

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

As Engrossed: H3/8/01 H3/19/01

83rd General Assembly

## A Bill

Regular Session, 2001

HOUSE BILL 2194

By: Representative Childers

### For An Act To Be Entitled

AN ACT TO ENSURE THAT CERTAIN ELECTRONIC COMMERCE  
TRANSACTIONS ARE COVERED BY THE ARKANSAS HOT  
CHECK LAW; AND FOR OTHER PURPOSES.

### Subtitle

TO ENSURE THAT CERTAIN ELECTRONIC  
COMMERCE TRANSACTIONS ARE COVERED BY THE  
ARKANSAS HOT CHECK LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 5-37-302 is amended to read as follows:

5-37-302. Unlawful acts.

It shall be 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, ~~or~~ 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, ~~or~~ order, or other form of presentment involving the transmission of account information in full, and all other checks, drafts, ~~or~~ orders, or other forms of presentment involving

1 the transmission of account information upon such funds then outstanding;

2 (2) To make, draw, utter, or deliver or to cause or direct the making,  
3 drawing, uttering, or delivering of any check, draft, ~~or~~ order, or any other  
4 form of presentment involving the transmission of account information for the  
5 payment of money on any in-state or out-of-state bank, person, firm, or  
6 corporation in payment of wages or salaries for personal services rendered,  
7 knowing that the maker, drawer, or payor does not have sufficient funds in or  
8 on deposit with such bank, person, firm, or corporation for the payment in  
9 full of such check, draft, ~~or~~ order, or other form of presentment involving  
10 the transmission of account information as well as all other then-outstanding  
11 checks, drafts, ~~or~~ orders, or other forms of presentment involving the  
12 transmission of account information upon such funds, and with no good reason  
13 to believe the check, draft, ~~or~~ order, or other form of presentment involving  
14 the transmission of account information would be paid upon presentation to  
15 the person or bank upon which same was drawn.

16 (3) After he has made, drawn, uttered, or delivered a check, draft, ~~or~~  
17 order, or any other form of presentment involving the transmission of account  
18 information for the payment of money upon any in-state or out-of-state bank  
19 to withdraw or cause to be withdrawn, with intent to defraud, the funds or  
20 any part thereof that have been deposited in the bank before presentment of  
21 the check, draft, ~~or~~ order, or any other form of presentment involving the  
22 transmission of account information for payment, without leaving sufficient  
23 funds in the bank for payment in full of the check, draft, ~~or~~ order, or other  
24 form of presentment involving the transmission of account information and all  
25 other checks, drafts, or orders upon the funds then outstanding.

26  
27 SECTION 2. Arkansas Code 5-37-304 is amended to read as follows:

28 5-37-304. Evidence against maker or drawer.

29 (a) For purposes of this section, it is prima facie evidence that the  
30 maker or drawer intended to defraud and knew at the time of the making,  
31 drawing, uttering, or delivering that the check, draft, ~~or~~ order, or other  
32 form of presentment involving transmission of account information would not  
33 be honored if:

34 (1) The maker or drawer had no account with the drawee at the  
35 time the check, draft, ~~or~~ order, or other form of presentment involving  
36 transmission of account information was made, drawn, uttered, or delivered;

1 or

2 (2)(A)(i) The check, draft, ~~or order~~, or other form of  
3 presentment involving transmission of account information bears the  
4 endorsement or stamp of a collecting bank indicating that the instrument or  
5 transmission was returned or otherwise dishonored because of insufficient  
6 funds to cover the value; or

7 (ii) Payment was refused by the drawee for lack of  
8 funds, upon presentation within thirty (30) days after delivery, and the  
9 maker or drawer shall not have paid the holder the amount due, together with  
10 a service charge not to exceed ~~twenty dollars (\$20.00)~~ twenty-five dollars  
11 (\$25.00), plus the amount of any fees charged to the holder of the check by  
12 any financial institution as a result of the check not being honored, within  
13 ten (10) days after receiving written notice that payment was refused upon  
14 the check, draft, ~~or order~~, or other form of presentment involving  
15 transmission of account information.

16 (B) Nothing shall impair the prosecuting attorney's power  
17 to immediately file charges after the check has been returned. The  
18 prosecuting attorney may collect restitution including a service charge, not  
19 exceeding ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00) per check,  
20 plus the amount of any fees charged to the holder of the check by any  
21 financial institution as a result of the check not being honored, for the  
22 payees of the check.

23 (b) The check, draft, or order bearing an "insufficient" stamp or "no  
24 account" stamp from the collecting bank or any other report or stamp from the  
25 collecting bank indicating that the check, draft, order, or other form of  
26 presentment involving the transmission of account information was dishonored  
27 or unable to be paid due to insufficient funds on deposit to cover the value  
28 of the check, draft, order, or other form of presentment involving the  
29 transmission of account information shall be received as evidence that there  
30 were insufficient funds or no account at trial in any court in this state.

