

**ISSUING A BAD CHECK OR DRAFT**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Parley G. Hellewell**

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**LONG TITLE****General Description:**

This bill amends the Criminal Code provisions regarding issuing a bad check by removing language regarding payment within 14 days of issuing the check.

**Highlighted Provisions:**

This bill:

▸ ~~§ [—removes language that exempted a person from the offense of issuing a bad check if the person makes good on the amount of the check within 14 days of his or her receipt of notice that the check did not clear.] PROVIDES AN AFFIRMATIVE DEFENSE IF THE WRITER OF THE CHECK DOES NOT KNOW THAT THE CHECK WILL NOT CLEAR, DOES NOT HAVE FUNDS TO MAKE GOOD ON THE CHECK, AND RETURNS TO THE PAYEE ANY PROPERTY OR MONEY OBTAINED BY THE DISHONORED CHECK. §~~

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**76-6-505**, as last amended by Chapter 291, Laws of Utah 1995

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

Section 1. Section **76-6-505** is amended to read:

**76-6-505. Issuing a bad check or draft -- Presumption.**

(1) (a) Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money,



property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check or draft.

(b) For purposes of this subsection, a person who issues a check or draft for which payment is refused by the drawee is presumed to know the check or draft would not be paid if he had no account with the drawee at the time of issue.

§ [f] (2) Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, payment of which check or draft is legally refused by the drawee, is guilty of issuing a bad check or draft if he fails to make good and actual payment to the payee in the amount of the refused check or draft within 14 days of his receiving actual notice of the check or draft's nonpayment. [f]

**(3) IT IS AN AFFIRMATIVE DEFENSE TO PROSECUTION FOR ISSUING A BAD CHECK OR DRAFT THAT:**

**(a) THE PERSON ISSUING THE CHECK OR DRAFT DID NOT KNOW OR HAVE REASON TO KNOW THAT THE CHECK OR DRAFT WOULD NOT BE HONORED BY THE DRAWEE;**

**(b) THE CHECK OR DRAFT WAS DISHONORED BECAUSE OF A THIRD PARTY'S ACTIONS THAT WERE NOT AUTHORIZED BY THE PERSON ISSUING THE CHECK OR DRAFT;**

**(c) THE PERSON ISSUING THE CHECK OR DRAFT HAS RETURNED TO THE PAYEE ANY MONEY, GOODS, PROPERTY, OR OTHER ITEM OF VALUE THE PERSON RECEIVED IN EXCHANGE FOR THE DISHONORED CHECK OR DRAFT, AND;**

**(i) THE GOODS, PROPERTY, OR OTHER ITEM OF VALUE ARE IN SUBSTANTIALLY THE SAME CONDITION AS WHEN OBTAINED BY THE PERSON; AND**

**(ii) THE PERSON RETURNS TO THE PAYEE THE MONEY, GOODS, PROPERTY, OR OTHER ITEM OF VALUE WITHIN 14 DAYS OF RECEIVING ACTUAL NOTICE THE CHECK OR DRAFT WAS DISHONORED; AND**

**(d) THE PERSON ISSUING THE CHECK OR DRAFT LACKED FUNDS SUFFICIENT TO MAKE FULL PAYMENT TO THE PAYEE IN THE AMOUNT OF THE DISHONORED CHECK OR DRAFT WITHIN 14 DAYS OF THE PERSON'S RECEIVING ACTUAL NOTICE THE CHECK OR DRAFT WAS DISHONORED. §**

~~[(3)]~~ **§ [(2)] (4) §** An offense of issuing a bad check or draft shall be punished as follows:

(a) If the check or draft or series of checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is less than \$300, the offense is a class B misdemeanor.

(b) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds \$300 but is less than \$1,000, the offense is a class A misdemeanor.

(c) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds \$1,000 but is less than \$5,000,

50 the offense is a felony of the third degree.

51 (d) If the check or draft or checks or drafts made or drawn in this state within a period  
52 not exceeding six months amounts to a sum that is or exceeds \$5,000, the offense is a second  
53 degree felony.



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**Legislative Review Note**  
**as of 12-3-03 12:49 PM**

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note****Issuing a Bad Check or Draft***20-Jan-04***Bill Number SB0095***11:11 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**