

**§708. Negotiating a worthless instrument**

1. A person is guilty of negotiating a worthless instrument if:

A. The person intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee. Violation of this paragraph is a Class E crime; or [PL 2001, c. 383, §77 (NEW); PL 2001, c. 383, §156 (AFF).]

B. The person violates paragraph A and:

(1) The face value of the written instrument or the aggregate value of the instruments is more than \$10,000. Violation of this subparagraph is a Class B crime;

(2) The face value of the written instrument or the aggregate value of the instruments is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;

(3) The face value of the negotiable instrument is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or

(4) At the time of negotiating a worthless instrument, the person has 2 or more prior convictions for any combination of the Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. The Maine offenses are: theft; any violation of this section; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702 or 703; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime. [PL 2007, c. 476, §28 (AMD).]

[PL 2007, c. 476, §28 (AMD).]

2. Proof of the following gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person issuing or negotiating the instrument knew that it would not be honored:

A. The drawer had no account with the drawee at the time the instrument was negotiated; [PL 2011, c. 504, §1 (AMD).]

B. Payment was refused by the drawee for lack of funds upon presentment made within the time frame specified in Title 11, section 3-1304, and the drawer failed to honor the drawer's contract within 5 days after actual receipt of a notice of dishonor, as defined in Title 11, section 3-1503, except that this time limit is tolled during one subsequent representment of the negotiable instrument; or [PL 2011, c. 504, §1 (AMD).]

C. The drawer refuses to tender payment in the amount of the instrument within 5 days of receipt of a notice under this paragraph mailed by certified or registered mail evidenced by return receipt at the address printed on the instrument or given at the time of issuance. The notice must be substantially as follows:

"You are hereby notified that the following instrument(s):

Number: ..... Date: ..... Amount: ..... Name of Bank: ..... drawn upon ..... and payable to ....., (has)(have) been dishonored. Pursuant to Maine law, the Maine Revised Statutes, Title 17-A, section 708, subsection 2, you have 5 days from receipt of this notice to tender payment of the total amount of the instrument(s) plus the applicable service charge(s) of \$.....(.....dollars and .....cents) and any fee charged to the holder of the instrument(s) by a bank or financial institution as a result of the instrument(s) not being honored, the total amount due being \$.....(.....dollars and.....cents). Pursuant to Title 17-A, section 708, subsection 2, unless this amount is paid in full to .....within 5 days after the actual receipt

of this notice of dishonor, your failure to pay the amount owed gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that you knew that your instrument(s) would not be honored. Your failure to pay the amount owed could result in a report to a law enforcement agency for investigation and possible criminal prosecution for negotiating a worthless instrument in violation of Title 17-A, section 708, subsection 1." [RR 2011, c. 2, §15 (COR).]

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**2-A.** The following evidentiary provisions apply.

A. Proof that there is a purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument that states "no account," "account closed" or some other terminology indicating that the instrument was not honored because no account existed gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person who issued or negotiated the instrument has no account with the drawee at the time the instrument was issued or negotiated. [PL 2001, c. 383, §79 (AMD); PL 2001, c. 383, §156 (AFF).]

B. Proof that there is a purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument that states "insufficient funds," "NSF" or some other terminology indicating that the instrument was not honored due to lack of funds gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person who issued or negotiated the instrument had insufficient funds with the drawee at the time the instrument was issued or negotiated. [PL 2001, c. 383, §79 (AMD); PL 2001, c. 383, §156 (AFF).]

C. The purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying a negotiable instrument is admissible in evidence in any court of the State, unless the defendant requests in writing at least 10 days before trial that the prosecution provide a qualified witness to testify as to why the instrument was not honored. [PL 1997, c. 253, §1 (NEW).]

[PL 2001, c. 383, §79 (AMD); PL 2001, c. 383, §156 (AFF).]

**3.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Issue" has the meaning provided in Title 11, section 3-1105, subsection (1). [PL 1995, c. 38, §2 (AMD).]

A-1. "Drawee" has the meaning provided in Title 11, section 3-1103, subsection (1), paragraph (b). [PL 1995, c. 38, §2 (NEW).]

A-2. "Drawer" has the meaning provided in Title 11, section 3-1103, subsection (1), paragraph (c). [PL 1995, c. 38, §2 (NEW).]

B. "Negotiable instrument" has the meaning provided in Title 11, section 3-1104. [PL 1995, c. 38, §2 (AMD).]

C. "Negotiation" and its variants have the meaning provided in Title 11, section 3-1201. [PL 1995, c. 38, §2 (AMD).]

[PL 1995, c. 38, §2 (AMD).]

**3-A.** Amounts of face value of negotiable instruments involved in violations of this section committed pursuant to one scheme or course of conduct, whether the instruments were issued or negotiated to the same person or several persons, may be aggregated to charge a single violation of this section of appropriate class. Subject to the requirement that the conduct of the defense may not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregated count be considered as separate violations of this section. An aggregated count of violations of this section may not be deemed duplicitous because of such an order and no election may be required. Prosecution may be brought in any venue in which one of the violations of this section that have been aggregated was committed.

[PL 2001, c. 383, §80 (AMD); PL 2001, c. 383, §156 (AFF).]

4.

[PL 2001, c. 383, §81 (RP); PL 2001, c. 383, §156 (AFF); PL 2003, c. 1, §6 (AMD).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 1975, c. 740, §79 (AMD). PL 1977, c. 510, §59 (AMD). PL 1981, c. 317, §22 (AMD). PL 1983, c. 198, §§1,2 (AMD). PL 1989, c. 186 (AMD). PL 1995, c. 38, §§1,2 (AMD). PL 1995, c. 224, §7 (AMD). PL 1997, c. 253, §1 (AMD). PL 2001, c. 383, §§77-81 (AMD). PL 2001, c. 383, §156 (AFF). PL 2001, c. 389, §7 (AMD). PL 2001, c. 667, §D15 (AMD). PL 2001, c. 667, §D36 (AFF). PL 2003, c. 1, §6 (AMD). PL 2007, c. 476, §28 (AMD). PL 2011, c. 504, §1 (AMD). RR 2011, c. 2, §15 (COR).

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