

SENATE BILL NO. 298

INTRODUCED BY

Benedict

Van Valkenburg *Mc* *Larson* *Arbaugh*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SERVICE CHARGE UPON THE DISHONOR OR STOP PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT; AND AMENDING SECTION 27-1-717, MCA."

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~~ payee to whom the check, draft, or order is issued, or the payee's assignee, 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) Except as provided in subsection (7), the person who issues the check, draft, or order is liable to the payee or the payee's assignee for a service charge in an amount not greater than \$15. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, or order or to the issuer's last-known address. The demand must state that the issuer has a period of 10 calendar days from the date of the written demand to pay the value of the check, draft, or order and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the sum of \$15 plus 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)(4)~~ (4) The remedy provided by ~~this section~~ subsection (3) is available only if:

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5 OR STOP PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT; AND AMENDING SECTION
6 27-1-717, MCA."7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:9
10 **Section 1.** Section 27-1-717, MCA, is amended to read:11 **"27-1-717. Issuing a bad check or stopping payment -- civil liability.** (1) A person who issues a
12 check, draft, or ~~an~~ order for the payment of money is liable for a service charge, as provided in subsection
13 (2), or for damages in a civil action, as provided in subsection (2) (3), to the ~~person~~ payee to whom the
14 check, draft, or order is issued, or the payee's assignee, if the check, draft, or order is:

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

16 or

17 (b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer
18 stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of
19 the check.20 (2) ~~Except as provided in subsection (7), the~~ THE person who issues the check, draft, or order is
21 liable to the payee or the payee's assignee for a service charge in ~~an~~ A REASONABLE amount, not greater
22 than ~~\$15~~ \$30. The payee or the payee's assignee may waive the service charge. Demand for the service
23 charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on
24 the check, draft, or order or to the issuer's last-known address. The demand must state that the issuer ~~has~~
25 a ~~period of 10 calendar days from the date of the written demand~~ IS REQUIRED to pay the value of the
26 check, draft, or order AND SERVICE CHARGE and must state the service charge provided for in this
27 section.28 (3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the
29 sum of ~~\$15~~ SERVICE CHARGE plus the greater of \$100 or three times the amount for which the check,
30 draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by

1 more than \$500.

2 ~~(3)(4)~~ The remedy provided by ~~this section~~ subsection (3) is available only if:

3 (a) ~~the person to whom the check, draft, or order was issued~~ payee or the payee's assignee has
4 made ~~the~~ written demand, ~~mailed to the last known address or the address shown on the check, to the~~
5 ~~drawer for payment of the amount of the check, draft, or order~~ required in subsection (2) not less than 10
6 days before commencing the action; and

7 (b) the issuer has failed to tender an amount of money equal to the amount demanded under
8 subsection (2) prior to the commencement of the action.

9 ~~(4)(5)~~ The remedy provided by this section:

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

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

13 (c) does not affect the obligation of the ~~drawer~~ issuer provided for in 30-3-423 to pay the amount
14 of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the
15 provisions of this section apply.

16 (6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the
17 fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense
18 to the action allowed under subsection (3).

19 (7) The limit on the service charge provided for in subsection (2) increases by \$1 each calendar year
20 beginning October 1, 1995, but the service charge may not exceed \$25 without further action by the
21 legislature."

22 -END-

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14 check, draft, or order is issued, or the payee's assignee, if the check, draft, or order is:

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17 (b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer
18 stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of
19 the check.20 (2) ~~Except as provided in subsection (7), the~~ THE person who issues the check, draft, or order is
21 liable to the payee or the payee's assignee for a service charge in an A REASONABLE amount, not greater
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1 more than \$500.

2 ~~(3)~~(4) The remedy provided by ~~this section~~ subsection (3) is available only if:

3 (a) ~~the person to whom the check, draft, or order was issued~~ payee or the payee's assignee has
4 made the written demand, ~~mailed to the last known address or the address shown on the check, to the~~
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6 days before commencing the action; and

7 (b) the issuer has failed to tender an amount of money equal to the amount demanded under
8 subsection (2) prior to the commencement of the action.

9 ~~(4)~~(5) The remedy provided by this section:

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

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12 providing a criminal penalty; and

13 (c) does not affect the obligation of the ~~drawer~~ issuer provided for in 30-3-423 to pay the amount
14 of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the
15 provisions of this section apply.

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17 fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense
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