31 (c) Nothing herein shall be deemed to abrogate a defendant's right of  
32 cross-examination of banking officials provided notice of intention to cross-  
33 examine is given ten (10) days prior to the date of hearing or trial.

34  
35 SECTION 3. Arkansas Code 5-37-305 is amended to read as follows:  
36 5-37-305. Penalties.

1 (a) Upon a determination of guilt, in the event that the order, draft,  
2 ~~or~~ check, or other form of presentment involving the transmission of account  
3 information is two hundred dollars (\$200) or less, the penalties shall be as  
4 follows:

5 (1) First Offense. A fine of not less than fifty dollars  
6 (\$50.00) nor more than five hundred dollars (\$500) or imprisonment in the  
7 county jail or regional detention facility not to exceed thirty (30) days, or  
8 both;

9 (2) Second Offense. A fine of not less than one hundred dollars  
10 (\$100) nor more than one thousand dollars (\$1,000) or imprisonment in the  
11 county jail or regional detention facility not to exceed ninety (90) days, or  
12 both;

13 (3) Third and Subsequent Offenses. A fine of not less than two  
14 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or  
15 imprisonment in the county jail or regional detention facility not to exceed  
16 one (1) year, or both;

17 (b)(1) Making, uttering, or delivering one (1) or more instruments or  
18 transactions drawn on insufficient funds or drawn on nonexistent accounts is  
19 a Class B felony if:

20 (A) The amount of any one (1) instrument or transaction is  
21 two thousand five hundred dollars (\$2,500) or more; or

22 (B) More than one (1) instrument or transaction has been  
23 drawn within a ninety-day period, and each instrument or transaction is in an  
24 amount less than two thousand five hundred dollars (\$2,500), and the total  
25 amount of all such instruments or transactions is two thousand five hundred  
26 dollars (\$2,500) or more.

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

30 (A) The amount of any one (1) instrument or transaction is  
31 less than two thousand five hundred dollars (\$2,500) but more than two  
32 hundred dollars (\$200); or

33 (B) More than one (1) instrument or transaction has been  
34 drawn within a ninety-day period, and each instrument or transaction is in an  
35 amount less than two hundred dollars (\$200), and the total amount of all such  
36 instruments or transactions is less than two thousand five hundred dollars

1 (\$2,500) but more than two hundred dollars (\$200).

2 (3) Under subdivisions (b)(1)(B) and (b)(2)(B) of this section,  
3 each instrument or transaction may be added together in a single prosecution.

4 (c) Any court passing sentence upon a person convicted of any offense,  
5 pursuant to the provisions of §§ 5-37-301 - 5-37-306, may also order such  
6 person to make full restitution to the plaintiff or complaining party. All  
7 court costs may be taxed to the convicted defendant.

8  
9 SECTION 4. Arkansas Code 5-37-307 is amended to read as follows:

10 5-37-307. Knowingly issuing worthless check.

11 (a) A person commits an offense if he issues or passes a check, order,  
12 ~~or draft,~~ or any other form of presentment involving the transmission of  
13 account information for the payment of money knowing that the issuer does not  
14 have sufficient funds in or on deposit with the bank or other drawee for the  
15 payment in full of the check, order, ~~or draft,~~ or any other form of  
16 presentment involving the transmission of account information as well as all  
17 other checks, orders, ~~or drafts,~~ or any other form of presentment involving  
18 the transmission of account information outstanding at the time of issuance.  
19 This section and § 21-6-411 do not apply to preexisting debt or situations  
20 where nothing of value was acquired, but do apply to rents, child support  
21 payments, consignments, taxes, licenses, fees, fines, and court costs.

22 (b) This section does not prevent the prosecuting attorney from  
23 establishing the required knowledge by direct evidence. However, for purposes  
24 of this section, the issuer's knowledge of insufficient funds is presumed,  
25 except in the case of a postdated check, order, ~~or draft,~~ or any other form  
26 of presentment involving the transmission of account information if:

27 (1) He had no account with the bank or other drawee at the time  
28 he issued the check, order, ~~or draft,~~ or any other form of presentment  
29 involving the transmission of account information; or

30 (2) Payment was refused by the bank or other drawee for lack of  
31 funds or insufficient funds on presentation within thirty (30) days after  
32 issue and the issuer failed to pay the holder in full, plus a service charge  
33 not to exceed ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00), plus the  
34 amount of any fees charged to the holder of the check by any financial  
35 institution as a result of the check not being honored, within ten (10) days  
36 after receiving notice of that refusal.

1 (c) Notice for purposes of this section shall be by the procedure as  
2 set forth in §§ 5-37-303 and 5-37-304.

3 (d) If notice is given, it is presumed that the notice was received no  
4 later than five (5) days after it was sent.

5 (e) An offense under this section is a violation and is punishable as  
6 provided in § 5-4-104.

7 (f) This act is cumulative to all other acts and shall not repeal any  
8 other act.

9 /s/ Childers