

AMENDED IN SENATE JUNE 17, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2643

**Introduced by Assembly Members Bordonaro and
Kaloogian**

February 21, 1996

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2643, as amended, Bordonaro. Commercial paper: insufficient funds.

Existing law creates a cause of action for the amount of a check passed on insufficient funds minus any partial payment made within 30 days of a specified written demand for payment, damages equal to treble that amount, as specified, plus the costs of mailing the written demand for payment only if the person who passed the check failed to pay either the amount of the check or the amount of the bad check fee charged to the payee by his or her financial institution within a prescribed period, except as specified.

This bill would revise and recast these provisions to create a cause of action for the amount of the check and a *specified* service charge ~~not to exceed \$35~~, payable to the payee. The bill would provide that the person shall have 30 days from the date a prescribed written demand was mailed to pay the

amount of the check, ~~and the service charge, or the bad check fee charged to the payee by the financial institution of the payee.~~ If the person fails to pay ~~any one~~ *this amount in full*, this person shall, ~~in addition,~~ *instead* be liable for specified amounts, including ~~the costs to mail the written demand~~ *treble damages*. The bill would make conforming changes.

The bill would, among other things, provide that for purposes of the above provisions, the term “payee” includes an assignee or holder in due course.

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 shall be liable to the payee for the
6 amount of the check and a service charge payable to the
7 ~~payee for an amount determined by the payee not to~~
8 ~~exceed thirty five dollars (\$35).~~ *If a written demand for*
9 *payee for twenty-five dollars (\$25) for the first check*
10 *passed on insufficient funds and thirty-five dollars (\$35)*
11 *for each subsequent check passed on insufficient funds. If*
12 *a written demand for payment is mailed by certified mail*
13 *to the person who had passed a check on insufficient*
14 *funds and the written demand informs this person of (A)*
15 *the provisions of this section, (B) the amount of the*
16 *check, and (C) the amount of the service charge payable*
17 *to the payee, and (D) the amount of any bad check fee*
18 ~~charged to the payee by his or her financial institution,~~
19 ~~the person who had passed a,~~ *the person who had passed*
20 *a check on insufficient funds shall have 30 days from the*
21 *date the written demand was mailed to pay the amount*
22 *of the check, the amount of the service charge payable to*
23 ~~the payee, or the bad check fee in cash.~~ *If this person fails*
24 ~~to pay the amount of the check, the amount of the service~~
25 ~~charge payable to the payee, or the bad check fee in cash~~
26 ~~within this period, this person shall, in addition to the~~



1 ~~amount of the check minus any partial payment made~~
2 ~~within 30 days after the demand was mailed and the~~
3 ~~amount of the service charge payable to the payee, be~~
4 ~~liable to the payee for damages equal to treble the~~
5 ~~amount of the check, which shall not be less than one~~
6 ~~hundred dollars (\$100) nor more than one thousand five~~
7 ~~hundred dollars (\$1,500), the amount of any bad check~~
8 ~~fee charged to the payee by his or her financial institution,~~
9 ~~if any, and the costs to mail this written demand for~~
10 ~~payment. payable to the payee, and the costs to mail the~~
11 ~~written demand for payment. If this person fails to pay in~~
12 ~~full the amount of the check, the service charge payable~~
13 ~~to the payee, and the costs to mail the written demand~~
14 ~~within this period, this person shall then be liable instead~~
15 ~~for the amount of the check, minus any partial payments~~
16 ~~made toward the amount of the check or the service~~
17 ~~charge within 30 days of the written demand, and~~
18 ~~damages equal to treble the amount of the check, which~~
19 ~~shall not be less than one hundred dollars (\$100) nor more~~
20 ~~than one thousand five hundred dollars (\$1,500).~~

21 (2) Notwithstanding paragraph (1), a person shall not
22 be liable under that paragraph *for the service charge or*
23 *treble damages* if he or she stops payment in order to
24 resolve a good faith dispute with the payee. The payee is
25 entitled to the ~~damages~~ *service charge or treble damages*
26 only upon proving by clear and convincing evidence that
27 there was no good faith dispute, as defined in subdivision
28 (b).

29 (3) *Notwithstanding paragraph (1), a person shall not*
30 *be liable under that paragraph if, at any time, he or she*
31 *presents the payee with written confirmation by his or*
32 *her financial institution that the check was returned to*
33 *the payee by the financial institution due to an error on*
34 *the part of the financial institution.*

35 (4) As used in this subdivision, to “pass a check on
36 insufficient funds” means to make, utter, draw, or deliver
37 any check, draft, or order for the payment of money upon
38 any bank, depository, person, firm, or corporation that
39 refuses to honor the check, draft, or order for any of the
40 following reasons:



1 (A) Lack of funds or credit in the account to pay the
2 check.

