



Sub. H.B. 401

125th General Assembly
(As Passed by the General Assembly)

Reps. Raga, Latta, D. Evans, Aslanides, Beatty, Buehrer, Carano, Carmichael, Daniels, DeBose, DeGeeter, Distel, Domenick, C. Evans, Flowers, Gibbs, Hagan, Hollister, Hoops, Hughes, Martin, Olman, T. Patton, Perry, Reidelbach, Schaffer, Schmidt, Seaver, Slaby, G. Smith, Webster, Willamowski, Wolpert

Sen. Austria

Effective date: *

ACT SUMMARY

- Expands the offense of passing bad checks to prohibit a person, with purpose to defraud, from issuing or transferring or causing to be issued or transferred a check or other negotiable instrument knowing that a person has ordered or will order stop payment on the check or other negotiable instrument.
- Modifies the penalties for the offense of passing bad checks.
- Provides that, for purposes of the section containing the offense of passing bad checks, a "check" includes any form of debit from a demand deposit account, including, but not limited to: (1) a check, bill of exchange, draft, order of withdrawal, or similar negotiable or non-negotiable instrument, or (2) an electronic check, electronic transaction, debit card transaction, check card transaction, substitute check, web check, or any form of automated clearinghouse transaction.
- Increases the authorized amount of a check-cashing loan from \$500 to \$800, and provides that, for that increased amount, the amount of the

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

authorized loan origination fee is \$3.75 per \$50 of the amount of the loan between \$501 and \$800.

CONTENT AND OPERATION

Passing bad checks

Continuing law

Continuing law prohibits a person, with "purpose to defraud," from issuing or transferring or causing to be issued or transferred a check or other negotiable instrument, "knowing that it will be dishonored." A person who violates this prohibition is guilty of passing bad checks. (R.C. 2913.11(A) and (E).)

Under prior law, the penalties for this offense were as follows (R.C. 2913.11(E)):

| The offense of passing bad checks | Penalties under modified continuing law |
|--|--|
| Generally | M1 |
| If the check or other negotiable instrument was for payment of \$500 or more but less than \$5,000 | F5 |
| If the check or other negotiable instrument was for payment of \$5,000 or more but less than \$100,000 | F4 |
| If the check or other negotiable instrument was for payment of \$100,000 or more | F3 |

Operation of the act

Definitions. The act defines both "check" and "issue a check" for purposes of the offense of passing bad checks. It defines "check" as including any form of debit from a demand deposit account, including, but not limited to, any of the following: (1) a check, bill of exchange, draft, order of withdrawal, or similar negotiable or non-negotiable instrument, or (2) an electronic check, electronic transaction, debit card transaction, check card transaction, substitute check, web check, or any form of automated clearinghouse transaction. It defines "issue a check" as causing any form of debit from a demand deposit account. (R.C. 2913.11(A).)

Expansion of the offense of passing bad checks. The act expands the prohibition that formerly constituted the offense of passing bad checks so that it prohibits a person, with purpose to defraud, from issuing or transferring or causing



to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored *or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument* (italicized language is added by the act) (R.C. 2913.11(B)).

Modified penalties for the offense of passing bad checks. The act modifies the penalties for passing bad checks in two ways. First, the act permits a court, when determining the value of the involved payment in the offense for purposes of determining the penalty, to aggregate all checks and other negotiable instruments that the offender issued or transferred or caused to be issued or transferred within a period of 180 consecutive days. Second, the act modifies the factors to be considered when determining the penalty for passing bad checks. (R.C. 2913.11(E) and (F).)

