

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Senator Gwatney

# A Bill

SENATE BILL 206

## For An Act To Be Entitled

"AN ACT TO AMEND THE ARKANSAS HOT CHECK LAW TO INCREASE  
THE SERVICE CHARGE ON DISHONORED CHECKS TO TWENTY DOLLARS  
(\$20.00); AND FOR OTHER PURPOSES."

## Subtitle

"TO AMEND THE ARKANSAS HOT CHECK LAW  
TO INCREASE THE SERVICE CHARGE ON  
DISHONORED CHECKS TO (\$20.00)"

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

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

"5-37-303. Notice.

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

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

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

1	CHECK NO.	CHECK DATE	CHECK AMOUNT	NAME OF BANK
2	.....	.....	.....	.....
3	.....	.....	.....	.....
4	.....	.....	.....	.....
5	.....	.....	.....	....._

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

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

15 "5-37-304. Evidence against maker or drawer.

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

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

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

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

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

35 (b) The check, draft, or order bearing an insufficient stamp or no

1 account\_ stamp from the collecting bank shall be received as evidence that  
2 there were insufficient funds or no account at trial in any court in this  
3 state.

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

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8 SECTION 3. Arkansas Code Annotated § 5-37-307 is amended to read as  
9 follows:

10 "5-37-307. Knowingly issuing worthless check.

11 (a) A person commits an offense if he issues or passes a check, order,  
12 or draft for the payment of money knowing that the issuer does not have  
13 sufficient funds in or on deposit with the bank or other drawee for the  
14 payment in full of the check, order, or draft as well as all other checks,  
15 orders, or drafts outstanding at the time of issuance. This section and  
16 § 21-6-411 do not apply to preexisting debt or situations where nothing of  
17 value was acquired, but do apply to rents, child support payments,  
18 consignments, taxes, licenses, fees, fines, and court costs.

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

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

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

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

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

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

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

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

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8 SECTION 5. If any provision of this act or the application thereof to  
9 any person or circumstance is held invalid, such invalidity shall not affect  
10 other provisions or applications of the act which can be given effect without  
11 the invalid provision or application, and to this end the provisions of this  
12 act are declared to be severable.

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

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