

LEGISLATIVE BILL 111

Approved by the Governor April 15, 1992

Introduced by Pirsch, 10

AN ACT relating to crimes and offenses; to amend sections 28-514, 28-518, 28-611, and 29-2280, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to theft and issuing a bad check; to authorize court-ordered restitution as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-514, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-514. A person who comes into control of property of another that he or she knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he or she fails to take reasonable measures to restore the property to a person entitled to have it. Any person violating the provisions of this section shall, upon conviction thereof, be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under a mistake pursuant to section 28-518. Any person convicted pursuant to this section when the value of the property is ~~one~~ two hundred dollars or less shall be guilty of a Class III misdemeanor for the first conviction, a Class II misdemeanor for the second conviction, and a Class I misdemeanor for the third or subsequent conviction.

Sec. 2. That section 28-518, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-518. (1) Theft constitutes a Class III felony when the value of the thing involved is over one thousand five hundred dollars.

(2) Theft constitutes a Class IV felony when the value of the thing involved is ~~three~~ five hundred dollars or more, but not over one thousand five hundred dollars.

(3) Theft constitutes a Class I misdemeanor

when the value of the thing involved is more than ~~one~~ two hundred dollars, but less than ~~three~~ five hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is ~~one~~ two hundred dollars or less.

(5) For any second or subsequent conviction under subsection (3) of this section, any person so offending shall be guilty of a Class IV felony.

(6) For any second conviction under subsection (4) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subsection (4) of this section, the person so offending shall be guilty of a Class IV felony.

(7) Amounts taken pursuant to one scheme or course of conduct from one person may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(8) In any prosecution for theft under sections 28-509 to 28-518, value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Sec. 3. That section 28-611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-611. (1) Whoever obtains property, services, 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 has no account with the drawee at the time the check, draft, assignment of funds, or order is issued; or, if he or she has ~~such~~ an account, knowing that he or she does not have sufficient funds in, or credit with, the drawee for the payment of ~~such~~ the check, draft, assignment of funds, or order in full upon its presentation, commits the offense of issuing a bad check. Issuing a bad check is:

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

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

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

three five hundred dollars; and

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

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 this subsection, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(2) 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.

(3) 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 has no account with the drawee at the time the check, draft, assignment of funds, or order is issued; or, if he or she has such an account, knowing that he or she does not have sufficient funds in; or credit with; the drawee for the payment of such the check, draft, assignment of funds, or order in full upon its presentation, commits shall be guilty of a Class II misdemeanor.

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

(5) In any prosecution when the person issuing the check, draft, assignment of funds, or order has an account with the drawee, he or she 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 such the check, draft, assignment of funds, or order in full upon its presentation; if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she has been was notified that the drawee refused payment for lack of funds and he or she has 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 has 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, ~~order, or~~ 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.

(6) Any person convicted of violating this section may, in addition to being ~~finned or imprisoned a fine or imprisonment~~, be ordered to make restitution to the party injured for the value of the check, draft, ~~order, or~~ assignment of funds, or order and any costs of filing with the county attorney 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 ~~shall~~ in addition to sentencing any person to imprisonment under this section, also ~~enter~~ enters an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(7) The fact that restitution to the party injured has been made and that any costs of filing with the county attorney 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. 4. That section 29-2280, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2280. A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. Whenever the court believes that restitution may be a proper sentence or the victim of any offense or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the

nature and amount of the actual damages sustained by the victim.

Sec. 5. That original sections 28-514, 28-518, 28-611, and 29-2280, Reissue Revised Statutes of Nebraska, 1943, are repealed.