

1                                   **REGULATION OF DEBT CANCELLATION**  
2                                   **AGREEMENTS AND DEBT SUSPENSION**  
3                                   **AGREEMENTS**

4                                   2003 GENERAL SESSION

5                                   STATE OF UTAH

6                                   **Sponsor: John L. Valentine**

7   **This act modifies the Financial Institutions Act and the Insurance Code to provide**  
8   **guidelines for the issuance and regulation of debt cancellation agreements and debt**  
9   **suspension agreements.**

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

11 ENACTS:

12           **7-1-324**, Utah Code Annotated 1953

13           **31A-21-109**, Utah Code Annotated 1953

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

15           Section 1. Section **7-1-324** is enacted to read:

16           **7-1-324. Debt cancellation agreements and debt suspension agreements.**

17           (1) As used in this section:

18           (a) "Class of depository institution" means a class consisting of:

19           (i) banks;

20           (ii) credit unions;

21           (iii) industrial loan corporations; § [or] §

22           (iv) savings and loan associations § [;] ; OR

22a           (v) WHOLLY OWNED SUBSIDIARIES OF A DEPOSITORY INSTITUTION LISTED IN THIS

22b **SUBSECTION (1)(a). §**

23           (b) "Debt cancellation agreement" is as defined in Section 31A-21-109.

24           (c) "Debt suspension agreement" is as defined in Section 31A-21-109.

25           (2) Subject to the other provisions of this section, the commissioner may by rule, made  
26 in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

27           (a) authorize any member of a class of depository institution that is subject to the



28 jurisdiction of the department to issue a debt cancellation agreement or a debt suspension  
29 agreement; and

30 (b) regulate the issuance of a debt cancellation agreement or a debt suspension  
31 agreement issued in this state by a member of a class of depository institution.

32 (3) (a) Any rule adopted by the commissioner under this section as applied to a class of  
33 depository institution shall be substantially similar to any federal regulation applying to the  
34 same class of depository institution.

35 (b) Any rule adopted by the commissioner applicable to a class of depository institution  
36 described in this Subsection (3)(b) shall be substantially similar to any federal regulation  
37 applicable to a bank if no federal regulation authorizes or regulates the issuance of a debt  
38 cancellation agreement or debt suspension agreement for that class of depository institution.

39 (4) (a) An out-of-state depository institution may issue a debt cancellation agreement  
40 or debt suspension agreement in this state if:

41 (i) the home state of the out-of-state depository institution authorizes and regulates the  
42 issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state  
43 depository institution; and

44 (ii) subject to Subsection (4)(b), the out-of-state depository institution complies with  
45 regulations from the out-of-state depository institution's home state that regulate the issuance of  
46 a debt cancellation agreement or a debt suspension agreement.

47 (b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described  
48 in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section  
49 that regulate the issuance of a debt cancellation agreement or a debt suspension agreement in  
50 this state by the class of depository institution to which the out-of-state depository institution  
51 belongs if the regulations of the out-of-state depository institution's home state do not provide  
52 at least the same level of protection with respect to a debt cancellation agreement or debt  
53 suspension agreement as the rules adopted by the commissioner under this section with respect  
54 to the same class of depository institution:

55 (i) for the safety and soundness of the depository institution; and

56 (ii) for consumer protections for the borrowers of the depository institution.

57 Section 2. Section **31A-21-109** is enacted to read:

58 **31A-21-109. Debt cancellation agreements and debt suspension agreements.**

59 (1) As used in this section:

60 (a) "Debt cancellation agreement" means a contract between a lender and a borrower  
61 where the lender, for a separately stated consideration, agrees to waive all or part of the debt in  
62 the event of a fortuitous event such as death, disability, or the destruction of the lender's  
63 collateral.

64 (b) "Debt suspension agreement" means a contract between a lender and a borrower  
65 where the lender, for a separately stated consideration, agrees to suspend scheduled installment  
66 payments for an agreed period of time in the event of a:

67 (i) fortuitous event such as involuntary unemployment or accident; or

68 (ii) fortuitous condition such as sickness.

69 (c) "Institution" means:

70 (i) a bank as defined in Section 7-1-103;

71 (ii) a credit union as defined in Section 7-1-103;

72 (iii) an industrial loan corporation as defined in Section 7-1-103; or

73 (iv) a savings and loan association as defined in Section 7-1-103.

74 (d) "Regulate the issuance" includes regulation of the following with respect to a debt  
75 cancellation agreement or a debt suspension agreement:

76 (i) terms;

77 (ii) conditions;

78 (iii) rates;

79 (iv) forms; and

80 (v) claims.

80a **§ (e) "SUBSIDIARY" IS AS DEFINED IN SECTION 7-1-103. §**

81 (2) Except as provided in Subsection (6), the commissioner has sole jurisdiction over  
82 the regulation of a debt cancellation agreement or debt suspension agreement.

83 (3) Subject to this section, the commissioner may by rule, made in accordance with  
84 Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

85 (a) authorize an insurer to issue a debt cancellation agreement or debt suspension  
86 agreement; and

87 (b) regulate the issuance of a debt cancellation agreement or debt suspension  
88 agreement.

89 (4) Except as provided in Subsection (6), a debt cancellation agreement or a debt

90 suspension agreement may be issued only by an insurer authorized to issue a debt cancellation  
 91 agreement or debt suspension agreement under this section.

92 (5) (a) The rules promulgated by the commissioner under this section shall regulate the  
 93 issuance of a debt cancellation agreement or debt suspension agreement according to the  
 94 functional insurance equivalent of each type of debt cancellation agreement or debt suspension  
 95 agreement.

96 (b) Except as provided in Subsection (5)(c), in accordance with Title 63, Chapter 46a,  
 97 Utah Administrative Rulemaking Act, the commissioner may by rule determine the functional  
 98 insurance equivalent of each type of debt cancellation agreement or debt suspension agreement.

99 (c) Notwithstanding Subsection (5)(b), the functional insurance equivalent of a debt  
 100 cancellation agreement that provides for the cancellation of indebtedness at death is credit life  
 101 insurance.

102 (6) Notwithstanding the other provisions of this section, the issuance of a debt  
 103 cancellation agreement or a debt suspension agreement by an institution § OR A SUBSIDIARY OF AN

103a INSTITUTION § is:

104 (a) not subject to this section; and

105 (b) § [is] § subject to the jurisdiction of the § [institution's] § primary regulator § [-] OF:

105a (i) THE INSTITUTION; OR

105b (ii) THE SUBSIDIARY OF AN INSTITUTION. §

### Legislative Review Note

as of 2-11-03 12:33 PM

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

Office of Legislative Research and General Counsel

**State Impact**

Provisions of this legislation can be handled within existing budgets.

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**Individual and Business Impact**

Individuals purchasing these services could see some financial benefits depending on the product purchased and individual circumstances.

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**Office of the Legislative Fiscal Analyst**