

AMENDED IN ASSEMBLY MARCH 23, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 522**

---

---

**Introduced by Assembly Member Katz**  
*(Coauthors: Assembly Members Bowen, Knox, Napolitano,  
Richter, and Speier)*  
*(Coauthors: Senators Costa, Monteith, O'Connell, and  
Thompson)*

February 17, 1995

---

---

An act to amend Section 1719 of the Civil Code, relating to commercial paper.

LEGISLATIVE COUNSEL'S DIGEST

AB 522, as amended, Katz. Checks: insufficient funds.

Existing law creates a cause of action for treble the amount, not to exceed \$500, of a check passed on insufficient funds, plus costs, *except as specified, if the maker of the check fails to pay the amount of the check in cash, as specified.*

This bill would increase the maximum amount of damages to \$1,500, plus costs, to be awarded to a payee. *The bill would make a person liable for these damages if the person fails to pay the amount of the check and any bad check or service charge owing on or resulting from the check in cash, as specified.* The bill would make findings and declarations in this regard and would make related technical, nonsubstantive changes. *This bill would specify that the requirements of this provision in regard to remedies are mandatory upon a court.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1719 of the Civil Code is  
2 amended to read:  
3 1719. (a) (1) Notwithstanding any penal sanctions  
4 that may apply, any person who passes a check on  
5 insufficient funds is liable to the payee for the amount of  
6 the check, plus damages equal to treble that amount,  
7 which damages shall not be less than one hundred dollars  
8 (\$100) nor more than one thousand five hundred dollars  
9 (\$1,500), plus the costs of mailing the written demand for  
10 payment.  
11 (2) (A) A person shall only be liable under paragraph  
12 (1) if (i) the payee sent, by certified mail, a written  
13 demand for payment, informing the person of the  
14 provisions of ~~this section, and the person failed to pay the~~  
15 ~~amount in cash within 30 days of the demand.~~ *this section,*  
16 *the amount of the check, and the amount of any bad*  
17 *check or service charge owing on or resulting from the*  
18 *check, if any, and (ii) the person failed to pay the amount*  
19 *of the check and the bad check or service charge in cash*  
20 *within 30 days of the demand.*  
21 (B) A person shall not be liable under paragraph (1)  
22 if he or she stops payment in order to resolve a good faith  
23 dispute with the payee. The payee is entitled to the  
24 damages only upon proving by clear and convincing  
25 evidence that there was no good faith dispute, as defined  
26 in subdivision (b).  
27 (3) As used in this subdivision, to “pass a check on  
28 insufficient funds” means to make, utter, draw, or deliver  
29 any check, draft, or order for the payment of money upon  
30 any bank, depository, person, firm, or corporation that  
31 refuses to honor the check, draft, or order for any of the  
32 following reasons:  
33 (A) Lack of funds or credit in the account to pay the  
34 check.



1 (B) The person who wrote the check does not have an  
2 account with the drawee.

3 (C) The person who wrote the check instructed the  
4 drawee to stop payment on the check.

5 (b) For purposes of this section, in the case of a stop  
6 payment, the existence of a “good faith dispute” shall be  
7 determined by the trier of fact. A “good faith dispute” is  
8 one in which the court finds that the maker had a  
9 reasonable belief of his or her legal entitlement to  
10 withhold payment. Grounds for the entitlement include,  
11 but are not limited to, the following: services were not  
12 rendered, goods were not delivered, goods or services  
13 purchased are faulty, not as promised, or otherwise  
14 unsatisfactory, or there was an overcharge.

15 (c) In the case of a stop payment, the notice to the  
16 maker required by this section shall be in substantially the  
17 following form:

18  
19 NOTICE

20  
21 To: \_\_\_\_\_

22 (name of maker)

23 \_\_\_\_\_ is the payee of a check you wrote

24 (name of payee)

25 for \$ \_\_\_\_\_. The check was not paid because

26 (amount)

27 you stopped payment, and the payee demands payment.  
28 You may have a good faith dispute as to whether you owe  
29 the full amount. If you do not have a good faith dispute  
30 with the payee and fail to pay the payee the full amount  
31 of the check in cash within 30 days after this notice was  
32 mailed, you could be sued and held responsible to pay at  
33 least all of the following:

34 (1) The amount of the check.

35 (2) Damages of at least \$100 or, if higher, three times  
36 the amount of the check up to \$1,500.

37 (3) The cost of mailing this notice.

38 If the court determines that you do have a good faith  
39 dispute with the payee, you will not have to pay the  
40 damages and mailing cost mentioned above. If you



1 stopped payment because you have a good faith dispute  
2 with the payee, you should try to work out your dispute  
3 with the payee. You can contact the payee at:

4 \_\_\_\_\_  
 5 (name of payee)  
 6 \_\_\_\_\_  
 7 (street address)  
 8 \_\_\_\_\_  
 9 (telephone number)

10  
11 You may wish to contact a lawyer to discuss your legal  
12 rights and responsibilities.

13 \_\_\_\_\_  
14 (name of sender of notice)

15 (d) In the case of a stop payment, a court may not  
16 award damages or costs under this section unless the  
17 court receives into evidence a copy of the written  
18 demand which, in that case, shall have been sent to the  
19 maker and a signed certified mail receipt showing  
20 delivery, or attempted delivery if refused, of the written  
21 demand to the maker's address.

22 (e) A cause of action under this section may be  
23 brought in small claims court, if it does not exceed the  
24 jurisdiction of that court, or in any other appropriate  
25 court. The payee shall, in order to recover damages  
26 because the maker instructed the drawee to stop  
27 payment, show to the satisfaction of the trier of fact that  
28 there was a reasonable effort on the part of the payee to  
29 reconcile and resolve the dispute prior to pursuing the  
30 dispute through the courts.

31 (f) A cause of action under this section may be brought  
32 in municipal or justice court by an assignee of the payee.  
33 However, if the assignee is acting on behalf of the payee,  
34 for a flat fee or a percentage fee, the assignee may not  
35 charge the payee a greater flat fee or percentage fee for  
36 that portion of the amount collected that represents  
37 treble damages than is charged the payee for collecting  
38 the face amount of the check, draft, or order. This  
39 subdivision shall not apply to an action brought in small  
40 claims court.



1 (g) Notwithstanding subdivision (a), if the payee is a  
2 municipal court, the written demand for payment  
3 described in subdivision (a) may be mailed to the maker  
4 by a municipal court clerk. Notwithstanding subdivision  
5 (d), in the case of a stop payment where the demand is  
6 mailed by a municipal court clerk, a court may not award  
7 damages or costs pursuant to subdivision (d), unless the  
8 court receives into evidence a copy of the written  
9 demand, and a certificate of mailing by a municipal court  
10 clerk in the form provided for in subdivision (4) of  
11 Section 1013a of the Code of Civil Procedure for service  
12 in civil actions. For purposes of this subdivision, in courts  
13 where a single court clerk serves more than one court, the  
14 clerk shall be deemed the court clerk of each court.

15 *(h) The requirements of this section in regard to*  
16 *remedies are mandatory upon a court.*

17 SEC. 2. The Legislature finds and declares that the  
18 number of checks passed on insufficient funds, and the  
19 amounts of those checks, are increasing. Thus, the  
20 number of disputes taken to small claims court has  
21 increased. In enacting Section 1 of this act, the  
22 Legislature intends to deter any further expansion of the  
23 number of incidents of passing checks on insufficient  
24 funds, and thereby reduce the burden on small claims  
25 courts.

