

SENATE BILL 163

Unofficial Copy  
I4

1998 Regular Session  
8lr0178  
CF 8lr0012

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By: **Senators Roesser, Munson, Baker, Colburn, Dorman, Dyson, Fry,  
Hoffman, Hogan, Hollinger, Jimeno, Kelley, Middleton, Neall, and Stone**  
Introduced and read first time: January 23, 1998  
Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Checks and Other Instruments - Rights of Holders**

3 FOR the purpose of reenacting certain provisions of law inadvertently repealed by  
4 Chapter 91 of the Acts of the General Assembly of 1996; clarifying and  
5 confirming the intent of the General Assembly that certain holders of certain  
6 dishonored checks and other instruments may recover certain amounts from a  
7 maker or a drawer under certain circumstances; providing for the effective date  
8 of this Act; making this Act retroactive; and generally relating to dishonored  
9 checks and other instruments.

10 BY adding to

11 Article - Commercial Law  
12 Section 15-801 through 15-804 to be under the new subtitle "Subtitle 8.  
13 Dishonored Checks and Other Instruments - Collection"  
14 Annotated Code of Maryland  
15 (1990 Replacement Volume and 1997 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Commercial Law**

19 **SUBTITLE 8. DISHONORED CHECKS AND OTHER INSTRUMENTS - COLLECTION.**

20 15-801.

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
22 INDICATED.

23 (B) "CHECK" HAS THE MEANING PROVIDED IN § 3-104(F) OF THIS ARTICLE.

24 (C) "DISHONOR" HAS THE MEANING PROVIDED IN § 3-502 OF THIS ARTICLE.

25 (D) "DRAWER" HAS THE MEANING PROVIDED IN § 3-103(A)(3) OF THIS ARTICLE.

1 (E) "HOLDER" HAS THE MEANING PROVIDED IN § 1-201(20) OF THIS ARTICLE.

2 (F) "HOLDER IN DUE COURSE" HAS THE MEANING PROVIDED IN § 3-302 OF  
3 THIS ARTICLE.

4 (G) "INSTRUMENT" HAS THE MEANING PROVIDED IN § 3-104(B) OF THIS  
5 ARTICLE.

6 (H) "ISSUE" HAS THE MEANING PROVIDED IN § 3-105 OF THIS ARTICLE.

7 (I) "MAKER" HAS THE MEANING PROVIDED IN § 3-103(A)(5) OF THIS ARTICLE.

8 (J) "NEGOTIATION" HAS THE MEANING PROVIDED IN § 3-201 OF THIS  
9 ARTICLE.

10 (K) "NOTICE OF DISHONOR" HAS THE MEANING PROVIDED IN § 3-503 OF THIS  
11 ARTICLE.

12 (L) "STOP PAYMENT ORDER" HAS THE MEANING PROVIDED IN § 4-403 OF THIS  
13 ARTICLE.

14 15-802.

15 (A) WHEN A CHECK OR OTHER INSTRUMENT HAS BEEN DISHONORED BY  
16 NONACCEPTANCE OR NONPAYMENT AND HAS NOT BEEN PAID WITHIN 10 DAYS, THE  
17 HOLDER TO WHOM THE CHECK OR OTHER INSTRUMENT WAS ISSUED OR  
18 NEGOTIATED MAY SEND A NOTICE OF DISHONOR TO THE MAKER OR DRAWER AS  
19 PROVIDED UNDER THIS SECTION.

20 (B) IF A CHECK OR OTHER INSTRUMENT HAS NOT BEEN PAID WITHIN 30 DAYS  
21 AFTER THE HOLDER HAS SENT A NOTICE OF DISHONOR TO THE MAKER OR DRAWER,  
22 THE MAKER OR DRAWER OF A CHECK OR OTHER INSTRUMENT THAT HAS BEEN  
23 DISHONORED MAY BE LIABLE FOR:

24 (1) THE AMOUNT OF THE CHECK OR INSTRUMENT;

25 (2) A COLLECTION FEE OF UP TO \$25; AND

26 (3) AN AMOUNT UP TO 2 TIMES THE AMOUNT OF THE CHECK, BUT NOT  
27 MORE THAN \$1,000.

28 (C) (1) (I) THE HOLDER OF A CHECK OR OTHER INSTRUMENT THAT HAS  
29 BEEN DISHONORED MAY SEEK THE DAMAGES PROVIDED UNDER THIS SECTION IN  
30 ANY DISTRICT COURT OF THE STATE 30 DAYS AFTER A NOTICE OF DISHONOR HAS  
31 BEEN SENT BY MAIL TO THE LAST KNOWN ADDRESS OF THE MAKER OR DRAWER.

32 (II) THE HOLDER SHALL OBTAIN A CERTIFICATE OF MAILING FROM  
33 THE U.S. POSTAL SERVICE FOR EACH NOTICE SENT BY THE HOLDER UNDER  
34 SUBPARAGRAPH (I) OF THIS PARAGRAPH.

