

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# A Bill

**ACT 335 OF 1995**  
**HOUSE BILL 1366**

4 **By: Representatives Beatty, J. Wilson, Lynn, T. Smith, and Courtway**

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## **For An Act To Be Entitled**

8 "AN ACT TO INCREASE THE HOT CHECK COLLECTION FEE FROM \$15

9 TO \$20; AND FOR OTHER PURPOSES."

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11

## **Subtitle**

12 "TO INCREASE THE HOT CHECK COLLECTION

13 FEE FROM \$15 TO \$20."

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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17

18 SECTION 1. Arkansas Code 4-60-103 is amended to read as follows:

19 "4-60-103. Liability for restitution.

20 (a) Any person who issues a check which is not paid because the check was  
21 written on an account with insufficient funds has fifteen (15) days following  
22 the date of a written demand mailed or delivered to the drawer of the check at  
23 the address shown on the check or his last known address to pay to the holder  
24 of the check or his agent the amount of the check and a collection fee not to  
25 exceed twenty dollars (\$20.00).

26 (b) Any person who fails to make restitution as set forth in subsection  
27 (a) of this section and who fails to pay the amount of the check and a  
28 collection fee not to exceed twenty dollars (\$20.00) within thirty (30) days  
29 following the date of a written demand mailed to the drawer by certified mail,  
30 return receipt requested, to the address shown on the check or his last known  
31 address, is liable to the holder of the check or his agent for twice the  
32 amount of the check, but in no case less than fifty dollars (\$50.00), and for  
33 interest and costs of collection including reasonable attorney fees. In an  
34 action brought under this subsection, the prevailing party may recover court  
35 costs and reasonable attorneys\_ fees.

36 (c) Nothing in this section shall prevent the criminal prosecution of the

1 person who issues the check. However, any payment made by the defendant to a  
2 victim pursuant to an order for restitution entered in a criminal prosecution  
3 shall be set off against any judgment in favor of the victim in a civil action  
4 brought under this section arising out of the same facts or event."

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6 SECTION 2. Arkansas Code 5-37-303 is amended to read as follows:

7 "5-37-303. Notice.

8 (a) For purposes of this section and § 5-37-304, notice that payment was  
9 refused by the drawee for lack of funds shall be sent by certified or  
10 registered mail, evidenced by return receipt, to the address printed on the  
11 instrument or given at the time of issuance, or current residence.

12 (b) The form of the notice shall be substantially as follows:

13 \_You are hereby notified that the check(s) or instrument(s) listed below  
14 (has) (have) been dishonored. Pursuant to Arkansas law, you have ten (10)  
15 days from receipt of this notice to tender payment of the total amount of the  
16 check(s) or instrument(s), plus the applicable service charge(s) of \$\_\_\_\_\_  
17 (not to exceed \$20.00 per check), the total amount due being \$\_\_\_\_\_.  
18 Unless this amount is paid in full within the time specified above, the  
19 dishonored check(s) or instrument(s) and all other available information  
20 relating to this incident may be turned over to the Prosecuting Attorney for  
21 criminal prosecution.

22	CHECK NO.	CHECK DATE	CHECK AMOUNT	NAME OF BANK
23				
24	_____	_____	_____	_____
25				
26	_____	_____	_____	_____
27				
28	_____	_____	_____	_____

29 (c) Any party holding a dishonored check or instrument and giving notice  
30 in substantially similar form to that provided in subsection (b) of this  
31 section and in the manner provided in subsection (a) of this section shall be  
32 immune from civil liability and criminal liability if sent in good faith for  
33 the giving of the notice and for proceeding under the forms of the notice."

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35 SECTION 3. Arkansas Code 5-37-304 is amended to read as follows:

1 "5-37-304. Evidence against maker or drawer.

2 (a) For purposes of this section, it is prima facie evidence that the  
3 maker or drawer intended to defraud and knew at the time of the making,  
4 drawing, uttering, or delivering that the check, draft, or order would not be  
5 honored if:

6 (1) The maker or drawer had no account with the drawee at the time the  
7 check, draft, or order was made, drawn, uttered, or delivered; or

8 (2) (A) (i) The check, draft, or order bears the endorsement or stamp of a  
9 collecting bank indicating that the instrument was returned because of  
10 insufficient funds to cover the value; or

11 (ii) Payment was refused by the drawee for lack of funds, upon  
12 presentation within thirty (30) days after delivery, and the maker or drawer  
13 shall not have paid the holder the amount due, together with a service charge  
14 not to exceed twenty dollars (\$20.00) within ten (10) days after receiving  
15 written notice that payment was refused upon the check, draft, or order.

16 (B) Nothing shall impair the prosecuting attorney's power to  
17 immediately file charges after the check has been returned. The prosecuting  
18 attorney may collect restitution including a service charge, not exceeding  
19 twenty dollars (\$20.00) per check, for the payees of the check.

20 (b) The check, draft, or order bearing an insufficient stamp or no  
21 account stamp from the collecting bank shall be received as evidence that  
22 there were insufficient funds or no account at trial in any court in this  
23 state.

24 (c) Nothing herein shall be deemed to abrogate a defendant's right of  
25 cross-examination of banking officials provided notice of intention to  
26 cross-examine is given ten (10) days prior to the date of hearing or trial."

27

28 SECTION 4. Arkansas Code 5-37-307 is amended to read as follows:

29 "5-37-307. Knowingly issuing worthless check.

30 (a) A person commits an offense if he issues or passes a check, order, or  
31 draft for the payment of money knowing that the issuer does not have  
32 sufficient funds in or on deposit with the bank or other drawee for the  
33 payment in full of the check, order, or draft as well as all other checks,  
34 orders, or drafts outstanding at the time of issuance. This section and  
35 21-6-411 do not apply to preexisting debt or situations where nothing of value

1 was acquired, but do apply to rents, child support payments, consignments,  
2 taxes, licenses, fees, fines, and court costs.

3 (b) This section does not prevent the prosecuting attorney from  
4 establishing the required knowledge by direct evidence. However, for purposes  
5 of this section, the issuer's knowledge of insufficient funds is presumed,  
6 except in the case of a postdated check, order, or draft, if:

7 (1) He had no account with the bank or other drawee at the time he issued  
8 the check, order, or draft; or

9 (2) Payment was refused by the bank or other drawee for lack of funds or  
10 insufficient funds on presentation within thirty (30) days after issue and the  
11 issuer failed to pay the holder in full, plus a service charge not to exceed  
12 twenty dollars (\$20.00), within ten (10) days after receiving notice of that  
13 refusal.

14 (c) Notice for purposes of this section shall be by the procedure as set  
15 forth in §§ 5-37-303 and 5-37-304.

16 (d) If notice is given, it is presumed that the notice was received no  
17 later than five (5) days after it was sent.

18 (e) An offense under this section is a violation and is punishable as  
19 provided in § 5-4-104.

20 (f) This act is cumulative to all other acts and shall not repeal any  
21 other act."

22

23 SECTION 5. All provisions of this act of a general and permanent nature  
24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
25 Revision Commission shall incorporate the same in the Code.

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27 SECTION 6. If any provision of this act or the application thereof to  
28 any person or circumstance is held invalid, such invalidity shall not affect  
29 other provisions or applications of the act which can be given effect without  
30 the invalid provision or application, and to this end the provisions of this  
31 act are declared to be severable.

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33 SECTION 7. All laws and parts of laws in conflict with this act are  
34 hereby repealed.

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APPROVED: 2-14-95