

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL PENALTIES AND PROCEDURES FOR ISSUING
5 A BAD CHECK, DRAFT, CONVERTED CHECK, ELECTRONIC FUNDS TRANSFER, OR ORDER OR
6 STOPPING PAYMENT; CLARIFYING THAT AN ASSIGNEE HAS ONLY THE RIGHTS ASSIGNED BY THE
7 ASSIGNOR; REQUIRING PROOF OF MAILING; EXTENDING THE REQUIREMENT TO RESPOND TO 30
8 DAYS; REQUIRING A REASONABLE FEE; AND AMENDING SECTION 27-1-717, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 27-1-717, MCA, is amended to read:

13 **"27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or**
14 **stopping payment -- civil liability -- statute of limitations.** (1) A person who issues a check, draft, converted
15 check, electronic funds transfer, or order for the payment of money is liable for a service charge, as provided in
16 subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check,
17 draft, converted check, electronic funds transfer, or order is issued, ~~or the payee's assignee~~, if the check, draft,
18 converted check, electronic funds transfer, or order is:

19 (a) dishonored for lack of funds or credit or because the issuer does not have an account with the
20 drawee; or

21 (b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops
22 payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

23 (2) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable
24 to the payee ~~or the payee's assignee~~ for a service charge in ~~an a reasonable~~ amount not greater than \$30. The
25 payee ~~or the payee's assignee~~ may waive the service charge. ~~Demand for the service charge must be made in~~
26 ~~writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, converted~~
27 ~~check, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay~~
28 ~~the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must~~
29 ~~state the service charge provided for in this section.~~

30 (3) The amount of damages awarded pursuant to subsection (1) must be ~~an amount equal to the service~~



1 ~~charge plus~~ the greater of \$100 or three times the amount for which the check, draft, converted check, electronic
 2 funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted
 3 check, electronic funds transfer, or order by more than \$500.

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

5 (a) the payee ~~or the payee's assignee~~ has made ~~the a certified~~ written demand ~~required in subsection~~
 6 ~~(2)~~ not less than ~~40~~ 30 days before commencing the action; and

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

9 (5) The remedy provided by this section:

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

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

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

16 (6) Upon introduction by the payee ~~or the payee's assignee~~ of evidence sufficient to establish the fact
 17 of a certified mailing ~~as required under subsection (2)~~, the failure to receive the written demand is not a defense
 18 to the action allowed under subsection (3). The statute of limitations for the liability created under this section is
 19 ~~6 years~~ 1 year from the date of the ~~demand under subsection (2)~~ check, draft, converted check, electronic funds
 20 transfer, or order for the payment of money.

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

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

28 - END -