

## LEGISLATIVE BILL 254

Approved by the Governor March 11, 1987

Introduced by Peterson, 21

AN ACT relating to crimes and punishments; to amend section 28-611, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to the offense of issuing a bad check; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-611. (1) Whoever obtains property, services, or present value of any kind by issuing or passing a check or similar signed order for the payment of money, knowing that he or she has no account with the drawee at the time the check or order is issued, or, if he or she has such an account, knowing that he or she does not have sufficient funds in, or credit with, the drawee for the payment of such check or order in full upon its presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class III felony if the amount of the check or order is one thousand dollars or more;

(b) A Class IV felony if the amount of the check or order is three hundred dollars or more, but less than one thousand dollars;

(c) A Class I misdemeanor if the amount of the check or order is seventy-five dollars or more, but less than three hundred dollars; and

(d) A Class II misdemeanor if the amount of the check or order is less than seventy-five dollars.

(2) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(3) Whoever otherwise issues or passes a check or similar signed order for the payment of money, knowing that he or she has no account with the drawee at the time the check or order is issued, or, if he or she has such an account, knowing that he or she does not have sufficient funds in, or credit with, the drawee for the payment of such check or order in full upon its presentation, commits a Class II misdemeanor.

(4) Any person in violation of this section

who makes voluntary restitution to the injured party for the value of the check, draft, order, or assignment of funds shall also pay any costs of filing with the county attorney.

(5) In any prosecution ~~where~~ when the person issuing the check has an account with the drawee, he or she shall be presumed to have known that he or she did not have sufficient funds in, or credit with, the drawee for the payment of such check or order in full upon its presentation, if, within thirty days after issuance of the check or order, he or she has been notified that the drawee refused payment for lack of funds and he or she has failed within ten days after such notice to make the check good or, in the absence of such notice, he or she ~~shall not have made~~ has failed to make the check good within ten days after notice that such check or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address, ~~that such check or order has been returned to the depositor.~~ Upon request of the depositor and the payment of ~~seven ten~~ seven dollars for each check, draft, order, or assignment of funds, ~~unless waived by the county attorney,~~ the county attorney or his or her deputy shall be required to mail notice to the person issuing the check or order as provided in this subsection. The ~~seven-dollar~~ ten-dollar payment shall be payable to the county treasurer and credited to the county general fund.

(6) Any person convicted of violating this section may, in addition to being fined or imprisoned, be ordered to make restitution to the party injured for the value of the check, draft, order, or assignment of funds and any costs of filing with the county attorney. If the court shall in addition to sentencing any person to imprisonment under this section also enter an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(7) The fact that restitution to the party injured has been made and that any costs of filing with the county attorney have been paid shall be a mitigating factor in the imposition of punishment for any violation of this section.

Sec. 2. That original section 28-611, Reissue Revised Statutes of Nebraska, 1943, is repealed.