

Senator D. Chris Buttars proposes the following substitute bill:

DISHONORED CHECKS - MOTOR VEHICLE

REPAIR FACILITIES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill modifies the provisions related to dishonored checks related to motor vehicle repair facilities.

Highlighted Provisions:

This bill:

- ▶ authorizes a motor vehicle repair facility to take possession of a motor vehicle under certain circumstances;
- ▶ provides for notice;
- ▶ imposes conditions on the treatment of the motor vehicle after possession is taken;
- ▶ addresses lien provisions;
- ▶ provides for disposal of the motor vehicle;
- ▶ addresses the distribution of proceeds if a motor vehicle is sold; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 7-15-2, as last amended by Chapters 100 and 171, Laws of Utah 1999

28 ENACTS:

29 7-15-4, Utah Code Annotated 1953



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

32 Section 1. Section 7-15-2 is amended to read:

33 **7-15-2. Notice -- Form.**

34 (1) (a) "Notice" means notice given to the issuer of a check either orally or in writing.

35 (b) Written notice may be given by United States mail that is:

36 (i) first class; and

37 (ii) postage prepaid.

38 (c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have
39 been given when the notice is:

40 (i) properly deposited in the United States mail;

41 (ii) postage prepaid;

42 (iii) certified or registered mail;

43 (iv) return receipt requested; and

44 (v) addressed to the signer at the signer's:

45 (A) address as it appears on the check; or

46 (B) last-known address.

47 (2) Written notice under Subsection 7-15-1(5) shall take substantially the following
48 form:

49 Date: _____

50 To: _____

51 You are hereby notified that the check(s) described below issued by you has (have)
52 been returned to us unpaid:

53 Check date: _____

54 Check number: _____

55 Originating institution: _____

56 Amount: _____

57 Reason for dishonor (marked on check): _____

58 In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check
59 together with a service charge of \$20, which must be paid to the undersigned.

60 If you do not pay the check amount and the \$20 service charge within 15 calendar days
61 from the day on which this notice was mailed, you are required to pay within 30 calendar days
62 from the day on which this notice is mailed:

- 63 (1) the check amount;
64 (2) the \$20 service charge; and
65 (3) collection costs not to exceed \$20.

66 If you do not pay the check amount, the \$20 service charge, and the collection costs
67 within 30 calendar days from the day on which this notice is mailed, in accordance with
68 Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be filed against
69 you for:

- 70 (1) the check amount;
71 (2) interest;
72 (3) court costs;
73 (4) attorneys' fees;
74 (5) actual costs of collection as provided by law; and
75 (6) damages in an amount equal to the greater of \$100 or triple the check amount,
76 except that damages recovered under this Subsection (6) may not exceed the check amount by
77 more than \$500.

78 If the check was paid to a motor vehicle repair facility for repair of a motor vehicle and
79 the check amount equals or exceeds \$250, the motor vehicle repair facility may take possession
80 of § [your] THE § motor vehicle, subject to the rights and interests of any secured parties in the
80a motor
81 vehicle, and dispose of it to pay amounts owed under the civil legal action.

82 In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that
83 any person who issues or passes a check for the payment of money, for the purpose of
84 obtaining from any person, firm, partnership, or corporation, any money, property, or other
85 thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be
86 paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check.

87 The civil action referred to in this notice does not preclude the right to prosecute under

88 the criminal code of the state.

89 (Signed) _____

90 Name of Holder: _____

91 Address of Holder: _____

92 Telephone Number: _____

93 (3) Notwithstanding the other provisions of this section, a holder exempt under
94 Subsection 7-15-1(9) is exempt from this section.

95 Section 2. Section **7-15-4** is enacted to read:

96 **7-15-4. Dishonored check as payment for repair of a motor vehicle.**

97 (1) As used in this section:

97a **§ (a) "DISHONORED" MEANS THAT A CHECK IS NOT HONORED BECAUSE THE ACCOUNT**
97b **UPON WHICH THE CHECK IS MADE OR DRAWN DOES NOT HAVE SUFFICIENT FUNDS FOR**
97c **PAYMENT IN FULL OF THE CHECK.**

98 ~~(a)~~ (b) § "Motor vehicle" means a self-propelled vehicle intended primarily for use and
99 operation on the highways.

100 § ~~(b)~~ (c) § "Motor vehicle repair facility" means any motor vehicle dealer, garage, body
100a shop,
101 or other commercial entity that repairs or replaces parts of a motor vehicle by substituting or
102 correcting the exterior or inoperative parts of the motor vehicle.

