

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2006 Spring  
Supp.

West Group  
Publisher

To provide sellers of goods of services with a right of action that includes minimum damages against a drawer of a check, draft, order, or other instrument for the payment of money when the drawer fraudulently negotiates the check, draft, order, or other instrument for the payment of money to obtain goods and services and the check draft, order, or other instrument for the payment of money is subsequently dishonored.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Dishonored Check Act of 2006".

Sec. 2. Definitions.

For the purposes of this act, the term "merchant" means a person who does or would sell, lease, or transfer, either directly or indirectly, consumer goods or services, or a person who does or would supply the goods or services which are or would be the subject matter of a trade practice.

Sec. 3. Merchant's civil recovery for dishonored checks.

(a) Any person who, for himself or herself, or for another person, with intent to defraud, makes, draws, utters, or delivers any check, draft, order, or other instrument for the payment of money for goods or services upon any bank or other depository and knows or should have known that payment of the check, draft, order, or other instrument for the payment of money for goods or services will be refused by the drawee bank or other depository, either because the drawer does not have sufficient funds in or credit with the bank or other depository, or the drawer, with intent to defraud, has ordered a stop payment on the check, draft, order, or other instrument for the payment of money for goods or services, shall be civilly liable to the payee who has presented the check, draft, order, or other instrument for the payment of money as provided in this section.

(b) A person shall be liable under subsection (a) of this section only if the check, draft, order, or other instrument for payment of money is dishonored and the drawer fails to pay the face amount of that check, draft, order, or other instrument for payment of money within 30

days following the mailing by the merchant of a written demand for payment as provided in subsection (f) of this section.

(c) Any person liable under subsection (a) of this section shall be liable to the merchant for the face amount of the check, and:

(1) Additional damages in the amount of 2 times the amount of the check, draft, order, or other instrument for the payment of money, or \$100, whichever is greater;

(2) Costs; and

(3) Reasonable attorney fees.

(d) The refusal of the drawee bank or other depository to make payment on a check, draft, order, or other instrument because the drawer does not have sufficient funds in or credit with the bank or other depository shall be prima facie evidence of the drawer's intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository.

(e) The additional damages authorized under subsection (c)(1) of this section shall only be available to those merchants that post or otherwise give conspicuous notice at their place of business of the additional damages, including reference to the section of law authorizing the additional damages.

(f) The written demand for payment of the dishonored check, draft, order, or other instrument for the payment of money required by subsection (b) of this section shall be in the form prescribed in subsection (g) of this section and shall be sent to the drawer's last known residence address and the last known place of business, if any, by first-class mail and by certified mail, return receipt requested with delivery restricted to the drawer, on or after the date the merchant received notice that the check, draft, order, or other instrument for the payment of money has been dishonored.

(g) The written demand for payment required by subsection (f) of this section shall be in substantially the following form and shall be printed in at least 10-point type:

"DEMAND FOR PAYMENT OF DISHONORED CHECK, DRAFT, ORDER, OR OTHER  
INSTRUMENT FOR THE PAYMENT OF MONEY

Notice: You may be sued 30 days after this notice if you don't  
make payment within 30 days of this notice

DATE:

TO: Name of Drawer  
Last known residence address  
or place of business

**ENROLLED ORIGINAL**

YOUR CHECK, DRAFT, ORDER, OR OTHER INSTRUMENT FOR THE PAYMENT OF MONEY IN THE AMOUNT OF \$ \_\_\_\_\_, DATED \_\_\_\_\_, PAYABLE TO THE ORDER OF \_\_\_\_\_ HAS BEEN DISHONORED BY THE BANK/DEPOSITORY UPON WHICH IT WAS DRAWN, BECAUSE:

- YOU HAD NO ACCOUNT WITH THAT BANK/DEPOSITORY
- YOU HAD INSUFFICIENT FUNDS OR CREDIT WITH THAT BANK/DEPOSITORY
- A STOP PAYMENT ORDER WAS ISSUED
- OTHER (specify)

IF YOU DO NOT MAKE PAYMENT, YOU COULD BE SUED UNDER SECTION OF THE DISTRICT OF COLUMBIA OFFICIAL CODE TO RECOVER PAYMENT. IF JUDGMENT IS RENDERED AGAINST YOU IN COURT, IT MAY ALSO INCLUDE NOT ONLY THE ORIGINAL FACE AMOUNT OF THE CHECK, BUT ALSO ADDITIONAL DAMAGES, AS FOLLOWS:

- (1) TWO TIMES THE FACE AMOUNT OF THE CHECK, OR \$100, WHICHEVER IS GREATER;
- (2) COSTS; AND
- (3) REASONABLE ATTORNEY FEES.

NAME OF PAYEE:

(PHONE NUMBER)

ADDRESS TO WHICH PAYMENT SHOULD BE DELIVERED

IF YOU DISPUTE ANY OF THE FACTS LISTED ABOVE, CONTACT THE PAYEE IMMEDIATELY."

(h) The remedies provided by this act are in addition to civil remedies otherwise provided by law.

(i) The recovery of damages from the alleged offender shall not prohibit criminal prosecution of the alleged offender under section 1 of An Act Regulating the issuance of checks, drafts, and orders for the payment of money within the District of Columbia, approved July 1, 1922 (42 Stat. 820; D.C. Official Code § 22-1510) ("the Act").

(j) The recovery of civil damages by a merchant or a finding of liability under this act

shall not be admissible in a criminal proceeding.

(k) A conviction or plea of guilty of making, drawing, or uttering a check, draft, order, or other instrument for payment of money with the intent to defraud under section 1 of the Act is not a prerequisite to the maintenance of a civil action under this act.

**Sec. 4. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**Sec. 5. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia