



H.B. 401

125th General Assembly
(As Introduced)

Rep. Raga

BILL SUMMARY

- Increases the penalties for the offense of passing bad checks.
- Expands the offense of passing bad checks to prohibit a person, with purpose to defraud, from issuing or transferring a check or other negotiable instrument knowing that a person has ordered or will order stop payment on the check or other negotiable instrument.
- Includes electronic transactions within the scope of the offense of passing bad checks.

CONTENT AND OPERATION

Passing bad checks

Current 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 (see **COMMENT 1**) (R.C. 2913.11(B)). Whoever violates this prohibition is guilty of passing bad checks.

Currently, the penalties for this offense are as follows:

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

Operation of the bill

Definitions

The bill defines both "check" and "issue a check" for purposes of the offense of passing bad checks. It defines "check" to include any form of debit from a demand deposit account, including, but not limited to, any of the following (R.C. 2913.11(A)(1)):

(1) A check, bill of exchange, draft, order of withdrawal, or similar negotiable or non-negotiable instrument;

(2) An electronic check, electronic transaction, debit card transaction, check card transaction, substitute check, web check, or any form of automated clearing house transaction.

It defines "issue a check" to mean causing any form of debit from a demand deposit account (R.C. 2913.11(A)(2)).

Expansion of the offense of passing bad checks

The bill expands the offense of passing bad checks by prohibiting 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 bill) (R.C. 2913.11(B)).

Increased penalties for the offense of passing bad checks

The bill modifies the penalties for passing bad checks in two ways. First, the bill permits a court 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 bill increases the penalty for passing bad checks when the checks or other negotiable instruments are for an aggregated payment of between \$500 and \$100,000 if an offender previously has been convicted of or pleaded guilty to a theft offense.¹ (R.C. 2913.11(E) and (F).)

¹ A "theft offense" means a violation of section 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, former section 2913.47 or 2913.48, or section 2913.51, 2915.05, or 2921.41 of the Revised Code; or a violation of an existing or former municipal ordinance or law of this or any other state, or of the United States,



Thus, under the bill, the penalties for passing bad checks are as follows:

The offense of passing bad checks	Penalty
Generally	M1
If the checks or other negotiable instruments are for an aggregated payment of \$500 or more but less than \$5,000, or if the offender previously has been convicted of or pleaded guilty to a theft offense	F4
If the checks or other negotiable instruments are for an aggregated payment of \$5,000 or more but less than \$100,000, or if the offender previously has been convicted of or pleaded guilty to two or more theft offenses	F3
If the checks or other negotiable instruments are for an aggregated payment of more than \$100,000	F2

Misuse of credit cards

Current law

Current law prohibits, among other acts, a person, with purpose to defraud, from obtaining property or services by the use of a *credit card*, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law (R.C. 2913.21(B)(2)). Whoever violates this prohibition is guilty of misuse of credit cards, the penalty for which ranges from a misdemeanor of the first degree to a felony of the second degree depending on the value of the property or services involved and whether the victim of the offense is an elderly or disabled adult (R.C. 2913.21(D)). (See **COMMENT 2**.)

"Credit card" includes a card, code, device, or other means of access to a customer's account for the purpose of obtaining money, property, labor, or services on credit, or for initiating an electronic fund transfer at a point-of-sale terminal, an automated teller machine, or a cash dispensing machine (R.C. 2913.01(U), *not in the bill*).

Operation of the bill

The bill makes the above-described prohibition against misuse of credit cards subject to the offense of passing bad checks (R.C. 2913.21(B)(2)). Given

substantially equivalent to any section listed above or a violation of R.C. 2913.41, 2913.81, or 2915.06 as it existed prior to July 1, 1996 (R.C. 2913.01(K), not in the bill).



the bill's inclusion of electronic checks, electronic transactions, debit card transactions, check card transactions, substitute checks, web checks, or any form of automated clearing house transactions within the definition of "check" for purposes of the offense of passing bad checks, there could be overlap between the offenses of passing bad checks and misuse of credit cards. This language change probably is intended to address the case when there is a conflict between this prohibition in the offense of misuse of credit cards and the offense of passing bad checks. It is not clear how courts would interpret this language change.

COMMENT

1. Continuing law, unaffected by the bill, contains the following presumptions with respect to the offense of passing bad checks. First, a person who issues or transfers a check or other negotiable instrument is presumed to know that it will be dishonored if either of the following occurs (R.C. 2913.11(C)):

(1) The drawer had no account with the drawee at the time of issue or the stated date, whichever is later.

(2) The check or other negotiable instrument was properly refused payment for insufficient funds upon presentment within 30 days after issue or the stated date, whichever is later, and the liability of the drawer, indorser, or any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor.

Second, a person who issues or transfers a check, bill of exchange, or other draft is presumed to have the purpose to defraud if the drawer fails to comply with the identification requirements required to open a checking account under R.C. 1349.16 by doing any of the following when opening a checking account intended for personal, family, or household purposes at a financial institution (R.C. 2913.11(D)):

(1) Falsely stating that the drawer has not been issued a valid driver's or commercial driver's license or identification card;

(2) Furnishing such license or card, or another identification document that contains false information;

(3) Making a false statement with respect to the drawer's current address or any additional relevant information reasonably required by the financial institution.



2. The offense of misuse of credit cards may also be committed by a person in the following ways (R.C. 2913.21(A), (B)(1), (B)(3), and (B)(4)):

(1) Practicing deception for the purpose of procuring the issuance of a credit card, when a credit card is issued in actual reliance thereon;

(2) Knowingly buying or selling a credit card from or to a person other than the issuer;

(3) With purpose to defraud, obtaining control over a credit card as security for a debt;

(4) With purpose to defraud, furnishing property or services upon presentation of a credit card, knowing that the card is being used in violation of law;

(5) With purpose to defraud, representing or causing to be represented to the issuer of a credit card that property or services have been furnished, knowing that the representation is false.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-04-04	pp. 1602-1603

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