Under the act, the penalties for passing bad checks are as follows (italicized language is added by the act) (R.C. 2913.11(F)):

| The offense of passing bad checks | Penalty |
|---|---------|
| Generally | M1 |
| If the check <i>or checks</i> or other negotiable instrument <i>or instruments</i> are issued or transferred to a single vendor or single other person for the payment of \$500 or more but less than \$5,000 | F5 |
| If the check <i>or checks</i> or other negotiable instrument <i>or instruments</i> are issued or transferred to multiple vendors or persons for the payment of \$1,000 or more but less than \$5,000 | F5 |
| If the check <i>or checks</i> or other negotiable instrument <i>or instruments</i> are for the payment of \$5,000 or more but less than \$100,000 | F4 |
| If the check <i>or checks</i> or other negotiable instrument <i>or instruments</i> are for the payment of more than \$100,000 | F3 |

Loans by check-cashing businesses

Prior law

Prior law provided and, except for the italicized language below, continuing law provides that a check-cashing business licensed under R.C. 1315.35 to 1315.44 may engage in the business of making loans provided that each loan meets all of the following conditions: (1) *the total amount of the loan does not exceed \$500*, (2) the duration of the loan does not exceed six months, (3) the interest on the loan is calculated in compliance with, and does not exceed the amount described in the next paragraph, (4) the loan is made pursuant to a written loan contract that sets forth the terms and conditions of the loan, and discloses in a



clear and concise manner certain information (the total amount of fees and charges the borrower will be required to pay in connection with the loan pursuant to the loan contract; the rate of interest contracted for under the loan contract, calculated both as an annual percentage rate based solely on the principal of the loan and as an annual percentage rate based on the sum of the principal of the loan and the loan origination fee, check collection charge, and all other fees or charges contracted for under the loan contract; the total amount of each payment, when each payment is due, and the total number of payments that the borrower will be required to make under the loan contract; and a statement, printed in boldface type of the minimum size of ten points, as follows: "WARNING: The rate of interest charged on this loan is higher than the average rate of interest charged by financial institutions on substantially similar loans."), and (5) the loan is not being made to a borrower for purposes of retiring an existing loan between the check-cashing business and that borrower, which existing loan was made pursuant to R.C. 1315.35 to 1315.44. (R.C. 1315.39(A).)

A check-cashing business may contract for and receive interest at a rate of 5% per month or fraction of a month on the unpaid principal of a loan made under R.C. 1315.35 to 1315.44. Any unearned interest cannot be deducted from the proceeds of the loan or paid in advance, and interest must be computed on the unpaid balance and shall not be compounded. If, after the first month of the loan contract, the loan is paid in full before the final date on which payment is due on the loan pursuant to the loan contract, the licensee must refund or credit the borrower with the amount of the unearned interest for the unexpired period of the loan contract that follows the date of the borrower's payment in full. (R.C. 1315.39(B).)

In addition to the interest authorized to be contracted for and received pursuant to the provision described in the preceding paragraph, a check-cashing business licensed pursuant to R.C. 1315.35 to 1315.44 may charge, collect, and receive the following fees and charges in connection with a loan made under those sections (R.C. 1315.40): (1) *loan origination fees not exceeding an amount equal to five dollars per \$50 of the amount of the loan*, (2) check collection charges not exceeding an amount equal to \$20 plus any amount passed on from other financial institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the borrower are set forth in the written loan contract described in R.C. 1315.39(A)(4), and (3) damages, costs, and disbursements to which the check-cashing business may become entitled to by law in connection with any civil action to collect a loan after default.

Operation of the act

The act increases, from \$500 to \$800, the maximum amount of a loan that a check-cashing business may issue in order to engage in the business of making loans (R.C. 1315.39(A)(1)).

The act also changes the amount of the loan origination fees that a check-cashing business may charge, collect, and receive in connection with a loan it makes. Under the act, a check-cashing business may charge, collect, and receive loan origination fees *not exceeding an amount equal to five dollars per \$50 of the amount up to \$500 of the loan and \$3.75 per \$50 of the amount of the loan between \$501 and \$800.* (R.C. 1315.40(A).)

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced | 02-04-04 | pp. 1602-1603 |
| Reported, H. Criminal Justice | 11-09-04 | p. 2203 |
| Passed by House (94-1) | 11-16-04 | pp. 2266-2268 |
| Reported, S. Judiciary | 12-08-04 | pp. 2433-2434 |
| Passed Senate (30-2) | 12-08-04 | pp. 2456-2459 |
| House concurred in Senate amendments (60-27) | 12-17-04 | pp. 2763-2764 |

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