1 (2) A NOTICE OF DISHONOR SENT BY A HOLDER UNDER THIS SECTION  
2 TO A MAKER OR DRAWER OF A DISHONORED CHECK OR OTHER INSTRUMENT SHALL  
3 SUBSTANTIALLY COMPLY WITH THE FORM PRESCRIBED IN § 15-803 OF THIS  
4 SUBTITLE.

5 (D) A HOLDER MAY NOT RECOVER ANY DAMAGES UNDER SUBSECTION (B)(3)  
6 OF THIS SECTION IF:

7 (1) THE HOLDER HAS DEMANDED OF, AND RECEIVED FROM, THE MAKER  
8 OR DRAWER:

9 (I) COLLECTION COSTS IN EXCESS OF THE COLLECTION FEE  
10 PROVIDED UNDER SUBSECTION (B)(2) OF THIS SECTION; OR

11 (II) COLLECTION COSTS WITHIN 30 DAYS AFTER THE MAILING OF  
12 THE NOTICE OF DISHONOR, UNDER SUBSECTION (C) OF THIS SECTION; OR

13 (2) THE DISHONORED CHECK OR OTHER INSTRUMENT PROVIDES FOR  
14 THE PAYMENT OF COLLECTION COSTS IN THE EVENT OF DISHONOR.

15 (E) (1) IT SHALL BE A COMPLETE DEFENSE TO ANY ACTION BROUGHT  
16 UNDER THIS SECTION BY ANY HOLDER OF A DISHONORED CHECK OR OTHER  
17 INSTRUMENT THAT, WITHIN 30 DAYS FROM THE MAILING OF THE NOTICE OF  
18 DISHONOR, THE MAKER OR DRAWER HAS PAID TO THE HOLDER THE FULL AMOUNT  
19 OF THE CHECK OR OTHER INSTRUMENT AND COLLECTION COSTS OF NOT MORE  
20 THAN \$25.

21 (2) IT SHALL BE A COMPLETE DEFENSE TO ANY ACTION BOUGHT UNDER  
22 THIS SECTION BY A HOLDER TO WHOM A DISHONORED CHECK OR OTHER  
23 INSTRUMENT WAS ISSUED THAT THE DISHONOR OF THE CHECK OR OTHER  
24 INSTRUMENT WAS DUE TO A JUSTIFIABLE STOP PAYMENT ORDER OR TO THE  
25 ATTACHMENT OF THE ACCOUNT.

26 (3) IN ANY ACTION BROUGHT UNDER THIS SECTION BY A HOLDER OR  
27 HOLDER IN DUE COURSE TO WHOM A DISHONORED CHECK OR OTHER INSTRUMENT  
28 WAS NEGOTIATED, THE ACTION IS SUBJECT TO ALL VALID DEFENSES THAT MAY BE  
29 RAISED BY THE MAKER OR DRAWER AGAINST THE HOLDER OR HOLDER IN DUE  
30 COURSE UNDER TITLE 3 OF THIS ARTICLE.

31 15-803.

32 (A) A NOTICE OF DISHONOR SENT BY A HOLDER TO A MAKER OR DRAWER  
33 UNDER § 15-802 OF THIS SUBTITLE SHALL SUBSTANTIALLY COMPLY WITH THE  
34 FOLLOWING FORM:

35 "NOTICE OF DISHONORED CHECK

36 DATE \_\_\_\_\_  
37 NAME OF ISSUER \_\_\_\_\_  
38 STREET ADDRESS \_\_\_\_\_

1 CITY AND STATE \_\_\_\_\_  
2 YOU ARE ACCORDING TO LAW HEREBY NOTIFIED THAT A CHECK OR INSTRUMENT  
3 NUMBERED \_\_\_\_\_ AND DATED \_\_\_\_\_, DRAWN ON THE  
4 \_\_\_\_\_ BANK OF \_\_\_\_\_ IN THE AMOUNT OF \_\_\_\_\_ HAS BEEN  
5 RETURNED UNPAID WITH THE NOTATION THE PAYMENT HAS BEEN REFUSED  
6 BECAUSE OF \_\_\_\_\_  
7 WITHIN 30 DAYS FROM THE MAILING OF THIS NOTICE, YOU MUST PAY OR TENDER TO  
8 \_\_\_\_\_

9 (HOLDER)

