

HOUSE BILL NO. 341
INTRODUCED BY MILLER

IN THE HOUSE

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| January 22, 1985 | Introduced and referred to Committee on Judiciary. |
| February 5, 1985 | Committee recommend bill do pass as amended. Report adopted. |
| February 6, 1985 | Bill printed and placed on members' desks. |
| February 7, 1985 | On motion, taken from second reading and rereferred to Committee on Judiciary. |
| February 16, 1985 | Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks. |
| February 18, 1985 | Second reading, do pass. Considered correctly engrossed. |
| February 19, 1985 | Third reading, passed. Transmitted to Senate. |

IN THE SENATE

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|-------------------|---|
| February 21, 1985 | Introduced and referred to Committee on Judiciary. |
| March 21, 1985 | Committee recommend bill be concurrent in as amended. Report adopted. |
| March 23, 1985 | Second reading, concurred in. |

March 26, 1985

Third reading, concurred in.
Ayes, 46; Noes, 4.

Returned to House with
amendments.

IN THE HOUSE

March 27, 1985

Received from Senate.

April 4, 1985

Second reading, amendments
concurred in.

April 5, 1985

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

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2 INTRODUCED BY Miller

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE CIVIL
5 LIABILITY FOR A PERSON WHO WRONGFULLY STOPS PAYMENT ON A
6 CHECK, DRAFT, OR AN ORDER FOR THE PAYMENT OF MONEY; AMENDING
7 SECTIONS 27-1-717 AND 30-4-403, MCA."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 27-1-717, MCA, is amended to read:

11 "27-1-717. Issuing a bad check or stopping payment --
12 civil liability. (1) A person who issues a check, draft, or
13 an order for the payment of money which is liable for
14 damages in a civil action as provided in subsection (2) to
15 the person to whom the check, draft, or order is issued if
16 the check, draft, or order is:

17 (a) dishonored for lack of funds or credit or because
18 he the issuer has no account with the drawee is liable to
19 the person to whom the check, draft, or order is issued -- for
20 damages in a civil action as provided in subsection (2); or

21 (b) issued in partial or complete fulfillment of a
22 valid and legally binding obligation and the issuer stops
23 payment.

24 (2) The amount of damages awarded pursuant to
25 subsection (1) shall be an amount equal to the greater of

1 \$100 or three times the amount for which the check, draft,
2 or order was issued. However, damages may not exceed the
3 value of the check, draft, or order by more than \$500.

4 (3) The remedy provided by this section is available
5 only if:

6 (a) the person to whom the check, draft, or order was
7 issued has made written demand, mailed to the last known
8 address or the address shown on the check, to the drawer for
9 payment of the amount of such check, draft, or order not
10 less than 10 days before commencing the action; and

11 (b) the issuer has failed to tender an amount of money
12 equal to the amount demanded prior to the commencement of
13 the action.

14 (4) The remedy provided by this section:

15 (a) may be pursued notwithstanding the provisions of
16 27-1-312;

17 (b) may be pursued whether or not a criminal penalty
18 is sought under 45-6-316 or any other statute providing a
19 criminal penalty; and

20 (c) does not affect the engagement of the drawer
21 provided for in 30-3-413 to pay the amount of the draft.
22 However, in case of any inconsistency with the provisions of
23 Title 30, chapter 3, the provisions of this section apply."

24 Section 2. Section 30-4-403, MCA, is amended to read:

25 "30-4-403. Customer's right to stop payment -- burden



1 of proof of loss. (1) A Subject to 27-1-717, a customer may
2 by order to his bank stop payment of any item payable for
3 his account but the order must be received at such time and
4 in such manner as to afford the bank a reasonable
5 opportunity to act on it prior to any action by the bank
6 with respect to the item described in 30-4-303.

7 (2) An oral order is binding upon the bank only for 14
8 calendar days unless confirmed in writing within that
9 period. A written order is effective for only 6 months
10 unless renewed in writing.

