

LEGISLATIVE BILL 514

Approved by the Governor April 24, 2019

Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-611, Reissue Revised Statutes of Nebraska; to include child support credit and spousal support credit as property obtained under issuing or passing a bad check or other order; and to repeal the original section.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-611, Reissue Revised Statutes of Nebraska, is amended to read:

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

(a) A Class IIA felony if the amount of the check, draft, assignment of funds, or order is five thousand dollars or more;

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

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

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

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

(3) 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.

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

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

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order 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 the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, 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. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check, draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

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

(8) The fact that restitution to the party injured has been made and that

ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Sec. 2. Original section 28-611, Reissue Revised Statutes of Nebraska, is repealed.