

**REGULATION OF DEBT CANCELLATION
AGREEMENTS AND DEBT SUSPENSION
AGREEMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

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

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

ENACTS:

7-1-324, Utah Code Annotated 1953

31A-21-109, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

(i) banks;

(ii) credit unions;

(iii) industrial loan corporations;

(iv) savings and loan associations; or

(v) wholly owned subsidiaries of a depository institution listed in this Subsection

(1)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

(ii) fortuitous condition such as sickness.

(c) "Institution" means:

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

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

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

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

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

(i) terms;

(ii) conditions;

(iii) rates;

(iv) forms; and

(v) claims.

(e) "Subsidiary" is as defined in Section 7-1-103.

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

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

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

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

(4) Except as provided in Subsection (6), a debt cancellation agreement or a debt suspension agreement may be issued only by an insurer authorized to issue a debt cancellation agreement or debt suspension agreement under this section.

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

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

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

(6) Notwithstanding the other provisions of this section, the issuance of a debt cancellation agreement or a debt suspension agreement by an institution or a subsidiary of an institution is:

(a) not subject to this section; and

(b) subject to the jurisdiction of the primary regulator of:

(i) the institution; or

(ii) the subsidiary of an institution.