



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for HB1040  
Sponsored by Representative Rushing**

**Subtitle** TO AMEND THE ARKANSAS HOT CHECK LAW.

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from current law**<sup>2</sup> Amends Arkansas Code Annotated Title 5, Chapter 37, Subchapter 3 by creating A.C.A. § 5-37-308, Dishonored Payment – Refer to maker. The proposed bill provides that it is unlawful for any person to make, draw, utter, or deliver a check, draft, order or other form of presentment involving the transmission of account information if the check, draft, order, or other form of presentment is dishonored for a reason known to the maker and marked or stamped “refer to maker”.

The penalties for a violation of this proposed bill are as follows:

- (1) If the check, draft, or other form of presentment involving the transmission of account information is one-thousand dollars (\$1,000) or less, the penalty is an unclassified misdemeanor with a fine, imprisonment, or both.
- (2) If the amount of any one instrument, or the cumulative amount of dishonored instruments over a ninety day period, is more than one thousand (\$1,000) dollars but five thousand (\$5,000) dollars or less, the penalty is a Class D felony.
- (3) If the amount of any one instrument, or the cumulative amount of dishonored instruments over a ninety day period, is more than five thousand (\$5,000) dollars but less than twenty-five thousand (\$25,000) dollars, the penalty is a Class C felony.
- (4) If the amount of any one instrument, or the cumulative amount of dishonored instruments over a ninety day period, is twenty-five thousand dollars (\$25,000) or more, the penalty is a Class B felony.

**Impact Information**

Because this proposed bill creates a new course of conduct for committing a criminal offense, data is unavailable as to the likely number of convictions per year. Therefore, the impact of this proposed bill cannot be determined.

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<sup>1</sup> This impact assessment was prepared (1/15/2019, 11:02 a.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

<sup>2</sup> Standard punishment ranges:

|         |                            |              |                            |         |                              |
|---------|----------------------------|--------------|----------------------------|---------|------------------------------|
| Class Y | 10-40 years or life        | Class C      | 3-10 years; up to \$10,000 | Class A | Up to 1 year; up to \$2,500  |
| Class A | 6-30 years; up to \$15,000 | Class D      | 0-6 years; up to \$10,000  | Class B | Up to 90 days; up to \$1,000 |
| Class B | 5-20 years; up to \$15,000 | Unclassified | As specified in statute    | Class C | Up to 30 days; up to \$500   |

The following numbers are provided for informational purposes only. The Arkansas Department of Correction (ADC) reports that there are currently four (4) inmates serving a sentence for A.C.A § 5-37-302, Violation of the Arkansas Hot Check Law, a Class B felony. The ADC reports an additional 45 inmates serving a sentence for A.C.A § 5-37-302, Violation of the Arkansas Hot Check Law, a Class C felony, and six (6) inmates serving a sentence for A.C.A § 5-37-302, Violation of the Arkansas Hot Check Law, a Class D felony. See attached for a reprint of this code provision.

**A.C.A. § 5-37-302. Unlawful acts.**

**(a)** It is unlawful for any person:

**(1)** To procure any article or thing of value or to secure possession of any personal property to which a lien has attached or to make payment of rent or to make payment of a child support payment or to make payment of any taxes, licenses, or fees, or any fine or court costs, or for any other purpose to make or draw or utter or deliver, with the intent to defraud, any check, draft, order, or any other form of presentment involving the transmission of account information for the payment of money upon any in-state or out-of-state bank, person, firm, or corporation, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in, or on deposit with, such bank, person, firm, or corporation for the payment of such check, draft, order, or other form of presentment involving the transmission of account information in full, and any other check, draft, order, or other form of presentment involving the transmission of account information upon such funds then outstanding;

**(2)** To make, draw, utter, or deliver or to cause or direct the making, drawing, uttering, or delivering of any check, draft, order, or any other form of presentment involving the transmission of account information for the payment of money on any in-state or out-of-state bank, person, firm, or corporation in payment of wages or salaries for personal services rendered, knowing that the maker, drawer, or payor does not have sufficient funds in or on deposit with such bank, person, firm, or corporation for the payment in full of such check, draft, order, or other form of presentment involving the transmission of account information as well as any other then-outstanding check, draft, order, or other form of presentment involving the transmission of account information upon such funds, and with no good reason to believe the check, draft, order, or other form of presentment involving the transmission of account information would be paid upon presentation to the person or bank upon which same was drawn; or

**(3)** After he or she has made, drawn, uttered, or delivered a check, draft, order, or any other form of presentment involving the transmission of account information for the payment of money upon any in-state or out-of-state bank, to withdraw or cause to be withdrawn, with intent to defraud, the funds or any part of the funds that have been deposited in the bank before presentment of the check, draft, order, or any other form of presentment involving the transmission of account information for payment, without leaving sufficient funds in the bank for payment in full of the check, draft, order, or other form of presentment involving the transmission of account information and any other check, draft, or order upon the funds then outstanding.

**(b) (1)** Upon a determination of guilt of a person under this section, in the event that the order, draft, check, or other form of presentment involving the transmission of account information is one thousand dollars (\$1,000) or less, the penalties shall be as follows:

**(A)** For a first offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisonment in the county jail or regional detention facility not to exceed thirty (30) days, or both;

**(B)** For a second offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisonment in the county jail or regional detention facility not to exceed ninety (90) days, or both; and

**(C)** For a third or subsequent offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or imprisonment in the county jail or regional detention facility not to exceed one (1) year, or both.

**(2)** Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on a nonexistent account is a Class B felony if:

**(A)** The amount of any one (1) instrument or transaction is twenty-five thousand dollars (\$25,000) or more; or

**(B)** More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount less than twenty-five thousand dollars (\$25,000), and

the total amount of all such instruments or transactions is twenty-five thousand dollars (\$25,000) or more.

(3) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on nonexistent accounts is a Class C felony if:

(A) The amount of any one (1) instrument or transaction is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000); or

(B) More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount of five thousand dollars (\$5,000) or less, and the total amount of all such instruments or transactions is more than five thousand dollars (\$5,000).

(4) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on nonexistent accounts is a Class D felony if:

(A) The amount of any one (1) instrument or transaction is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000); or

(B) More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount of one thousand dollars (\$1,000) or less, and the total amount of all such instruments or transactions is more than one thousand dollars (\$1,000).

(5) Under subdivision (b)(2)(B), subdivision (b)(3)(B), and subdivision (b)(4)(B) of this section, each instrument or transaction may be added together in a single prosecution.

**History:** Acts 1959, No. 241, §§ 2-4; 1977, No. 155, § 1; 1981, No. 899, §§ 1, 2, 4; 1985, No. 1012, § 1; A.S.A. 1947, §§ 67-720, 67-721, 67-725; Acts 1987, No. 69, § 1; 1991, No. 1051, § 1; 2001, No. 1466, § 1; 2015, No. 1263, § 10.