

SECOND REGULAR SESSION

# HOUSE BILL NO. 1227

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RUESTMAN (Sponsor),  
WILSON (119) AND STEVENSON (Co-sponsors).

Pre-filed January 3, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3588L.01I

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### AN ACT

To repeal section 570.120, RSMo, and to enact in lieu thereof one new section relating to passing a bad check, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 570.120, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 570.120, to read as follows:

570.120. 1. A person commits the crime of passing a bad check when:

- (1) With purpose to defraud, the person makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee, **whether or not the check or other similar sight order is post-dated or held for later presentment**; or
- (2) The person makes, issues, or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that there are insufficient funds in or on deposit with that account for the payment of such check, sight order, or other form of presentment involving the transmission of account information in full and all other checks, sight orders, or other forms of presentment involving the transmission of account information upon such funds then outstanding, or that there is no such account or no drawee and fails to pay the check or sight order or other form of presentment involving the transmission of account information within ten days after receiving

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 actual notice in writing that it has not been paid because of insufficient funds or credit with the  
16 drawee or because there is no such drawee, **whether or not the check or other sight order is**  
17 **post-dated or held for later presentment.**

18 2. As used in subdivision (2) of subsection 1 of this section, "actual notice in writing"  
19 means notice of the nonpayment which is actually received by the defendant. Such notice may  
20 include the service of summons or warrant upon the defendant for the initiation of the  
21 prosecution of the check or checks which are the subject matter of the prosecution if the  
22 summons or warrant contains information of the ten-day period during which the instrument may  
23 be paid and that payment of the instrument within such ten-day period will result in dismissal  
24 of the charges. The requirement of notice shall also be satisfied for written communications  
25 which are tendered to the defendant and which the defendant refuses to accept.

26 3. The face amounts of any bad checks passed pursuant to one course of conduct within  
27 any ten-day period may be aggregated in determining the grade of the offense.

28 4. Passing bad checks is a class A misdemeanor, unless:

29 (1) The face amount of the check or sight order or the aggregated amounts is five  
30 hundred dollars or more; or

31 (2) The issuer had no account with the drawee or if there was no such drawee at the time  
32 the check or order was issued, in which cases passing bad checks is a class C felony.

33 5. (1) In addition to all other costs and fees allowed by law, each prosecuting attorney  
34 or circuit attorney who takes any action pursuant to the provisions of this section shall collect  
35 from the issuer in such action an administrative handling cost. The cost shall be twenty-five  
36 dollars for checks of less than one hundred dollars, and fifty dollars for checks of one hundred  
37 dollars but less than two hundred fifty dollars. For checks of two hundred fifty dollars or more  
38 an additional fee of ten percent of the face amount shall be assessed, with a maximum fee for  
39 administrative handling costs not to exceed seventy-five dollars total. Notwithstanding the  
40 provisions of sections 50.525 to 50.745, RSMo, the costs provided for in this subsection shall  
41 be deposited by the county treasurer into a separate interest-bearing fund to be expended by the  
42 prosecuting attorney or circuit attorney. The funds shall be expended, upon warrants issued by  
43 the prosecuting attorney or circuit attorney directing the treasurer to issue checks thereon, only  
44 for purposes related to that previously authorized in this section. Any revenues that are not  
45 required for the purposes of this section may be placed in the general revenue fund of the county  
46 or city not within a county. Notwithstanding any law to the contrary, in addition to the  
47 administrative handling cost, the prosecuting attorney or circuit attorney shall collect an  
48 additional cost of five dollars per check for deposit to the Missouri office of prosecution services  
49 fund established in subsection 2 of section 56.765, RSMo. All moneys collected pursuant to this  
50 section which are payable to the Missouri office of prosecution services fund shall be transmitted

51 at least monthly by the county treasurer to the director of revenue who shall deposit the amount  
52 collected pursuant to the credit of the Missouri office of prosecution services fund under the  
53 procedure established pursuant to subsection 2 of section 56.765, RSMo.

54 (2) The moneys deposited in the fund may be used by the prosecuting or circuit attorney  
55 for office supplies, postage, books, training, office equipment, capital outlay, expenses of trial  
56 and witness preparation, additional employees for the staff of the prosecuting or circuit attorney,  
57 employees' salaries, and for other lawful expenses incurred by the circuit or prosecuting attorney  
58 in operation of that office.

59 (3) This fund may be audited by the state auditor's office or the appropriate auditing  
60 agency.

61 (4) If the moneys collected and deposited into this fund are not totally expended  
62 annually, then the unexpended balance shall remain in said fund and the balance shall be kept  
63 in said fund to accumulate from year to year.

64 6. Notwithstanding any other provision of law to the contrary:

65 (1) In addition to the administrative handling costs provided for in subsection 5 of this  
66 section, the prosecuting attorney or circuit attorney may collect from the issuer, in addition to the  
67 face amount of the check, a reasonable service charge, which along with the face amount of the  
68 check, shall be turned over to the party to whom the bad check was issued;

69 (2) If a check that is dishonored or returned unpaid by a financial institution is not  
70 referred to the prosecuting attorney or circuit attorney for any action pursuant to the provisions  
71 of this section, the party to whom the check was issued, or his or her agent or assignee, or a  
72 holder, may collect from the issuer, in addition to the face amount of the check, a reasonable  
73 service charge, not to exceed twenty-five dollars, plus an amount equal to the actual charge by  
74 the depository institution for the return of each unpaid or dishonored instrument.

75 7. When any financial institution returns a dishonored check to the person who deposited  
76 such check, it shall be in substantially the same physical condition as when deposited, or in such  
77 condition as to provide the person who deposited the check the information required to identify  
78 the person who wrote the check.

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