

DISHONORED INSTRUMENT AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Ben C. Ferry

LONG TITLE

General Description:

This bill modifies provisions related to treatment of dishonored instruments.

Highlighted Provisions:

This bill:

- ▶ modifies the exemption from the requirements for collecting on a dishonored instrument; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

7-15-1, as last amended by Chapter 170, Laws of Utah 2002

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

Section 1. Section **7-15-1** is amended to read:

7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs -- Exemptions.

(1) As used in this chapter:

- (a) "Check" means a payment instrument on a depository institution including a:
 - (i) check;

- (ii) draft;
- (iii) order; or
- (iv) other instrument.

(b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:

- (i) obtaining from any person any money, merchandise, property, or other thing of value;

or

- (ii) paying for any service, wages, salary, or rent.
- (c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2) (a) An issuer of a check is liable to the holder of the check if:

- (i) the check:
 - (A) is not honored upon presentment; and
 - (B) is marked "refer to maker";
- (ii) the account upon which the check is made or drawn:
 - (A) does not exist;
 - (B) has been closed; or
 - (C) does not have sufficient funds or sufficient credit for payment in full of the check; or
- (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally

binding obligation; and

(B) the issuer stops payment on the check with the intent to:

- (I) fraudulently defeat a possessory lien; or
- (II) otherwise defraud the holder of the check.

(b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

- (i) the check amount; and
- (ii) a service charge of \$20.

(3) (a) The holder of a check that has been dishonored may:

- (i) give written or oral notice of dishonor to the issuer of the check; and
- (ii) waive all or part of the service charge imposed under Subsection (2)(b).

(b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:

- (i) the holder redeposits the check; and
- (ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

- (a) the amount owed under Subsection (2)(b); and
- (b) collection costs not to exceed \$20.

(5) (a) A holder shall provide written notice to an issuer before:

(i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b); or

- (ii) filing an action based upon this section.

(b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:

(i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:

- (A) the amount owed under Subsection (2)(b); and
- (B) collection costs under Subsection (4); and

(ii) the holder may file civil action if the issuer does not pay to the holder the amount owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

(6) (a) If the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not file civil action under this section if the issuer pays the holder:

- (i) the amount owed under Subsection (2)(b);
- (ii) the collection costs under Subsection (4);
- (iii) an amount that:
 - (A) is equal to the greater of:

(I) \$50; or
(II) triple the check amount; and
(B) does not exceed the check amount plus \$250; and
(iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed \$50.

(b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).

(7) (a) A civil action may not be filed under this section unless the issuer fails to pay the amounts owed:

(i) under Subsection (4); and

(ii) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.

(b) Subject to ~~Subsection~~ Subsections (7)(c) and (d), in a civil action the issuer of the check is liable to the holder for:

(i) the amount owed under Subsection (2)(b);

(ii) the collection costs under Subsection (4);

(iii) interest;

(iv) court costs;

(v) reasonable attorneys' fees; and

(vi) damages:

(A) equal to the greater of:

(I) \$100; or

(II) triple the check amount; and

(B) not to exceed the check amount plus \$500.

(c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a finding of good cause.

(d) If a holder of a check violates this section by filing a civil action under this section before 31 calendar days from the day on which the notice required by Subsection (5) is mailed, an issuer may not be held liable for an amount in excess of the check amount.

(e) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(vi).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(vi).

(8) This section may not be construed to prohibit the holder of the check from seeking relief under any other applicable statute or cause of action.

(9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if~~[-(†)]~~ the holder is:

~~[(A) is]~~ (i) a depository institution; or

~~[(B)]~~ (ii) a person that receives a payment on behalf of a depository institution~~[-];~~

~~[(ii) the check is a payment on a loan that originated at the depository institution that:]~~

~~[(A) is the holder; or]~~

~~[(B) on behalf of which the holder received the payment; and]~~

~~[(iii) the loan contract states a specific service charge for dishonor.]~~

(b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the

date of veto override.