

House Bill 1301

By: Representatives Moraitakis of the 42<sup>nd</sup>, Post 4, Dodson of the 84<sup>th</sup>, Post 1, and Oliver of the 56<sup>th</sup>, Post 2

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 16-9-20 of the Official Code of Georgia Annotated, relating to  
2 deposit account fraud, so as to change the description of the offense; to change a definition;  
3 to provide for related matters; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 style="text-align:center">**SECTION 1.**

6 Code Section 16-9-20 of the Official Code of Georgia Annotated, relating to deposit account  
7 fraud, is amended by striking subsections (a) and (f) and inserting in lieu thereof the  
8 following:

9 "(a) A person commits the offense of deposit account fraud when such person makes,  
10 draws, utters, executes, or delivers an instrument for the payment of money on any bank  
11 or other depository in exchange for a ~~present~~ consideration or wages, knowing that it will  
12 not be honored by the drawee. For the purposes of this Code section, it is prima-facie  
13 evidence that the accused knew that the instrument would not be honored if:

14 (1) The accused had no account with the drawee at the time the instrument was made,  
15 drawn, uttered, or delivered;

16 (2) Payment was refused by the drawee for lack of funds upon presentation within 30  
17 days after delivery and the accused or someone for him or her shall not have tendered the  
18 holder thereof the amount due thereon, together with a service charge, within ten days  
19 after receiving written notice that payment was refused upon such instrument. For  
20 purposes of this paragraph:

21 (A) Notice mailed by certified or registered mail or statutory overnight delivery  
22 evidenced by return receipt to the person at the address printed on the instrument or  
23 given at the time of issuance shall be deemed sufficient and equivalent to notice having  
24 been received as of the date on the return receipt by the person making, drawing,  
25 uttering, executing, or delivering the instrument. A single notice as provided in  
26 subparagraph (B) of this paragraph shall be sufficient to cover all instruments on which

1 payment was refused and which were delivered within a ten-day period by the accused  
2 to a single entity, provided that the form of notice lists and identifies each instrument;  
3 and

4 (B) The form of notice shall be substantially as follows:

5 'You are hereby notified that the following instrument(s)

	<u>Number</u>	<u>Date</u>	<u>Amount</u>	<u>Name of Bank</u>
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____

12 drawn upon \_\_\_\_\_ and payable to \_\_\_\_\_, (has) (have) been  
13 dishonored. Pursuant to Georgia law, you have ten days from receipt of this notice  
14 to tender payment of the total amount of the instrument(s) plus the applicable service  
15 charge(s) of \$\_\_\_\_\_ and any fee charged to the holder of the instrument(s) by a  
16 bank or financial institution as a result of the instrument(s) not being honored, the  
17 total amount due being \_\_\_\_\_ dollars and \_\_\_\_\_ cents. Unless this amount  
18 is paid in full within the specified time above, a presumption in law arises that you  
19 delivered the instrument(s) with the intent to defraud and the dishonored instrument(s)  
20 and all other available information relating to this incident may be submitted to the  
21 magistrate for the issuance of a criminal warrant or citation or to the district attorney  
22 or solicitor-general for criminal prosecution.'; or

23 (3) Notice mailed by certified or registered mail or statutory overnight delivery is  
24 returned undelivered to the sender when such notice was mailed within 90 days of  
25 dishonor to the person at the address printed on the instrument or given by the accused  
26 at the time of issuance of the instrument."

27 "(f) As used in this Code section, the term:

28 (1) 'Bank' shall include a financial institution as defined in this Code section.

29 ~~(6)~~(2) '~~Present consideration~~ Consideration' shall include without limitation:

30 (A) An obligation or debt of rent which is past due or presently due;

31 (B) An obligation or debt of state taxes which is past due or presently due;

32 (C) An obligation or debt which is past due or presently due for child support when  
33 made for the support of such minor child and which is given pursuant to an order of  
34 court or written agreement signed by the person making the payment;

1 (D) A simultaneous agreement for the extension of additional credit where additional  
2 credit is being denied; ~~and~~

3 (E) A written waiver of mechanic's or materialmen's lien rights; and

4 (F) An obligation or debt which is past due or presently due for services rendered or  
5 goods sold.

6 ~~(2)~~(3) 'Conviction' shall include the entering of a guilty plea, the entering of a plea of  
7 nolo contendere, or the forfeiting of bail.

8 ~~(3)~~(4) 'Financial institution' shall have the same meaning as defined in paragraph (21)  
9 of Code Section 7-1-4 and shall also include a national bank, a state or federal savings  
10 bank, a state or federal credit union, and a state or federal savings and loan association.

11 ~~(4)~~(5) 'Holder in due course' shall have the same meaning as in Code Section 11-3-302.

12 ~~(5)~~(6) 'Instrument' means a check, draft, debit card sales draft, or order for the payment  
13 of money.

14 (7) 'State taxes' shall include payments made to the Georgia Department of Labor as  
15 required by Chapter 8 of Title 34."

16 **SECTION 2.**

17 All laws and parts of laws in conflict with this Act are repealed.