



Sub. H.B. 401*

125th General Assembly
(As Reported by H. Criminal Justice)

Reps. Raga, Latta, D. Evans

BILL SUMMARY

- Modifies 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 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.
- 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**) (R.C. 2913.11(B)). Whoever violates this prohibition is guilty of passing bad checks.

Currently, the penalties for this offense are as follows:

* *This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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)).

Modified 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, when determining the value of the involved payment in the offense, 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 modifies the factors to be considered when determining the penalty for passing bad checks. (R.C. 2913.11(E) and (F).)

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

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

COMMENT

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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-04-04	pp. 1602-1603
Reported, H. Criminal Justice	---	---

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