

HOUSE BILL REPORT

ESSB 5494

*As Reported By House Committee on:
Judiciary*

Title: An act relating to collection of debts.

Brief Description: Changing remedies for collection of debts.

Sponsor(s): Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators von Reichbauer, Pelz, Johnson, Owen, Thorsness, Vognild, Sellar and Moore).

Brief History:

Reported by House Committee on:
Judiciary, April 2, 1991, DPA.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass as amended.* Signed by 16 members: Representatives Appelwick, Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Hargrove; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Jeff Fishel (786-7191).

Background: To successfully prosecute a person for the unlawful issuance of a check requires the prosecutor to prove that the person intended to defraud the victim by writing a bad check, and that the person wrote the check. A person convicted of unlawfully issuing a bad check is guilty of a class C felony if the value was greater than \$250, or a gross misdemeanor if the value was \$250 or less.

If a person wrote a check on an account that was overdrawn or did not contain sufficient funds at the time he or she wrote the check, the intent to defraud is rebuttably presumed. To establish this presumption, prosecutors obtain information about the person's bank account either through the cooperation of the banks or by subpoena. At trial, the prosecution may introduce this information if the defendant agrees to its authenticity or a custodian of the bank's records testifies that the records were kept in the ordinary course of business.

A bad check is often discovered when a merchant or other payee presents the check for payment and payment is refused, that is, the check is dishonored. If payment on the check is refused, the holder of the check may charge the issuer a reasonable handling fee. If the holder notifies the issuer of the check's dishonor and executes an affidavit of service of notice, unless the issuer pays within 15 days of being notified, the holder may collect attorney fees, court costs, and treble the face value of the check or \$100, whichever is less.

Summary of Amended Bill: The statutory notice of dishonor includes a statement warning the drawer of the check that a copy of the notice of dishonor and the check may be delivered to a law enforcement agency for the possibility of proceeding with criminal charges.

The amount recoverable by a holder of a bad check in a civil action once notice of dishonor is given and 15 days have passed is raised from treble the face value of the check or \$100, to treble the face value of the check or \$300, whichever is less.

Amended Bill Compared to Engrossed Substitute Bill: The original bill allowed a bank to release bank statements on the account of an alleged bad check writer 30 days prior to the date of the check and 30 days after presentment for payment. The bank may furnish the information without liability if: (1) notice of dishonor was given and no payment is made 15 days after the date notice is given; (2) the holder presents a letter of agency from the investigating law enforcement agency; and (3) the holder presents a copy of the affidavit of service of the notice of dishonor. The information could not be used for collection purposes. The account information could be introduced at trial as authentic on the affidavit of the bank's custodian of the records. Under the original bill, the statutory notice of dishonor warned that the bank may release information to law enforcement agencies.

The amended bill deleted these provisions.

The original bill raised the amount of civil penalties for writing a bad check from treble the face value of the check or \$100, to treble the face value of the check of \$500, whichever is less.

The amended bill raises the penalty to \$300.

Fiscal Note: Not requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: People who write bad checks cause significant losses for retailers, and because prosecutors find it not cost efficient to prosecute checks written for \$250 or less, many bad check writers go unprosecuted. The bill makes it easier for law enforcement agencies to obtain bank records that create the presumption necessary to prosecute for bad checks. Raising the civil penalties for bad checks to \$500 is more in line with the national average.

Testimony Against: Allowing the holder of a bad check to get bank records, and the extent of records that may be obtained, seriously jeopardizes the privacy interests of account owners and may violate federal law. Currently, law enforcement agencies must obtain the records by subpoena or warrant which requires a showing of good cause to obtain the records. The bill eliminates this privacy protection. The content of the bill is beyond the scope of the title of the bill and is unconstitutional.

Witnesses: Kern Cleven, Washington Association of Criminal Defense Lawyers (opposed); Bruce DeHahn, Washington Retailers Association, Manager of K-Mart in Tacoma (in favor); Jan Gee, Washington Retailers Association (in favor); Karen Klein, Washington Association of Criminal Defense Lawyers (opposed); Tom Moore, Pierce County Prosecutor's Office, Washington Association of Prosecuting Attorneys (in favor); Trevor Sandison, Washington Bankers Association (opposed); and Jim Ulvenes, U-S, Inc. (in favor).