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HOUSE BILL 1116

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JERRY LEE ALWIN

AN ACT

RELATING TO WORTHLESS CHECKS; PROVIDING FOR REMEDIES OF PAYEE OF
A WORTHLESS CHECK; PROVIDING FOR DEFENSES OF A DRAWER OF A
WORTHLESS CHECK; REPEALING AND ENACTING A SECTION OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 56-14-1 NMSA 1978 (being Laws 1987,
Chapter 14, Section 1) is repealed and a new Section 56-14-1
NMSA 1978 is enacted to read:

"56-14-1. [NEW MATERIAL] DEFINITIONS-- WORTHLESS CHECK--
REMEDIES OF PAYEE-- DEFENSES OF DRAWER-- STOP PAYMENT PROCEDURES--
REQUIREMENT FOR NOTICE. --

A. As used in this section:

(1) "check" means a check, draft or order for
the payment of money;

1 (2) "good-faith dispute" means a dispute
2 between the drawer and the payee in which the drawer had a
3 reasonable belief of his legal entitlement to withhold payment
4 at the time he stopped payment on a check;

5 (3) "pass a worthless check" means to make,
6 utter, draw or deliver a check upon a bank, depository or person
7 that refuses to honor the check for any of the following
8 reasons:

9 (a) lack of funds or credit in the
10 account to pay the check;

11 (b) the person who wrote the check does
12 not have an account with the drawee; or

13 (c) the person who wrote the check
14 instructed the drawee to stop payment on the check; and

15 (4) "person" means any legal entity.

16 B. Except as provided otherwise in Subsection D, E,
17 F or G of this section, a person who passes a worthless check is
18 liable to the payee for the amount of the check and service
19 charges payable to the payee for an amount not to exceed thirty
20 dollars (\$30.00) for the first worthless check passed and an
21 amount not to exceed thirty dollars (\$30.00) for each subsequent
22 worthless check passed to that payee.

23 C. Except as provided otherwise in Subsection D, E,
24 F or G of this section, a person who passes a worthless check is
25 liable to the payee for damages equal to three times the amount

1 of the check if the payee makes a written demand for payment and
2 mails it by certified mail to the person who passed the
3 worthless check and the written demand informs that person of:

- 4 (1) the provisions of this section;
- 5 (2) the name and address of the payee;
- 6 (3) the amount of the worthless check; and
- 7 (4) the amount of the service charge payable to
8 the payee.

9 D. A person on whom a demand has been made pursuant
10 to Subsection C of this section has thirty days from the date
11 the demand was mailed to pay the amount of the worthless check,
12 the amount of the service charge and the costs to mail the
13 demand. If he fails to pay in full the enumerated amounts
14 within the thirty-day period he shall then be liable for the
15 amount of the check, minus any partial payments made toward the
16 check, the service charges or mailing costs within the thirty-
17 day period and damages equal to three times the amount of the
18 check, but the damages shall be limited to a maximum of one
19 thousand five hundred dollars (\$1,500) and shall be not less
20 than one hundred dollars (\$100). If a person is liable for
21 treble damages, he shall not be liable for service charges and
22 mailing costs.

23 E. A person is not liable for service charges,
24 mailing costs and treble damages pursuant to the provisions of
25 Subsections B, C and D of this section if he stops payment on a

1 check in order to resolve a good-faith dispute with the payee,
2 unless the payee proves by clear and convincing evidence that
3 there was no good-faith dispute.

4 F. A person is not liable for service charges
5 pursuant to the provisions of Subsection B of this section if he
6 presents the payee with written confirmation by his financial
7 institution that:

8 (1) the check was returned to the payee by the
9 financial institution due to an error on the part of the
10 financial institution; or

11 (2) his account had insufficient funds to pay
12 the check when presented because of a delay in the regularly
13 scheduled transfer or posting of a direct deposit of a social
14 security or government benefit assistance payment.

15 G. If the check was worthless because of a stop
16 payment by the person passing it, the notice given pursuant to
17 Subsection C of this section shall be in substantially the
18 following form:

19 "NOTICE

20 To: (name of person passing worthless check)

21 (name of payee and address) is the payee of a check you
22 passed for (dollar amount). The check was not paid because you
23 stopped payment, and the payee demands payment. You may have a
24 good-faith dispute about whether you owe the full amount. If
25 you do not have a good-faith dispute with the payee and fail to

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1 pay the payee within thirty days of the date this notice is
2 mailed to you (1) the full amount of the check in cash, (2) a
3 service charge of not more than thirty dollars (\$30.00) for the
4 first worthless check passed and a service charge of not more
5 than thirty dollars (\$30.00) for each subsequent worthless check
6 passed and (3) the costs of mailing this notice to you, you
7 could be sued and held responsible to pay at least both of the
8 following: the amount of the check and damages of at least one
9 hundred dollars (\$100) or, if higher, three times the amount of
10 the check up to one thousand five hundred dollars (\$1,500). If
11 the court determines that you do have a good-faith dispute with
12 the payee, you will not have to pay the service charge, treble
13 damages or mailing cost of this notice. If you stopped payment
14 because of a good-faith dispute with the payee, you should try
15 to work out your dispute with the payee at the indicated address
16 and telephone number (). You may wish to contact a
17 lawyer concerning your legal rights and responsibilities in this
18 matter

(name of sender of notice). "

19
20 H. The assignee of the payee or a holder of a check
21 may demand, recover and enforce the service charges, damages and
22 costs specified in this section to the same extent as the
23 original payee of a worthless check.

24 I. The person passing a worthless check is not
25 liable more than once pursuant to this section for a specific

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1 check, service charge, damage or cost.

2 J. Nothing in this section changes the rights and
3 obligations of parties pursuant to provisions of Chapter 55,
4 Article 3 NMSA 1978. "

State of New Mexico
House of Representatives

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4 FORTY-THIRD LEGISLATURE
5 FIRST SESSION, 1997
6
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9 March 4, 1997
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11 Mr. Speaker:
12

13 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
14 been referred
15

16 HOUSE BILL 1116
17

18 has had it under consideration and reports same with
19 recommendation that it DO PASS, amended as follows:
20

- 21 1. On page 2, line 12, strike "or" and insert in lieu
22 thereof "and".
23 2. On page 2, lines 13 and 14, strike Subparagraph (c) in
24 its entirety.
25 3. On page 4, line 13, after "deposit" insert "credit."

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and strike the remainder of the line and strike all of line 14.

4. On page 4, line 20, strike "of person passing
worthless" and insert in lieu thereof "of drawer of the".,

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Fred Luna, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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The roll call vote was 9 For 0 Against

Yes: 9

Excused: Gubbels, Hobbs, Rodella

Absent: Getty

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 12, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 1116, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Thomas P. Foy, Chairman

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: King, Mallory, Rios, Sanchez, Stewart

Absent: None

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