

Representative David Clark 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 and motor vehicle repair facilities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ 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



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **38-2-8**, Utah Code Annotated 1953

29

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

31 Section 1. Section **38-2-8** is enacted to read:

32 **38-2-8. Dishonored check as payment for repair of a motor vehicle.**

33 (1) As used in this section:

34 (a) "Check" means a payment instrument on a depository institution including a:

35 (i) check;

36 (ii) draft;

37 (iii) order; or

38 (iv) other instrumentality.

39 (b) "Dishonored" means that a check is not honored because the account upon which
40 the check is made or drawn does not have sufficient funds for payment in full of the check.

41 (c) "Issuer" means a person who makes, draws, signs, or issues a check, whether as
42 corporate agent or otherwise, for the repair of a motor vehicle.

43 (d) "Motor vehicle" means a self-propelled vehicle intended primarily for use and
44 operation on the highways.

45 (e) "Motor vehicle repair facility" means any motor vehicle dealer, garage, body shop,
46 or other commercial entity that repairs or replaces parts of a motor vehicle by substituting or
47 correcting the exterior or inoperative parts of the motor vehicle.

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

50 (a) the check amount equals or exceeds ~~Ĥ [\$250] \$500 ĥ~~ ;

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

52 (c) the motor vehicle repair facility:

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

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

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

57 the motor vehicle;

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

59 (f) the holder provides written notice of the intent to take possession of the motor
60 vehicle;

61 (i) to:

62 (A) the issuer; and

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

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

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

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

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

71 (i) pursuant to judicial process; or

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

74 (b) If a motor vehicle repair facility causes a motor vehicle to be moved by a tow truck
75 motor carrier, the tow truck motor carrier shall meet the standards outlined in Subsection
76 41-6-102.5(2) except that the tow truck motor carrier may not request a transfer of title to an
77 abandoned vehicle under Subsection 72-9-603(5).

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

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

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

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

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

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

93 (4) (a) If a motor vehicle repair facility takes possession of a motor vehicle, the motor
94 vehicle repair facility:

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

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

98 (B) any towing fees; and

99 (C) any storage fees;

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

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

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

108 (5) A motor vehicle shall be released:

109 (a) to the registered owner or the owner's agent, if the registered owner or the owner's
110 agent:

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

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

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

114 (b) to the lien holder or the lien holder's agent, if the lien holder or the lien holder's
115 agent:

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

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

118 (6) If a motor vehicle is disposed of under Subsection (4)(a)(iii), the proceeds from the

119 sale shall be distributed in the following order:

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

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

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

125 (d) the amount remaining after the amounts described in Subsections (6)(a) through (c)
126 are paid shall be paid to the registered owner of the motor vehicle prior to the title being
127 transferred to the motor vehicle repair facility under Subsection (4)(a)(ii).