

FINAL BILL REPORT

SHB 1347

C 277 L 05

Synopsis as Enacted

Brief Description: Changing provisions relating to dishonored checks.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Williams and Newhouse).

House Committee on Judiciary

Senate Committee on Financial Institutions, Housing & Consumer Protection

Background:

Collection of Dishonored Checks

If a check is dishonored by nonacceptance or nonpayment, the payee or the person entitled to enforce the check may collect a reasonable handling fee for each dishonored check. If the payee sends a statutory notice of dishonor to the payor and the payor does not pay the check within 15 days of mailing the notice, then, unless the instrument provides otherwise, the payor is liable for:

- interest at the rate of 12 percent from the date of dishonor; and
- collection costs equal to the face amount of the check or \$40, whichever is less.

In addition, if the payee institutes a lawsuit to collect on the check, he or she is entitled to a reasonable attorneys' fee plus three times the face amount of the check or \$300, whichever is less, as part of the damages awarded in the action.

After a lawsuit has begun but prior to the hearing, the payor may satisfy the claim by paying an amount equal to the amount of the check, the reasonable handling fee, interest, collection costs equal to the face amount of the check or \$40 (whichever is less), court costs, service costs, and a statutory attorneys' fee.

A payee may not collect interest, collection costs, and attorney's fees if the payee demanded:

- interest or collection costs in excess of those allowed in the statute;
- interest or collection costs prior to the expiration of the 15 days after mailing the notice; or
- attorneys' fees that have not been set by the court or that have been demanded prior to the expiration of the 15 days after mailing the notice.

Statutory Notice of Dishonor

The statutory notice of dishonor must be sent by mail to the payor at his or her last known address and must substantially follow the form provided in the statute. The payee must file an affidavit of mailing with the court.

The statutory notice includes a cautionary warning that law enforcement agencies may be provided with a copy of the notice of dishonor for the possibility of criminal charges.

Statutes regulating collection agency practices prohibit an agency from threatening a debtor with criminal prosecution. A 1992 Washington Attorney General opinion stated that a collection agency may use the cautionary statement provided in the statutory notice without violating the state law prohibiting threats by collection agencies.

Washington Financial Literacy Public-Private Partnership

Financial literacy has been defined as the understanding of basic concepts of money and the skills needed to manage personal finances. In 2004, the Legislature created the Washington Financial Literacy Public-Private Partnership (Partnership). The Partnership is charged with, among other things, identifying strategies to promote the use of financial literacy curricula in schools. The Partnership is directed to complete this task by June 30, 2005.

Summary:

Procedures for enforcing dishonored checks are created specifically for collection agencies. These procedures are very similar to the current statutes, with changes made to the grace period allowed for payment and the statutory notice.

Collection of Dishonored Checks

The time period in which a payor has to remit payment after the statutory notice is sent and before interest and collection costs are incurred is expanded to 33 days when a collection agency is enforcing a dishonored check. If a collection agency sends the required statutory notice of dishonor to the payor, and the payor does not pay the face amount of the check plus the handling fee within 33 days after notice is given, then, unless the instrument provides otherwise, the payor is liable for:

- interest at 12 percent from the date of dishonor; and
- cost of collection of \$40 or the face amount of the check, whichever is less.

If the collection agency brings a lawsuit, then, after 33 days of giving notice, the court must award reasonable attorneys' fees plus three times the face amount of the check or \$300, whichever is less, as part of the damages payable to the collection agency.

Statutory Notice of Dishonor

The collection agency may send the notice of dishonor to the payor by mail to the payor's last known address. The collection agency must file the affidavit of mailing with the court.

The cautionary statement regarding law enforcement action does not need to be included in the notice of dishonor sent by a collection agency. If it is included, the cautionary statement shall not be construed as a threat to take any action not intended to be taken and shall not be construed to be false or deceptive or violating any law.

A collection agency may not recover interest, collection costs, and attorneys' fees on a dishonored check if the collection agency demanded:

- interest or collection costs in excess of that provided by statute;

- interest or collection costs before the 33 days have passed since service of the notice; or
- attorneys' fees (other than statutory attorneys' fees) without having the fees set by the court, or any attorneys' fees (including statutory attorneys' fees) before the 33 days have passed since serving the notice.

Washington Financial Literacy Public-Private Partnership

The completion date for the Partnership is extended from June 30, 2005, to the same date in 2006.

Votes on Final Passage:

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| House | 94 | 0 | |
| Senate | 46 | 0 | (Senate amended) |
| House | 95 | 1 | (House concurred) |

Effective: July 24, 2005