103 (2) A holder of a check that has been dishonored may take possession of a motor
104 vehicle to recover the amounts owed under Subsection 7-15-1(7) if:

105 (a) the check amount equals or exceeds \$250;

106 (b) the holder is a motor vehicle repair facility;

107 (c) the motor vehicle repair facility:

108 (i) is licensed by the state if the motor vehicle repair facility is required to be licensed
109 by the state; and

110 (ii) has a valid business licence issued by the applicable county or municipality;

111 (d) the check that is dishonored is paid to the motor vehicle repair facility for repair of
112 the motor vehicle;

113 (e) the holder prevails in a civil action brought under Subsection 7-15-1(7);

114 (f) the holder provides written notice of the intent to take possession of the motor
115 vehicle:

116 (i) to:

117 (A) the issuer; and

118 (B) any secured parties having any rights and interest in the motor vehicle; and

119 (ii) at least 15 days before the day on which the holder takes possession of the motor
120 vehicle;

121 (g) the motor vehicle is in the possession of the issuer of the check; and

122 (h) the issuer has not paid the amount owed under Subsection 7-15-1(7) before the day
123 on which the holder takes possession of the motor vehicle.

124 (3) (a) Subject to the other requirements of this section, a motor vehicle repair facility
125 may take possession of a motor vehicle under Subsection (2):

126 (i) pursuant to judicial process; or

127 (ii) without judicial process, if the motor vehicle repair facility proceeds without
128 breach of the peace.

129 (b) If a motor vehicle repair facility causes a motor vehicle to be moved by a tow truck
130 motor carrier, the tow truck motor carrier shall meet the standards outlined in Subsection
131 41-6-102.5(2) except that the tow truck motor carrier may not request a transfer of title to an
132 abandoned vehicle under Subsection 72-9-603(5).

133 (c) (i) Except as provided in Subsection (3)(c)(ii), a person may not operate or allow to
134 be operated a motor vehicle that the motor vehicle repair facility takes possession of under this
135 section without prior written permission of the registered owner of the motor vehicle.

136 (ii) A person may engage in the incidental and necessary operation of a motor vehicle
137 to move the motor vehicle from one parking space to another within the facility at which the
138 motor vehicle is stored if it is necessary for the normal management of the facility.

139 (iii) The motor vehicle repair facility shall record the milage shown on the motor
140 vehicle's odometer at the time the motor vehicle repair facility takes possession of the motor
141 vehicle under this section:

142 (A) if the motor vehicle is equipped with an odometer; and

143 (B) the odometer reading is accessible to the motor vehicle repair facility.

144 (d) If the motor vehicle repair facility stores a motor vehicle that the motor vehicle
145 repair facility took possession of under this section in a location other than the location of the
146 motor vehicle repair facility, the location shall comply with the standards for an impound yard
147 determined in accordance with Section 41-1a-1101.

148 (4) (a) If a motor vehicle repair facility takes possession of a motor vehicle, the motor
149 vehicle repair facility:

150 (i) has a possessory lien under Section 38-2-3, subject to the rights and interests of any
151 secured parties in the motor vehicle, against the motor vehicle for:

152 (A) the amount owed under Subsection 7-15-1(7);

153 (B) any towing fees; and

154 (C) any storage fees;

155 (ii) may apply to the Division of Motor Vehicles for a transfer of title to the motor
156 vehicle 30 days from the day on which the motor vehicle repair facility sends notice of the sale
157 of the motor vehicle under Section 38-2-4; and

158 (iii) after obtaining title under Subsection (4)(a)(ii), may dispose of the motor vehicle
159 as provided in Section 38-2-4.

160 (b) If the Division of Motor Vehicles issues a title based on the application made
161 pursuant to Subsection (4)(a)(ii), the lien or interests of all other persons claiming an interest in
162 or lien on the motor vehicle shall be stated on the title.

163 (5) A motor vehicle shall be released:

164 (a) to the registered owner or the owner's agent, if the registered owner or the owner's
165 agent:

166 (i) makes a claim for release of the motor vehicle;

167 (ii) presents identification sufficient to prove ownership of the motor vehicle; and

168 (iii) pays the amount owed under Subsection (4)(a)(i); or

169 (b) to the lien holder or the lien holder's agent, if the lien holder or the lien holder's
170 agent:

171 (i) makes a claim for release of the motor vehicle; and

172 (ii) presents documentation stating that the lien holder has a lien on the motor vehicle.

173 (6) If a motor vehicle is disposed of under Subsection (4)(a)(iii), the proceeds from the
174 sale shall be distributed in the following order:

175 (a) amounts owed to any lien holder of the motor vehicle other than the motor vehicle
176 repair facility shall be paid in the order that the lien holders have priority;

177 (b) amounts owed a tow truck motor carrier or impound yard shall be paid;

178 (c) the amounts owed a motor vehicle repair facility under this section shall be paid to
179 the motor vehicle repair facility; and

180 (d) the amount remaining after the amounts described in Subsections (6)(a) through (c)

181 are paid shall be paid to the registered owner of the motor vehicle prior to the title being
182 transferred to the motor vehicle repair facility under Subsection (4)(a)(ii).