15~~] (16) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
317 Act, the commissioner may adopt and issue rules consistent with the purposes and provisions  
318 of this title, and may revise, amend, or repeal the rules adopted.

**Legislative Review Note**  
**as of 2-10-03 8:55 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

This bill will generate about \$50,000 and cost about \$50,000 in General Fund Restricted - Financial Institutions. Use of the product is expected to increase in FY 2005 to about \$200,000.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
GF Restrict-Financial Ins	\$50,000	\$200,000	\$50,000	\$200,000
<b>TOTAL</b>	<b>\$50,000</b>	<b>\$200,000</b>	<b>\$50,000</b>	<b>\$200,000</b>

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**Individual and Business Impact**

Business and individual impacts will depend on the type of products offered.

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