

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 359, L.D. 479, Bill, "An Act to Provide Merchants Greater Recourse to Combat Deceptive and Illegal Practices"

Amend the bill by striking out all of sections 1 to 5 and inserting in their place the following:

Sec. 1. 14 MRSA §6071, as amended by PL 1989, c. 502, Pt. D, §8, is further amended to read:

§6071. Civil penalties for bad checks

1. Recovery of costs. In any action against a person who makes, issues or draws any liable for a dishonored check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the check, draft or order, or because the maker, issuer or drawer has no account with the drawee, the holder may recover from the maker, issuer or drawer the amount of the check, draft or order, plus the court costs, service costs, collection costs and the processing charges incurred by the holder. The amount of the check, draft or order, plus the enumerated costs, may be recovered only, plus interest at the rate of 12% per annum from the date of dishonor if:

A. The holder gives notice pursuant to section 6073 for payment of the check, draft or order; and

B. The maker, issuer or drawer person liable fails to tender an amount equal to the amount of the check, draft or order, plus bank fees and mailing costs, within 10 days of receiving the notice set forth in section 6073.

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2 2. ~~Attorney's fees.~~ If a judgment is made against a maker,
 4 ~~issuer or drawer pursuant to subsection 1, paragraphs A and B and~~
~~that person fails to make restitution on the date of judgment,~~
 6 ~~the maker, issuer or drawer shall pay to the holder interest at~~
~~the rate of 12% per annum from the date of dishonor and~~
 8 ~~collection costs not to exceed \$40 or the face amount of the~~
~~check, whichever is less. In the event of court action, the~~
 10 person liable does not pay the amount of the check, plus costs
 12 and interest, before the hearing, then the court may award
 14 reasonable attorney's fees to the prevailing party. In addition,
the court may award to the holder of the check a civil penalty,
not to exceed \$50, to be paid by the person liable for the check.

16 3. ~~Written agreement.~~ Nothing in this chapter may be
 18 ~~construed to limit the rights of parties to~~ supersedes the terms
of a written agreement between the parties.

20 4. Check defined. As used in this chapter, "check" means a
 22 check, draft or order for the payment of money.

24 Sec. 2. 14 MRSA §6072, as enacted by PL 1989, c. 357, is
 26 repealed.

28 Sec. 3. 14 MRSA §6073, as enacted by PL 1989, c. 357, is
 30 amended to read:

32 **§6073. Notice for nonpayment**

34 The notice shall must be in substantially the following form.

36 "A- Your check, draft or order ~~by you and~~ made payable to
 38 in the amount of has not been
 40 accepted for payment by which is the
 42 drawee bank designated on your check. The check is dated
 44 and it is numbered

46 You are CAUTIONED that unless you pay the amount of this
 48 check within 10 days after the date this letter is postmarked,
 50 you may have to pay the following additional costs:

- 42 1. ~~Attorney~~ Attorney's fees;
- 44 2. ~~Services~~ Service costs;
- 46 3. Processing charges; and
- 48 4. Interest; and
- 50 5. A penalty not to exceed \$50.

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2 You are advised to make payment to
at the following address"

4
6 Further amend the bill in section 6 in that part designated
"§8302." in subsection 3 by striking out all of paragraph B (page
2, lines 28 and 29 in L.D.) and inserting in its place the
8 following:

10 'B. A civil penalty equal to 3 times the retail price of
12 the merchandise, but not less than \$50 nor more than \$500.'

14 Further amend the bill by relettering or renumbering any
16 nonconsecutive Part letter or section number to read
consecutively.

18 Further amend the bill by inserting at the end before the
20 statement of fact the following:

22 **FISCAL NOTE**

24 This bill may increase prosecutions for Class E crimes. If
26 a jail sentence is imposed, the additional costs to the counties
are estimated to be \$83.22 per day per prisoner. These costs are
28 not reimbursed by the State. The number of prosecutions that may
result in a jail sentence and the resulting costs to the county
jail system are expected to be insignificant.

30 The additional workload and administrative costs associated
32 with the minimal number of new cases filed in the court system
can be absorbed within the budgeted resources of the Judicial
34 Department. The collection of additional fines may increase
General Fund revenue by minor amounts. This bill may also
36 minimally increase the number of civil suits filed in the court
system. These additional costs associated with these cases can
38 be absorbed by the Judicial Department. The collection of
additional filing fees may increase General Fund revenue by minor
40 amounts.'

42 **STATEMENT OF FACT**

44 This amendment replaces the first 5 sections of the bill
46 addressing civil consequences for writing bad checks and similar
instruments. It clarifies and increases the monetary
48 consequences to include court costs, processing charges and
interest at the annual rate of 12% if certain requirements are
50 met. The first requirement specifies that the holder must give

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the notice required in by law. The 2nd requirement specifies that the person liable for the check, draft or money order must pay the amount of the check, draft or money order, plus certain fees and costs, within 10 days after receiving the notice.

This amendment provides that, if the person liable does not pay the amount and the authorized costs and interest before a court hearing on the holder's claim, the court may award reasonable attorney's fees and a civil penalty of \$50 to the prevailing party. This amendment repeals the current language concerning satisfying a claim before hearing and unnecessary language concerning jurisdiction over claims under the Maine Revised Statutes, Title 14, chapter 712.

This amendment also makes minor changes to the notice requirement and defines the term "check."

This amendment changes the civil penalty for shoplifting to 3 times the retail price of the merchandise taken or attempted to be taken and establishes that penalty at not less than \$50 nor more than \$500.

This amendment also adds a fiscal note to the bill.