10 SUFFICIENT MONEY TO PAY SUCH CHECK OR INSTRUMENT IN FULL AND A  
11 COLLECTION FEE OF \$ \_\_\_\_\_ (NOT MORE THAN \$25). IF PAYMENT OF THE ABOVE  
12 AMOUNTS IS NOT MADE WITHIN 30 DAYS OF THE MAILING OF THIS NOTICE OF  
13 DISHONOR, YOU MAY BE LIABLE UNDER § 15-802 OF THE COMMERCIAL LAW ARTICLE,  
14 IN ADDITION TO THE AMOUNT OF THE CHECK OR INSTRUMENT AND A COLLECTION  
15 FEE OF UP TO \$25, FOR AN AMOUNT UP TO 2 TIMES THE AMOUNT OF THE CHECK OR  
16 INSTRUMENT, BUT NOT MORE THAN \$1,000. IN ADDITION, YOU MAY BE PROSECUTED  
17 UNDER THE MARYLAND CRIMINAL CODE (ARTICLE 27, §§ 140 THROUGH 144) AND  
18 SUBJECT TO THE FOLLOWING PENALTIES:

19 (1) IF THE PROPERTY OR SERVICES HAS A VALUE OF \$300 OR MORE, A  
20 FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 15 YEARS, OR  
21 BOTH;

22 (2) IF THE PROPERTY OR SERVICES HAS A VALUE OF LESS THAN \$300, A  
23 FINE NOT EXCEEDING \$100 OR IMPRISONMENT NOT EXCEEDING 18 MONTHS, OR  
24 BOTH.

25 IT SHALL BE A COMPLETE DEFENSE TO ANY ACTION BROUGHT BY ANY HOLDER  
26 UNDER § 15-802 OF THE COMMERCIAL LAW ARTICLE THAT, WITHIN 30 DAYS FROM  
27 THE MAILING OF "THE NOTICE OF DISHONORED CHECK", THE MAKER OR DRAWER  
28 HAS PAID THE HOLDER THE FULL AMOUNT OF THE CHECK OR INSTRUMENT AND  
29 COLLECTION COSTS OF NOT MORE THAN \$25. A HOLDER MAY NOT RECOVER ANY  
30 DAMAGES IF THE HOLDER HAS DEMANDED OF, AND RECEIVED FROM, THE MAKER OR  
31 DRAWER COLLECTION COSTS EXCEEDING \$25.

32 IT SHALL BE A COMPLETE DEFENSE TO ANY ACTION BROUGHT UNDER § 15-802 OF  
33 THE COMMERCIAL LAW ARTICLE BY A HOLDER TO WHOM A DISHONORED CHECK OR  
34 OTHER INSTRUMENT WAS ISSUED THAT THE DISHONOR OF THE CHECK OR OTHER  
35 INSTRUMENT WAS DUE TO A JUSTIFIABLE STOP PAYMENT ORDER OR TO THE  
36 ATTACHMENT OF THE ACCOUNT.

37 IN ANY ACTION BROUGHT UNDER § 15-802 OF THE COMMERCIAL LAW ARTICLE BY A  
38 HOLDER OR HOLDER IN DUE COURSE TO WHOM A DISHONORED CHECK OR OTHER  
39 INSTRUMENT WAS NEGOTIATED, THE ACTION IS SUBJECT TO ALL VALID DEFENSES  
40 THAT MAY BE RAISED BY THE MAKER OR DRAWER AGAINST THE HOLDER OR HOLDER  
41 IN DUE COURSE UNDER TITLE 3 OF THE COMMERCIAL LAW ARTICLE."

1 (B) THE HOLDER TO WHOM A CHECK OR OTHER INSTRUMENT IS ISSUED OR  
2 NEGOTIATED MAY POST A CLEARLY CONSPICUOUS NOTICE AT OR NEAR THE POINT  
3 OF RECEIPT STATING THE LIABILITY OF THE MAKER OR DRAWER FOR THE  
4 COLLECTION FEE AND DAMAGES PROVIDED IN § 15-802 OF THIS SUBTITLE AND  
5 CRIMINAL PENALTIES PROVIDED IN ARTICLE 27, § 143 OF THE CODE.

6 15-804.

7 (A) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ARTICLE, §§ 15-802  
8 AND 15-803 OF THIS SUBTITLE DO NOT APPLY TO ANY CHECK:

9 (1) TENDERED BY A MAKER OR DRAWER IN COMPLETE OR PARTIAL  
10 SATISFACTION OF A PREEXISTING CREDIT OR LOAN OBLIGATION INCURRED BY THE  
11 MAKER OR DRAWER UNDER TITLE 12 OF THIS ARTICLE; OR

12 (2) THAT IS NOT A BAD CHECK AS DESCRIBED UNDER ARTICLE 27, § 141  
13 OF THE CODE.

14 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, §§ 15-802  
15 AND 15-803 OF THIS SUBTITLE SHALL BE CONSTRUED TO GRANT ANY HOLDER TO  
16 WHOM THE CHECK OR OTHER INSTRUMENT WAS ISSUED OR NEGOTIATED A RIGHT  
17 OF RECOURSE WHICH IS ALTERNATIVE TO ANY OTHER RIGHT OF RECOURSE  
18 GRANTED TO THAT HOLDER UNDER TITLE 3 OF THIS ARTICLE.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is retroactive to  
20 January 1, 1997.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 July 1, 1998.