

By:

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THE BAD CHECK LAW IS BACK!
(Did you know it was missing?)

In 1998, the General Assembly by its own admission reenacted certain provisions of law inadvertently repealed by Chapter 91 of the Acts of the General Assembly; specifically, the General Assembly was reenacting the law that permitted a holder of a dishonored checks to recover certain fees and damages, more commonly known as the Maryland Bad Check Law.

Many practitioners are surprised to hear that the bad check law, which was first enacted in 1986 and made a part of Maryland's version of Article 3 of the Uniform Commercial Code (UCC) governing negotiable instruments, was ever missing.

However, in 1996, the General Assembly inadvertently repealed the bad check law of Maryland when it adopted a revision of Title 3 of the Maryland UCC through Senate Bill 40. The revised commercial law article sought to achieve in Maryland the national uniformity that is the fundamental objective of the UCC as proposed by the Commission on Uniform State Laws. The drafters of Senate Bill 40 assumed that, following the national model, the old Commercial Law Title 3 was to be repealed in favor of the revised Commercial Law Title 3. Unfortunately, no one noticed that the repealing of old Commercial Law Title 3 was over inclusive in that it also repealed the non-UCC provision for deterring bad checks that, within the previous decade, the General Assembly had passed and refined twice.

The reenactment of the bad check law, now appearing in Subtitle 8 of the Maryland Commercial Law at Sections 15-801 et. seq., was effective on July 1, 1998 and retroactive to January 1, 1997; ultimately creating the fiction of Maryland having had a bad check law without interruption since 1986. Thus, one can invoke Maryland's bad check law regardless of whether the check was issued before, during, or after the repeal of the former home of the bad check law.

Whether the bad check law was/is appeared in Title 3 or subtitle 8 of the Commercial Law Code, the substance of the law is the same:

- 1) Plaintiff must send a Notice of Dishonor, the language of which is contained within the law. The letter must be sent via certified mail, but it need not be return-receipt requested. If you are a "debt collector" as defined by the Fair Debt Collection Practices Act ("FDCPA"), don't forget the "Miranda" notice at the end of the letter, informing a consumer-debtor of his/her rights pursuant to the FDCPA.
- 2) Plaintiff must wait at least 30 days from the mailing of the Notice of Dishonor

before filing a Complaint with the District Court.

- 3) Relief, while often called "treble damages," is actually twice the face value of the bad check but no more than \$1,000 per check, plus a \$25.00 returned check fee (also per check).

- 4) The debtor has two affirmative defenses of which you should be particularly aware. You may not continue prosecution if either of the following is expressed or occurs:
 - A) within 30 days of the mailing of the Notice of Dishonor, the debtor has paid to the holder the full amount of the check(s) plus \$25.00 per check; or

 - B) the dishonor of the check(s) was due to a justifiable stop payment order or to the attachment of the account.