

ACT 48

H.B. NO. 936

A Bill for an Act Relating to Commercial Paper.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 490, article 3, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§490:3- **Charges for dishonored checks.** The payee or a holder in due course of any check, draft, or order for the payment of money that has been dishonored for lack of funds or credit to pay the check, draft, or order or because the

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maker has no account with the drawee shall be allowed to assess the maker a reasonable service charge of not more than \$20.’’

SECTION 2. Section 490:3-506, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§490:3-506]]~~ **Dishonored check; action for treble damages; procedures.** (a) In any action against a person who makes any check, draft, or order for the payment of money [which] that has been dishonored for lack of funds or credit to pay the [same.] check, draft, or order or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages in an amount equal to \$100 or triple the amount for which the check, draft, or order is drawn, whichever is greater; provided that damages recovered under this section shall not exceed by more than \$500 the amount of the check, draft, or order, and may be awarded only if:

- (1) The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order and any service charge assessed under section 490:3-_____ not less than ten days before commencing the action; and
- (2) The defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the sum of the amount demanded[,] and any service charge assessed under section 490:3-_____.

The written demand shall include notice that if the money is not paid within ten days, triple damages may be incurred by the defendant. The plaintiff shall provide the defendant written notice of demand for payment by certified mail, restricted delivery, at the last known address of the defendant with a request for a return receipt and marked “deliver to addressee only”.

(b) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff, as satisfaction of the claim, an amount of money equal to the sum of the amount of the check and the incurred court and service costs[.] including attorney’s fees and any service charge assessed under section 490:3-_____.

(c) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury may waive all or part of the statutory damages; provided the court or jury shall render judgment against the defendant for not less than the amount of the dishonored check plus incurred court and service costs[.] including attorney’s fees and any service charge assessed under section 490:3-_____.’’

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.