WEST VIRGINIA CODE CHAPTER 55 ARTICLE 16

WV Legislature

§55-16-1. Civil remedy for making, drawing, issuing, uttering or delivery of worthless check, draft or order.

(a) As used in this section, "check" means a draft or other written order payable on demand and drawn on a bank or depository.

(b) If the maker or drawer of a check: (1) Draws, makes, utters, or issues and delivers to another a check drawn on a bank or depository that refuses to honor it because the maker or drawer does not have sufficient funds with which to pay the check on deposit in or credit with the bank or depository upon presentation; and (2) knowingly fails to pay the amount of the check in cash to the payee, within thirty days following written demand, the payee has a cause of action against the drawer or maker.

(c) In an action under this section, the payee may be awarded:

(1) The face amount of the check, less any money received by the payee in partial payment of the debt of the check;

(2) Damages of $500 or the face amount of the check, whichever is less; and

(3) Reasonable costs incurred in filing the action.

(d) In an action under this section, the court or jury may waive all or part of the damages or fees authorized by subdivision (2), subsection (c) of this section upon a finding that the defendant's failure to satisfy the dishonored check was due to the defendant's recent discharge from his or her employment, personal or family illness, or personal or family catastrophic loss.

(e) The written demand required in subsection (a) of this section shall:

(1) Describe the check and the circumstances of its dishonor;

(2) Contain a demand for payment and a notice of intent to

file suit for damages under this section if payment is not received within thirty days; and

(3) Be delivered by personal service, certified mail or regular mail to the defendant at his or her last known address: Provided, That service by regular mail shall be supported by either a post-marked certificate of mailing or a notarized affidavit of service.

(f) It is an affirmative defense to any claim under this section that:

(1) Full satisfaction of the amount of the check was made before the beginning of the action; or

(2) The bank or depository erred in dishonoring the check.

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(g) No action may be brought pursuant to both this section and sections thirty-nine-a through thirty-nine-h, article three, chapter sixty-one of this code on the same check.

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