

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1127

Introduced by Christensen, 44.

Read first time January 19, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections 28-611
2 and 28-611.01, Revised Statutes Cumulative Supplement,
3 2010; to change provisions and penalties relating to
4 issuing or passing a bad check or issuing a no-account
5 check; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-611, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 28-611 (1) Whoever obtains property, services, or present
4 value of any kind by issuing or passing a check, draft, assignment of
5 funds, or similar signed order for the payment of money, knowing that
6 he or she does not have sufficient funds in or credit with the drawee
7 for the payment of the check, draft, assignment of funds, or order in
8 full upon presentation, commits the offense of issuing a bad check.

9 Issuing a bad check is:

10 (a) A Class III felony if the amount of the check, draft,
11 assignment of funds, or order is one thousand five hundred dollars or
12 more;

13 (b) A Class IV felony if the amount of the check, draft,
14 assignment of funds, or order is five hundred dollars or more, but
15 less than one thousand five hundred dollars;

16 (c) A Class I misdemeanor if the amount of the check,
17 draft, assignment of funds, or order is two hundred dollars or more,
18 but less than five hundred dollars; and

19 (d) A Class II misdemeanor if the amount of the check,
20 draft, assignment of funds, or order is less than two hundred
21 dollars.

22 (2) The aggregate amount of any series of checks, drafts,
23 assignments, or orders issued or passed within a sixty-day period in
24 one county may be used in determining the classification of the
25 offense pursuant to subsection (1) of this section, except that

1 checks, drafts, assignments, or orders may not be aggregated into
2 more than one offense.

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

6 (4) Whoever otherwise issues or passes a check, draft,
7 assignment of funds, or similar signed order for the payment of
8 money, knowing that he or she does not have sufficient funds in or
9 credit with the drawee for the payment of the check, draft,
10 assignment of funds, or order in full upon its presentation, shall be
11 guilty of a Class II misdemeanor.

12 (5) Any person in violation of this section who makes
13 voluntary restitution to the injured party for the value of the
14 check, draft, assignment of funds, or order shall also pay ten
15 dollars to the injured party and any reasonable handling fee imposed
16 on the injured party by a financial institution.

17 (6) In any prosecution for issuing a bad check, the
18 person issuing the check, draft, assignment of funds, or order shall
19 be presumed to have known that he or she did not have sufficient
20 funds in or credit with the drawee for the payment of the check,
21 draft, assignment of funds, or order in full upon presentation if,
22 within thirty days after issuance of the check, draft, assignment of
23 funds, or order, he or she was notified that the drawee refused
24 payment for lack of funds and he or she failed within ten days after
25 such notice to make the check, draft, assignment of funds, or order

1 good or, in the absence of such notice, he or she failed to make the
2 check, draft, assignment of funds, or order good within ten days
3 after notice that such check, draft, assignment of funds, or order
4 has been returned to the depositor was sent to him or her by the
5 county attorney or his or her deputy, by United States mail addressed
6 to such person at his or her last-known address. Upon request of the
7 depositor and the payment of ten dollars for each check, draft,
8 assignment of funds, or order, the county attorney or his or her
9 deputy shall be required to mail notice to the person issuing the
10 check, draft, assignment of funds, or order as provided in this
11 subsection. The ten-dollar payment shall be payable to the county
12 treasurer and credited to the county general fund. No such payment
13 shall be collected from any county office to which such a check,
14 draft, assignment of funds, or order is issued in the course of the
15 official duties of the office.

16 (7) Any person convicted of violating this section may,
17 in addition to a fine or imprisonment, be ordered to make restitution
18 to the party injured for the value of the check, draft, assignment of
19 funds, or order and to pay ten dollars to the injured party and any
20 reasonable handling fee imposed on the injured party by a financial
21 institution. If the court, in addition to sentencing any person to
22 imprisonment under this section, also enters an order of restitution,
23 the time permitted to make such restitution shall not be concurrent
24 with the sentence of imprisonment.

25 (8) For any person convicted of violating this section,

1 the court may, as a condition of probation, require such person not
2 be an account holder of any account in which the funds are accessed
3 by check or draft for the term of his or her probation. The funds in
4 such an account may be accessed by debit card without violating the
5 conditions of such person's probation.

6 ~~(8)~~-(9) The fact that restitution to the party injured
7 has been made and that ten dollars and any reasonable handling fee
8 imposed on the injured party by a financial institution have been
9 paid to the injured party shall be a mitigating factor in the
10 imposition of punishment for any violation of this section.

11 Sec. 2. Section 28-611.01, Revised Statutes Cumulative
12 Supplement, 2010, is amended to read:

13 28-611.01 (1) Whoever issues or passes a check, draft,
14 assignment of funds, or similar signed order for the payment of
15 money, knowing that he or she has no account with the drawee at the
16 time the check, draft, assignment of funds, or order is issued,
17 commits the offense of issuing a no-account check. Issuing a no-
18 account check is:

19 (a) A Class III felony if the amount of the check, draft,
20 assignment of funds, or order is one thousand five hundred dollars or
21 more;

22 (b) A Class IV felony if the amount of the check, draft,
23 assignment of funds, or order is five hundred dollars or more, but
24 less than one thousand five hundred dollars;

25 (c) A Class I misdemeanor if the amount of the check,

1 draft, assignment of funds, or order is two hundred dollars or more,
2 but less than five hundred dollars; and

3 (d) A Class II misdemeanor if the amount of the check,
4 draft, assignment of funds, or order is less than two hundred
5 dollars.

6 (2) The aggregate amount of any series of checks, drafts,
7 assignments, or orders issued or passed within a sixty-day period in
8 one county may be used in determining the classification of the
9 offense pursuant to subsection (1) of this section, except that
10 checks, drafts, assignments, or orders may not be aggregated into
11 more than one offense.

12 (3) For any second or subsequent offense under this
13 section, any person so offending shall be guilty of:

14 (a) A Class III felony if the amount of the check, draft,
15 assignment of funds, or order is five hundred dollars or more; and

16 (b) A Class IV felony if the amount of the check, draft,
17 assignment of funds, or order is less than five hundred dollars.

18 (4) Any person convicted of violating this section shall
19 not be an account holder of any account in which the funds are
20 accessed by check or draft for the term of his or her probation, if
21 he or she is placed on probation. The funds in such an account may be
22 accessed by debit card without violating the conditions of such
23 person's probation.

24 Sec. 3. Original sections 28-611 and 28-611.01, Revised
25 Statutes Cumulative Supplement, 2010, are repealed.