§ 11-104. Additional liability of drawer. 1. Notwithstanding any contrary provision of law, a drawer negotiating a check who knows or should know that payment of such check will be refused by the drawee bank either because the drawer has no account with such bank or because the drawer has insufficient funds on deposit with such bank shall be liable, except as provided in subdivision four of this section, to the payee who has presented such check for payment, not only for the face amount of the check but also for additional, liquidated damages, where the check is dishonored and the drawer fails to pay the face amount of such check within thirty days following the date of mailing by the payee of the second written demand for payment as provided in this section.

2. In the case of a drawer negotiating a check who knows or should know that payment of such check will be refused by the drawee bank because the drawer has no account with such bank, such additional, liquidated damages shall be in an amount to be determined by the court in light of the circumstances, but in no event shall such amount be greater than twice the face amount of the check or seven hundred fifty dollars, whichever is less.

3. In the case of a drawer negotiating a check who knows or should know that payment of such check will be refused by the drawee bank because the drawer has insufficient funds on deposit with such bank, such additional, liquidated damages shall be in an amount to be determined by the court in light of the circumstances, but in no event shall such amount be greater than twice the face amount of the check or four hundred dollars, whichever is less.

4. The drawer shall not be liable to the payee for the additional, liquidated damages provided for by this section if:

(a) The drawer gave such check as payment for the rental of residential premises; or

(b) The drawer gave such check as payment for residential service supplied by a gas, electric, steam, telephone or water corporation; or

(c) The drawer gave such check as repayment of all, or a portion of, a debt secured by collateral which the payee has repossessed.

5. Defenses which may be asserted against any person not having the rights of a holder in due course, as specified in sections 3-306 and 3-408 of the uniform commercial code, shall be available to a defendant in any action or proceeding in which additional liability is claimed under this section.

6. The additional liquidated damages provided for in this section shall be available only to those persons or entities which post or otherwise give conspicuous notice to the public of the additional, liquidated damages which may be imposed pursuant to this section. Such notice shall set forth the additional liquidated damages that may be imposed if a check is dishonored and the section of law authorizing imposition of such damages, and provide notice that criminal penalties also may apply.

7. The first written demand for payment on the dishonored check shall be in the form prescribed by subdivision eight of this section and shall be sent to the drawer's last known residence address or last known place of business by first class mail and by certified mail return receipt requested with delivery restricted to the drawer, on or after the date the payee received notice that such check had been dishonored. The second written demand for payment on the dishonored check shall be in the form provided in subdivision eight of this section and shall be sent to the drawer at the drawer's last known residence address or last known place of business by first class mail on or after the fifteenth day following the date of receipt of the first written demand for payment.

8. The written demands for payment required by subdivision seven of this section, shall be in the following form and shall be printed in at least ten point type in both the English and Spanish languages:

DEMAND FOR PAYMENT OF DISHONORED CHECK

DATE:

1ST NOTICE

2ND AND FINAL NOTICE

TO: _____

NAME OF DRAWER

_____

_____

WARNING: YOU MAY BE SUED 30 DAYS AFTER THE DATE OF THIS NOTICE IF YOU DO

_____ NOT MAKE PAYMENT

LAST KNOWN RESIDENCE ADDRESS

OR PLACE OF BUSINESS

YOUR CHECK IN THE AMOUNT OF $_____ DATED_____

PAYABLE TO THE ORDER OF_____ HAS BEEN DISHONORED BY THE BANK UPON WHICH IT WAS DRAWN, BECAUSE:

_____YOU HAD NO ACCOUNT WITH THAT BANK.

_____YOU HAD INSUFFICIENT FUNDS ON DEPOSIT WITH THAT BANK.

IF YOU DO NOT MAKE PAYMENT, YOU MAY BE SUED UNDER SECTION 11-104 OF THE GENERAL OBLIGATIONS LAW TO RECOVER PAYMENT. IF A JUDGMENT IS RENDERED AGAINST YOU IN COURT, IT MAY INCLUDE NOT ONLY THE ORIGINAL FACE AMOUNT OF THE CHECK, BUT ALSO ADDITIONAL LIQUIDATED DAMAGES, AS FOLLOWS:

--IF YOU HAD NO ACCOUNT WITH THE BANK UPON WHICH THE CHECK WAS DRAWN, AN ADDITIONAL SUM WHICH MAY BE EQUIVALENT TO TWICE THE FACE AMOUNT OF THE CHECK OR SEVEN HUNDRED FIFTY DOLLARS, WHICHEVER IS LESS; OR

--IF YOU HAD INSUFFICIENT FUNDS ON DEPOSIT WITH THE BANK UPON WHICH THE CHECK WAS DRAWN, AN ADDITIONAL SUM WHICH MAY BE EQUIVALENT TO TWICE THE FACE AMOUNT OF THE CHECK OR FOUR HUNDRED DOLLARS, WHICHEVER IS LESS.

PLEASE MAKE PAYMENT IN THE AMOUNT OF_____ TO:

_____

NAME OF PAYEE

_____

_____

_____

ADDRESS TO WHICH PAYMENT SHOULD BE DELIVERED

IF YOU DISPUTE ANY OF THE FACTS LISTED ABOVE, CONTACT THE PAYEE IMMEDIATELY.

9. The public service commission shall study the extent to which checks given in payment for residential service supplied by a gas, electric, steam, telephone or water corporation are dishonored either because the drawer had no account with the bank on which the check was

written or because the drawer had insufficient funds on deposit with such bank, including the extent of chronic payment with checks that are dishonored and the impact of such dishonored checks on the operating costs of these corporations and their requests for rate increases, and whether any penalty for dishonored checks, in addition to recovery of the utilities' administrative costs, is necessary. The commission shall report to the governor and the legislature no later than one year after the effective date of this section.