

1 **DISHONORED INSTRUMENT AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Peter C. Knudson**

6 **LONG TITLE**

7 **General Description:**

8 This bill modifies provisions related to treatment of dishonored instruments.

9 **Highlighted Provisions:**

10 This bill:

11 ▶ modifies the exemption from the requirements for collecting on a dishonored
12 instrument; and

13 ▶ makes technical changes.

14 **Monies Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 This bill provides an immediate effective date.

18 **Utah Code Sections Affected:**

19 **AMENDS:**

20 **7-15-1**, as last amended by Chapter 170, Laws of Utah 2002

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

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

24 **7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs**
25 **-- Exemptions.**

26 (1) As used in this chapter:

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



- 28 (i) check;
- 29 (ii) draft;
- 30 (iii) order; or
- 31 (iv) other instrument.
- 32 (b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as
- 33 corporate agent or otherwise, for the purpose of:
 - 34 (i) obtaining from any person any money, merchandise, property, or other thing of
 - 35 value; or
 - 36 (ii) paying for any service, wages, salary, or rent.
- 37 (c) "Mailed" means the day that a notice is properly deposited in the United States
- 38 mail.
- 39 (2) (a) An issuer of a check is liable to the holder of the check if:
 - 40 (i) the check:
 - 41 (A) is not honored upon presentment; and
 - 42 (B) is marked "refer to maker";
 - 43 (ii) the account upon which the check is made or drawn:
 - 44 (A) does not exist;
 - 45 (B) has been closed; or
 - 46 (C) does not have sufficient funds or sufficient credit for payment in full of the check;
- 47 or
- 48 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally
- 49 binding obligation; and
 - 50 (B) the issuer stops payment on the check with the intent to:
 - 51 (I) fraudulently defeat a possessory lien; or
 - 52 (II) otherwise defraud the holder of the check.
- 53 (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:
 - 54 (i) the check amount; and
 - 55 (ii) a service charge of \$20.
- 56 (3) (a) The holder of a check that has been dishonored may:
 - 57 (i) give written or oral notice of dishonor to the issuer of the check; and
 - 58 (ii) waive all or part of the service charge imposed under Subsection (2)(b).

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

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

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

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

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

- 70 (i) charging collection costs under Subsection (4) in addition to the amount owed under
71 Subsection (2)(b); or
- 72 (ii) filing an action based upon this section.

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

- 75 (i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days
76 from the day on which the notice is mailed, the issuer is liable for:
 - 77 (A) the amount owed under Subsection (2)(b); and
 - 78 (B) collection costs under Subsection (4); and
- 79 (ii) the holder may file civil action if the issuer does not pay to the holder the amount
80 owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

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

- 84 (i) the amount owed under Subsection (2)(b);
- 85 (ii) the collection costs under Subsection (4);
- 86 (iii) an amount that:
 - 87 (A) is equal to the greater of:
 - 88 (I) \$50; or
 - 89 (II) triple the check amount; and

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

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

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

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

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

101 (i) under Subsection (4); and

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

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

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

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

108 (iii) interest;

109 (iv) court costs;

110 (v) reasonable attorneys' fees; and

111 (vi) damages:

112 (A) equal to the greater of:

113 (I) \$100; or

114 (II) triple the check amount; and

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

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

119 (d) If a holder of a check violates this section by filing a civil action under this section
120 before 31 calendar days from the day on which the notice required by Subsection (5) is mailed,

121 an issuer may not be held liable for an amount in excess of the check amount.

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

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

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

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

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

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

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

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

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

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

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

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

140 Section 2. **Effective date.**

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

Legislative Review Note

as of 1-27-05 12:26 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0158

Dishonored Instrument Amendments

01-Feb-05

11:29 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst