

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

A Bill

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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Subtitle

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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:

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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
21 was written on an account with insufficient funds has fifteen (15) days
22 following the date of a written demand mailed or delivered to the drawer of
23 the check at the address shown on the check or his last known address to pay
24 to the holder of the check or his agent the amount of the check and a
25 collection fee not to 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
30 mail, return receipt requested, to the address shown on the check or his last
31 known address, is liable to the holder of the check or his agent for twice
32 the amount of the check, but in no case less than fifty dollars (\$50.00), and
33 for interest and costs of collection including reasonable attorney fees. In
34 an action brought under this subsection, the prevailing party may recover
35 court costs and reasonable attorneys_ fees.

1 (c) Nothing in this section shall prevent the criminal prosecution of
2 the person who issues the check. However, any payment made by the defendant
3 to a victim pursuant to an order for restitution entered in a criminal
4 prosecution shall be set off against any judgment in favor of the victim in a
5 civil action brought under this section arising out of the same facts or
6 event."

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

9 "5-37-303. Notice.

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

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

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

24	CHECK NO.	CHECK DATE	CHECK AMOUNT	NAME OF BANK
25				
26	_____	_____	_____	_____
27				
28	_____	_____	_____	_____
29				
30	_____	_____	_____	_____

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

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

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

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

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

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

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

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

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

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

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

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

(a) A person commits an offense if he issues or passes a check, order, or draft for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check, order, or draft as well as all other checks,

1 orders, or drafts outstanding at the time of issuance. This section and
 2 21-6-411 do not apply to preexisting debt or situations where nothing of
 3 value was acquired, but do apply to rents, child support payments,
 4 consignments, taxes, licenses, fees, fines, and court costs.

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

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

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

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

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

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

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

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

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

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35 SECTION 7. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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