



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Sub. H.B. 401*

125th General Assembly
(As Reported by S. Judiciary)

Reps. Raga, Latta, D. Evans, Aslanides, Beatty, Book, Brown, Buehrer, Carano, Carmichael, Cirelli, Daniels, DeBose, DeGeeter, Distel, Domenick, Driehaus, C. Evans, Flowers, Gibbs, Hagan, Hartnett, Harwood, Hollister, Hoops, Hughes, Martin, Miller, Olman, Otterman, T. Patton, Perry, Price, Reidelbach, Schaffer, Schmidt, Seaver, Slaby, G. Smith, Webster, Willamowski, Wilson, Wolpert

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

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

CONTENT AND OPERATION

Passing bad checks

Existing law

Current law prohibits a person, with "purpose to defraud" (see **COMMENT**, under (2)), 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**, under (1)). A person who violates this prohibition is guilty of passing bad checks. (R.C. 2913.11(A) and (E).)

Currently, the penalties for this offense are as follows (R.C. 2913.11(E)):

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" 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 bill expands the prohibition that currently constitutes 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 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 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 bill modifies the factors to be considered when determining the penalty for passing bad checks. (R.C. 2913.11(E) and (F).)

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

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 <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

Existing law

Existing 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).)

Existing law provides that, 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 bill

The bill 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 bill 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 bill, 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).)

COMMENT

Current law, unaffected by the bill, contains the following presumptions with respect to the offense of passing bad checks:

(1) 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)):

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

(b) 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.

(2) 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)):

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

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

(c) 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	11-09-04	p. 2203
Passed by House (94-1)	11-16-04	pp. 2266-2268
Reported, S. Judiciary	---	---

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