

SENATE BILL 263

Introduced by Van Valkenburg, et al.

1/27	Introduced
1/27	Referred to Business & Industry
1/27	First Reading
2/02	Hearing
2/03	Committee Report--Bill Passed
2/04	2nd Reading Passed
2/05	3rd Reading Passed
	Transmitted to House
2/06	Referred to Business & Economic Development
2/06	First Reading
3/05	Hearing
3/05	Tabled in Committee

1 Senott BILL NO. 263  
 2 INTRODUCED BY Van Valkenburg Baughn  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SERVICE  
 5 CHARGE UPON THE DISHONOR OR STOP PAYMENT OF CHECKS, DRAFTS,  
 6 OR ORDERS FOR THE PAYMENT OF MONEY; AMENDING SECTION  
 7 27-1-717, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 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 is liable for a service  
 14 charge as provided in subsection (2) or for damages in a  
 15 civil action as provided in subsection (2) (3) to the person  
 16 to whom the check, draft, or order is issued if the check,  
 17 draft, or order is:

18 (a) dishonored for lack of funds or credit or because  
 19 the issuer has no account with the drawee; or

20 (b) issued in partial or complete fulfillment of a  
 21 valid and legally binding obligation and the issuer stops  
 22 payment with the intent to fraudulently defeat a possessory  
 23 lien or otherwise defraud the payee of the check.

24 (2) The issuer is liable to the payee or the payee's  
 25 assignee for a service charge in an amount no greater than

1 \$25. Notice of the service charge must be made by posting in  
 2 a conspicuous place or by giving written notice to the  
 3 issuer. In the event the issuer fails to satisfy payment of  
 4 the check, draft, or order and the service charge within 5  
 5 calendar days of dishonor or stoppage of payment, the payee  
 6 or the payee's assignee may seek the relief provided in  
 7 subsection (3) in lieu of a service charge.

8 (2)(3) The amount of damages awarded pursuant to  
 9 subsection (1) shall must be an amount equal to the sum of  
 10 \$25 plus the greater of \$100 or three 3 times the amount for  
 11 which the check, draft, or order was issued. However,  
 12 damages may not exceed the value of the check, draft, or  
 13 order by more than ~~\$500~~ \$800.

14 (3)(4) The remedy provided by this-section subsection  
 15 (3) is available only if:

16 (a) the person to whom the check, draft, or order was  
 17 issued or the person's assignee has made written demand,  
 18 mailed to the ~~last-known~~ last-known address or the address  
 19 shown on the check, to the drawer for payment of the amount  
 20 of such the check, draft, or order and the service charge  
 21 provided for in subsection (2) not less than 10 days before  
 22 commencing the action; and

23 (b) the issuer has failed to tender an amount of money  
 24 equal to the amount demanded under subsection (4)(a) prior  
 25 to the commencement of the action.

1       ~~(4)~~(5) The remedy provided by this section:

2       (a) may be pursued notwithstanding the provisions of  
3       27-1-312;

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

7       (c) does not affect the obligation of the drawer  
8       provided for in 30-3-422 to pay the amount of the draft.  
9       However, in case of any inconsistency with the provisions of  
10      Title 30, chapter 3, the provisions of this section apply.

11      (6) Upon introduction of evidence by the payee or by  
12      the payee's assignee that the written notice required by  
13      subsection (4)(a) was mailed, the issuer has the burden of  
14      proof to affirmatively refute the evidence of the mailing.  
15      If the issuer cannot satisfy that burden, the failure to  
16      receive the written demand is not a defense to the  
17      collection action."

18      **NEW SECTION. Section 2. Effective date.** [This act] is  
19      effective on passage and approval.

-End-

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

INTRODUCED BY Senatt BILL NO. 263  
Van Valkenburg Baughit

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SERVICE CHARGE UPON THE DISHONOR OR STOP PAYMENT OF CHECKS, DRAFTS, OR ORDERS FOR THE PAYMENT OF MONEY; AMENDING SECTION 27-1-717, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"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 is liable for a service charge as provided in subsection (2) or for damages in a civil action as provided in subsection (2) (3) 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 the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The issuer is liable to the payee or the payee's assignee for a service charge in an amount no greater than

\$25. Notice of the service charge must be made by posting in a conspicuous place or by giving written notice to the issuer. In the event the issuer fails to satisfy payment of the check, draft, or order and the service charge within 5 calendar days of dishonor or stoppage of payment, the payee or the payee's assignee may seek the relief provided in subsection (3) in lieu of a service charge.

