

HOUSE BILL NO. 268

INTRODUCED BY H. KLOCK, STEINBEISSER, VUCKOVICH, NOONAN

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REFERENCE TO A REASONABLE AMOUNT WITH RESPECT TO A SERVICE CHARGE FOR ISSUING A BAD CHECK, DRAFT, CONVERTED CHECK, ELECTRONIC FUNDS TRANSFER, OR ORDER; AND AMENDING SECTION 27-1-717, MCA."

WHEREAS, all but three states, Montana, Oregon, and Texas, have removed the reasonableness standard from their check collection fee laws; and

WHEREAS, the people that often suffer the most from bad checks are the merchants that take the checks; and

WHEREAS, without a financial incentive to collect bad checks, some merchants may stop accepting checks as payment and not being able to write a check would create a substantial hardship for many consumers.

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, draft, converted check, electronic funds transfer, or order or stopping payment -- civil liability -- statute of limitations. (1) A person who issues a check, draft, converted check, electronic funds transfer, or 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 (3), to the payee to whom the check, draft, converted check, electronic funds transfer, or order is issued, or the payee's assignee, if the check, draft, converted check, electronic funds transfer, or order is:

(a) dishonored for lack of funds or credit or because the issuer does not have an 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) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount; not greater than \$30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in



1 writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, converted  
2 check, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay  
3 the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must  
4 state the service charge provided for in this section.

5 (3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service  
6 charge plus the greater of \$100 or three times the amount for which the check, draft, converted check, electronic  
7 funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted  
8 check, electronic funds transfer, or order by more than \$500.

9 (4) The remedy provided by subsection (3) is available only if:

10 (a) the payee or the payee's assignee has made the written demand required in subsection (2) not less  
11 than 10 days before commencing the action; and

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

14 (5) The remedy provided by this section:

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

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

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

21 (6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact  
22 of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action  
23 allowed under subsection (3). The statute of limitations for the liability created under this section is 6 years from  
24 the date of the demand under subsection (2).

25 (7) This section applies to all checks, drafts, converted checks, electronic funds transfers, and orders,  
26 including those electronically presented for payment.

27 (8) Making partial payments of amounts owed under this section or entering into an agreement for paying  
28 in whole or in part amounts owed under this section does not waive any right that the payee or the payee's  
29 assignee may have under this section. Once a demand required under this section is made, the demand is not  
30 required to be repeated upon partial payment of amounts owed under this section."

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