

House Bill 2680

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon Collectors Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases dishonored check fee from \$25 to \$35.

Clarifies that certain provisions of law relating to dishonored checks apply to electronic checks and to debit card transactions that draw on checking accounts.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to dishonored checks; creating new provisions; amending ORS 30.701; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 30.701 is amended to read:

6 30.701. (1) In any action against a maker of a dishonored check, a payee may recover from the
7 maker statutory damages in an amount equal to \$100 or triple the amount for which the check is
8 drawn, whichever is greater. Statutory damages awarded under this subsection are in addition to the
9 amount for which the check was drawn and may not exceed by more than \$500 the amount for which
10 the check was drawn. The court shall allow reasonable attorney fees at trial and on appeal to the
11 prevailing party in an action on a dishonored check and in any action on a check that is not paid
12 because payment has been stopped.

13 (2) Statutory damages and attorney fees under subsection (1) of this section may be awarded
14 only if the payee made written demand of the maker of the check not less than 30 days before
15 commencing the action and the maker failed to tender to the payee before the commencement of the
16 action an amount of money not less than the amount for which the check was drawn, all interest
17 that has accrued on the check under ORS 82.010 as of the date of demand and any charges imposed
18 under subsection (5) of this section.

19 (3) Statutory damages under subsection (1) of this section shall not be awarded by the court if
20 after the commencement of the action but before trial the defendant tenders to the plaintiff an
21 amount of money equal to the amount for which the check was drawn, all interest that has accrued
22 on the check under ORS 82.010 as of the date of payment, any charges imposed under subsection (5)
23 of this section, costs and disbursements and the plaintiff's reasonable attorney fees incurred as of
24 the date of the tender.

25 (4) If the court or jury determines that the failure of the defendant to satisfy the dishonored
26 check at the time demand was made under subsection (2) of this section was due to economic
27 hardship, the court or jury has the discretion to waive all or part of the statutory damages provided
28 for in subsection (1) of this section. If all or part of the statutory damages are waived under this
29 subsection, judgment shall be entered in favor of the plaintiff for the amount of the dishonored
30 check, all interest that has accrued on the check under ORS 82.010, any charges imposed under

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 subsection (5) of this section, the plaintiff's reasonable attorney fees and costs and disbursements.

2 (5) If a check is dishonored, the payee may collect from the maker a **fee not to exceed \$35**
3 *[reasonable fee representing the cost of handling and collecting on the check. The total fee for any*
4 *single check may not exceed \$25]*. Any award of statutory damages under subsection (1) of this sec-
5 tion must be reduced by the amount of any charges imposed under this subsection that have been
6 paid by the maker or that are entered as part of the judgment.

7 (6) The provisions of this section apply only to a check that has been dishonored because of a
8 lack of funds or credit to pay the check, because the maker has no account with the drawee or be-
9 cause the maker has stopped payment on the check without good cause. A plaintiff is entitled to the
10 remedies provided by this section without regard to the reasons given by the drawee for dishonoring
11 the check.

12 **(7) The provisions of this section apply to all checks, including electronic checks, and to**
13 **debit card transactions that draw on checking accounts.**

14 [(7)] (8) For the purposes of this section:

15 (a) "Check" means a check, draft or order for the payment of money.

16 (b) "Drawee" has that meaning given in ORS 73.0103.

17 (c) "Payee" means a payee, holder or assignee of a check.

18 **SECTION 2. The increased fee imposed by the amendments to ORS 30.701 (5) by section**
19 **1 of this 2011 Act applies only to checks issued on or after the effective date of this 2011 Act.**

20 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
21 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
22 **on its passage.**