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

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

7 ~~(4) As used in this subdivision, "payee" includes an~~
8 ~~assignee or holder in due course.~~

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

19 (c) In the case of a stop payment, the notice to the
20 ~~maker~~ *drawer* required by this section shall be in
21 substantially the following form:

22
23
24
25
26
27
28
29
30

NOTICE

To: _____
(name of ~~maker~~ *drawer*)
_____ is the payee of a check you wrote
(name of payee)
for \$ _____. The check was not paid because
(amount)



1 you stopped payment, and the payee demands payment. You may
 2 have a good faith dispute as to whether you owe the full amount.
 3 If you do not have a good faith dispute with the payee and fail to
 4 pay the payee the full amount of the check in cash, a service charge
 5 ~~in the amount of _____, which shall not exceed thirty-five dollars~~
 6 ~~(\$35), or the amount of any bad check fee charged to the payee by~~
 7 ~~his or her financial institution charge of twenty-five dollars (\$25)~~
 8 *for the first check passed on insufficient funds and thirty-five*
 9 *dollars (\$35) for each subsequent check passed on insufficient*
 10 *funds* within 30 days after this notice was mailed, you could be sued
 11 and held responsible to pay at least all of the following:

- 12 (1) The amount of the check.
- 13 ~~(2) A service charge of _____, which shall not exceed~~
 14 ~~thirty-five dollars (\$35), payable to the payee.~~
- 15 ~~(3) The amount of any bad check fee charged to the payee by~~
 16 ~~his or her financial institution.~~
- 17 ~~(4)~~
- 18 (2) Damages of at least one hundred dollars (\$100) or, if high-
 19 er, three times the amount of the check up to one thousand five
 20 hundred dollars (\$1,500).
- 21 ~~(5) The cost of mailing this notice.~~

22 If the court determines that you do have a good faith dispute with
 23 the payee, you will not have to pay the ~~damages~~ *service charge,*
 24 *treble damages,* and mailing cost mentioned above. If you stopped
 25 payment because you have a good faith dispute with the payee, you
 26 should try to work out your dispute with the payee. You can contact
 27 the payee at:

28 _____
 29 (name of payee)

30 _____
 31 (street address)

32 _____
 33 (telephone number)

34 You may wish to contact a lawyer to discuss your legal rights and
 35 responsibilities.

36 _____
 37 (name of sender of notice)

38 (d) In the case of a stop payment, a court may not
 39 award damages or costs under this section unless the
 40



1 court receives into evidence a copy of the written
2 demand which, in that case, shall have been sent to the
3 ~~maker~~ *drawer* and a signed certified mail receipt showing
4 delivery, or attempted delivery if refused, of the written
5 demand to the ~~maker's~~ *drawer's* address.

6 (e) A cause of action under this section may be
7 brought in small claims court, if it does not exceed the
8 jurisdiction of that court, or in any other appropriate
9 court. The payee shall, in order to recover damages
10 because the ~~maker~~ *drawer* instructed the drawee to stop
11 payment, show to the satisfaction of the trier of fact that
12 there was a reasonable effort on the part of the payee to
13 reconcile and resolve the dispute prior to pursuing the
14 dispute through the courts.

15 (f) A cause of action under this section may be brought
16 in municipal court by an assignee of the payee. However,
17 if the assignee is acting on behalf of the payee, for a flat
18 fee or a percentage fee, the assignee may not charge the
19 payee a greater flat fee or percentage fee for that portion
20 of the amount collected that represents treble damages
21 than is charged the payee for collecting the face amount
22 of the check, draft, or order. This subdivision shall not
23 apply to an action brought in small claims court.

24 (g) Notwithstanding subdivision (a), if the payee is a
25 municipal court, the written demand for payment
26 described in subdivision (a) may be mailed to the ~~maker~~
27 *drawer* by a municipal court clerk. Notwithstanding
28 subdivision (d), in the case of a stop payment where the
29 demand is mailed by a municipal court clerk, a court may
30 not award damages or costs pursuant to subdivision (d),
31 unless the court receives into evidence a copy of the
32 written demand, and a certificate of mailing by a
33 municipal court clerk in the form provided for in
34 subdivision (4) of Section 1013a of the Code of Civil
35 Procedure for service in civil actions. For purposes of this
36 subdivision, in courts where a single court clerk serves
37 more than one court, the clerk shall be deemed the court
38 clerk of each court.

39 (h) The requirements of this section in regard to
40 remedies are mandatory upon a court.



1 (i) *The rights of the payee to recover the face amount*
2 *of the check as well as the service charge, damages, and*
3 *costs specified in this section, are subject to any applicable*
4 *claims and defenses that the drawer may assert against*
5 *the payee under Division 3 (commencing with Section*
6 *3101) of the Commercial Code.*

7 (j) *Nothing in this section is intended to condition,*
8 *curtail, or otherwise prejudice the rights and remedies of*
9 *a payee under Division 3 (commencing with Section*
10 *3101) of the Commercial Code.*

11 (k) *For purposes of this section, “payee” includes an*
12 *assignee or holder in due course, as defined in Section*
13 *3302 of the Commercial Code.*

14 (l) *The service charge authorized by the amendments*
15 *to this section adopted at the 1995–96 Regular Session of*
16 *the Legislature is declaratory of existing law.*

