

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative Mitchell

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For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS HOT CHECK LAW TO ALLOW FOR
9 THE COLLECTION FROM THE MAKER OF ANY SERVICE CHARGES ON
10 THE DISHONORED CHECK COLLECTED FROM THE HOLDER BY THE
11 HOLDER'S BANK OR OTHER DRAWEE IN ADDITION TO ALL OTHER
12 SERVICE CHARGES; AND FOR OTHER PURPOSES."

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Subtitle

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

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22 SECTION 1. Arkansas Code Annotated § 5-37-303 is amended to read as
23 follows:

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"5-37-303. Notice.

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

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

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31 You are hereby notified that the check(s) or instrument(s) listed
32 below (has) (have) been dishonored. Pursuant to Arkansas law, you have ten
33 (10) days from receipt of this notice to tender payment of the total amount
34 of the check(s) or instrument(s), plus the applicable service charge(s) of
35 \$..... (not to exceed \$15.00 per check), plus any services charges collected
from the holder by the holder's bank or other drawee as provided by law, the

1 total amount due being \$..... . Unless this amount is paid in full within
2 the time specified above, the dishonored check(s) or instrument(s) and all
3 other available information relating to this incident may be turned over to
4 the Prosecuting Attorney for criminal prosecution.

5 CHECK NO.	CHECK DATE	CHECK AMOUNT	NAME OF BANK
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10 (c) Any party holding a dishonored check or instrument and giving
11 notice in substantially similar form to that provided in subsection (b) of
12 this section and in the manner provided in subsection (a) of this section
13 shall be immune from civil liability and criminal liability if sent in good
14 faith for the giving of the notice and for proceeding under the forms of the
15 notice."

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17 SECTION 2. Arkansas Code Annotated § 5-37-304 is amended to read as
18 follows:

19 "5-37-304. Evidence against maker or drawer.

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

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

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

29 (ii) Payment was refused by the drawee for lack of
30 funds, upon presentation within thirty (30) days after delivery, and the
31 maker or drawer shall not have paid the holder the amount due, together with
32 a service charge not to exceed fifteen dollars (\$15.00), plus any service
33 charges collected from the holder by the holder's bank or other drawee as
34 provided by law, within ten (10) days after receiving written notice that
35 payment was refused upon the check, draft, or order.

1 (B) Nothing shall impair the prosecuting attorney's power to
 2 immediately file charges after the check has been returned. The prosecuting
 3 attorney may collect restitution including a service charge, not exceeding
 4 fifteen dollars (\$15.00) per check, plus any service charges collected from
 5 the holder by the holder's bank or other drawee as provided by law, for the
 6 payees of the check.

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

11 (c) Nothing herein shall be deemed to abrogate a defendant's right of
 12 cross-examination of banking officials provided notice of intention to
 13 cross-examine is given ten (10) days prior to the date of hearing or trial."
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15 SECTION 3. Arkansas Code Annotated § 5-37-307 is amended to read as
 16 follows:

17 "5-37-307. Knowingly issuing worthless check.

18 (a) A person commits an offense if he issues or passes a check, order,
 19 or draft for the payment of money knowing that the issuer does not have
 20 sufficient funds in or on deposit with the bank or other drawee for the
 21 payment in full of the check, order, or draft as well as all other checks,
 22 orders, or drafts outstanding at the time of issuance. This section and
 23 § 21-6-411 do not apply to preexisting debt or situations where nothing of
 24 value was acquired, but do apply to rents, child support payments,
 25 consignments, taxes, licenses, fees, fines, and court costs.

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

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

32 (2) Payment was refused by the bank or other drawee for lack of
 33 funds or insufficient funds on presentation within thirty (30) days after
 34 issue and the issuer failed to pay the holder in full, plus a service charge
 35 not to exceed fifteen dollars (\$15.00), plus any service charges collected

1 from the holder by the holder's bank or other drawee as provided by law,
2 within ten (10) days after receiving notice of that refusal.

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

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

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

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

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12 SECTION 4. All provisions of this act of a general and permanent
13 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
14 Code Revision Commission shall incorporate the same in the Code.

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16 SECTION 5. If any provision of this act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are declared to be severable.

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22 SECTION 6. All laws and parts of laws in conflict with this act are
23 hereby repealed.

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