11 (3) The burden of establishing the fact and amount of
12 loss resulting from the payment of an item contrary to a
13 binding stop payment order is on the customer."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

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14 damages in a civil action as provided in subsection (2) to
15 the person to whom the check, draft, or order is issued if
16 the check, draft, or order is:
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18 he the issuer has no account with the drawee is-liable-to
19 the-person-to-whom-the-check,-draft,-or-order-is-issued--for
20 damages-in-a-civil-action-as-provided-in-subsection-(2); or
21 (b) issued in partial or complete fulfillment of a
22 valid and legally binding obligation and the issuer stops
23 payment WHEN THERE IS NO GOOD FAITH DISPUTE AS TO THE VALUE
24 OF THE GOODS DELIVERED OR SERVICES RENDERED.
25 (2) The amount of damages awarded pursuant to

1 subsection (1) shall be an amount equal to the greater of
2 \$100 or three times the amount for which the check, draft,
3 or order was issued. However, damages may not exceed the
4 value of the check, draft, or order by more than \$500.
5 (3) The remedy provided by this section is available
6 only if:
7 (a) the person to whom the check, draft, or order was
8 issued has made written demand, mailed to the last known
9 address or the address shown on the check, to the drawer for
10 payment of the amount of such check, draft, or order not
11 less than 10 days before commencing the action; and
12 (b) the issuer has failed to tender an amount of money
13 equal to the amount demanded prior to the commencement of
14 the action.
15 (4) The remedy provided by this section:
16 (a) may be pursued notwithstanding the provisions of
17 27-1-312;
18 (b) may be pursued whether or not a criminal penalty
19 is sought under 45-6-316 or any other statute providing a
20 criminal penalty; and
21 (c) does not affect the engagement of the drawer
22 provided for in 30-3-413 to pay the amount of the draft.
23 However, in case of any inconsistency with the provisions of
24 Title 30, chapter 3, the provisions of this section apply."
25 Section 2. Section 30-4-403, MCA, is amended to read:

1 "30-4-403. Customer's right to stop payment -- burden
2 of proof of loss. (1) A Subject to 27-1-717, a customer may
3 by order to his bank stop payment of any item payable for
4 his account but the order must be received at such time and
5 in such manner as to afford the bank a reasonable
6 opportunity to act on it prior to any action by the bank
7 with respect to the item described in 30-4-303.

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9 calendar days unless confirmed in writing within that
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13 loss resulting from the payment of an item contrary to a
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"27-1-717. Issuing a bad check or stopping payment -- civil liability. (1) A person who issues a check, draft, or an order for the payment of money which is liable for damages in a civil action as provided in subsection (2) to the person to whom the check, draft, or order is issued if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because he the issuer has no account with the drawee is liable to the person to whom the check, draft, or order is issued for damages in a civil action as provided in subsection (2); or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment WHEN THERE IS NO GOOD FAITH DISPUTE AS TO THE VALUE OF THE GOODS DELIVERED OR SERVICES RENDERED.

(2) The amount of damages awarded pursuant to

subsection (1) shall be an amount equal to the greater of \$100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than \$500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

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(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

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(c) does not affect the engagement of the drawer provided for in 30-3-413 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply."

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-End-

STANDING COMMITTEE REPORT

SENATE

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No 341

third reading copy (blue color)

(Senator Blaylock)

CIVIL LIABILITY OF PERSON WHO STOPS PAYMENT ON CHECK, DRAFT, OR ORDER

Respectfully report as follows: That HOUSE BILL No 341

be amended as follows:

Page 1, lines 23 and 24.

Following: "payment" on line 23

Strike: remainder of line 23 through "RENDERED" on line 24

Insert: "with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check"

AND AS AMENDED

BE CONCURRED IN

~~BY PASS~~

~~BY PASS~~

Joe Mazurek

Senator Joe Mazurek

Chairman.

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 20 damages in a civil action as provided in subsection (2); or
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 22 valid and legally binding obligation and the issuer stops
 23 payment WHEN THERE IS NO GOOD FAITH DISPUTE AS TO THE VALUE
 24 OF THE GOODS DELIVERED OR SERVICES RENDERED WITH THE INTENT
 25 TO FRAUDULENTLY DEFEAT A POSSESSORY LIEN OR OTHERWISE

1 DEFRAUD THE PAYEE OF THE CHECK.
 2 (2) The amount of damages awarded pursuant to
 3 subsection (1) shall be an amount equal to the greater of
 4 \$100 or three times the amount for which the check, draft,
 5 or order was issued. However, damages may not exceed the
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