(2)(3) The amount of damages awarded pursuant to subsection (1) shall must be an amount equal to the sum of \$25 plus the greater of \$100 or three 3 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 \$800.

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

(a) the person to whom the check, draft, or order was issued or the person's assignee has made written demand, mailed to the last-known last-known address or the address shown on the check, to the drawer for payment of the amount of such the check, draft, or order and the service charge provided for in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (4)(a) prior to the commencement of the action.

1       ~~(4)~~(5) The remedy provided by this section:

2       (a) may be pursued notwithstanding the provisions of  
3       27-1-312;

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

7       (c) does not affect the obligation of the drawer  
8       provided for in 30-3-422 to pay the amount of the draft.  
9       However, in case of any inconsistency with the provisions of  
10      Title 30, chapter 3, the provisions of this section apply.

11      (6) Upon introduction of evidence by the payee or by  
12      the payee's assignee that the written notice required by  
13      subsection (4)(a) was mailed, the issuer has the burden of  
14      proof to affirmatively refute the evidence of the mailing.  
15      If the issuer cannot satisfy that burden, the failure to  
16      receive the written demand is not a defense to the  
17      collection action."

18      **NEW SECTION. Section 2.** Effective date. [This act] is  
19      effective on passage and approval.

-End-

1 Senatt BILL NO. 263  
 2 INTRODUCED BY Van Velsburg Baugh  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SERVICE  
 5 CHARGE UPON THE DISHONOR OR STOP PAYMENT OF CHECKS, DRAFTS,  
 6 OR ORDERS FOR THE PAYMENT OF MONEY; AMENDING SECTION  
 7 27-1-717, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 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 is liable for a service  
 14 charge as provided in subsection (2) or for damages in a  
 15 civil action as provided in subsection (2) (3) to the person  
 16 to whom the check, draft, or order is issued if the check,  
 17 draft, or order is:

18 (a) dishonored for lack of funds or credit or because  
 19 the issuer has no account with the drawee; or

20 (b) issued in partial or complete fulfillment of a  
 21 valid and legally binding obligation and the issuer stops  
 22 payment with the intent to fraudulently defeat a possessory  
 23 lien or otherwise defraud the payee of the check.

24 (2) The issuer is liable to the payee or the payee's  
 25 assignee for a service charge in an amount no greater than

1 \$25. Notice of the service charge must be made by posting in  
 2 a conspicuous place or by giving written notice to the  
 3 issuer. In the event the issuer fails to satisfy payment of  
 4 the check, draft, or order and the service charge within 5  
 5 calendar days of dishonor or stoppage of payment, the payee  
 6 or the payee's assignee may seek the relief provided in  
 7 subsection (3) in lieu of a service charge.

8 (2)(3) The amount of damages awarded pursuant to  
 9 subsection (1) shall must be an amount equal to the sum of  
 10 \$25 plus the greater of \$100 or three 3 times the amount for  
 11 which the check, draft, or order was issued. However,  
 12 damages may not exceed the value of the check, draft, or  
 13 order by more than \$500 \$800.

14 (3)(4) The remedy provided by this-section subsection  
 15 (3) is available only if:

16 (a) the person to whom the check, draft, or order was  
 17 issued or the person's assignee has made written demand,  
 18 mailed to the last-known last-known address or the address  
 19 shown on the check, to the drawer for payment of the amount  
 20 of such the check, draft, or order and the service charge  
 21 provided for in subsection (2) not less than 10 days before  
 22 commencing the action; and

23 (b) the issuer has failed to tender an amount of money  
 24 equal to the amount demanded under subsection (4)(a) prior  
 25 to the commencement of the action.

1        ~~(4)~~(5) The remedy provided by this section:

2        (a) may be pursued notwithstanding the provisions of  
3        27-1-312;

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

7        (c) does not affect the obligation of the drawer  
8        provided for in 30-3-422 to pay the amount of the draft.  
9        However, in case of any inconsistency with the provisions of  
10       Title 30, chapter 3, the provisions of this section apply.

11       (6) Upon introduction of evidence by the payee or by  
12       the payee's assignee that the written notice required by  
13       subsection (4)(a) was mailed, the issuer has the burden of  
14       proof to affirmatively refute the evidence of the mailing.  
15       If the issuer cannot satisfy that burden, the failure to  
16       receive the written demand is not a defense to the  
17       collection action."

18       NEW SECTION. Section 2. Effective date. [This act] is  
19       effective on passage and approval.

-End-