

**SENATE BILL REPORT**

**ESSB 5494**

**AS PASSED SENATE, MARCH 15, 1991**

**Brief Description:** Changing remedies for collection of debts.

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

**SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE**

**Majority Report:** That Substitute Senate Bill No. 5494 be substituted therefor, and the substitute bill do pass.

Signed by Senators von Reichbauer, Chairman; Johnson, Vice Chairman; McCaslin, Moore, Owen, Pelz, Rasmussen, Vognild, and West.

**Staff:** Meg Jones (786-7416)

**Hearing Dates:** February 15, 1991; March 5, 1991

**HOUSE COMMITTEE ON JUDICIARY**

**BACKGROUND:**

Merchants must collect from consumers checks used to purchase items that are later dishonored. Collection agencies, paid based on the fees permitted by state law, often are used to collect bad checks. Both federal and state laws regulate the collection of consumer debt. States may not permit collection practices that are inconsistent with the federal Consumer Credit Protection Act, but may provide the consumer with greater protection than does the federal law. Washington has adopted the Fair Debt Collection Act, which is a uniform act limiting the collection activity of agencies or merchants.

Action in civil court to collect a bad check typically occurs in district or small claims court. These courts of limited jurisdiction will not let "agents" of the person suing appear, requiring only primary parties to the litigation. This prevents merchants from using collection agencies to enforce judgments obtained against bad check writers.

Action in criminal court to punish bad check writers requires the prosecutor's office to present proof of the intent to write a bad check, and proof of the act of writing a bad check. Generally, an overdrawn balance at the time the check was drafted creates a presumption of intent. To obtain a writer's bank statement to prove this fact, the prosecutor must follow a lengthy process that is often deemed a low priority due to other concerns of the prosecutor's office. Hence, it has been reported that prosecuting for bad checks does not occur on the smaller checks that cannot be collected

by the merchants through collection efforts, and that these bad check writers as a practical matter face neither civil nor criminal penalty. Merchants report that only 50 percent of bad checks are recovered.

**SUMMARY:**

Financial institutions must provide bank account information to holders of dishonored checks when presented with a request pursuant to a letter of agency issued to the holder of the check by the local prosecutor's office. Account owner information and a copy of the account may be furnished to law enforcement agencies or holders of dishonored checks or drafts if the items remain unpaid after 15 days. The holder of the check may not retain copies of the information delivered to the law enforcement agency. The account information may be deemed admissible as evidence if verified by the records custodian as true and accurate copies of business records. The penalties for dishonored checks may include administrative costs and in the event of judgment, payment of three times the face amount of the check or \$500, whichever is less.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

Dishonored checks are a significant problem for retailers and businesses. Only 50 percent of bad checks are collected due to insufficient resources of prosecutors' offices to obtain the information needed to charge and prosecute. The cost to retailers grows despite the best efforts of collection agencies. The \$100 penalty/three times the face amount of the check increased the responsiveness of bad check drafters. The \$500/three times the face amount of the check brings Washington in line with its neighboring states and increases the incentive to pay on a dishonored check.

**TESTIMONY AGAINST:**

Financial institutions are not guaranteed payment for providing the records nor is it certain that they will be exempted from classification as a consumer reporting agency under the federal consumer credit laws. Concerns exist about the bank secrecy laws as well.

**TESTIFIED:** Jan Gee, Jim Ulvenes, Bruce Dehahn, Washington Retailers Association (pro); Ben Wood, Jr. Washington Collectors Assn. (pro); Trevor Sandison, Washington Bankers Assn. (con); Steven F. Burgess, Washington Association of Prosecuting Attorneys (pro)

**HOUSE AMENDMENT(S):**

The ability to assist prosecutors' offices by providing bank account information and the ability of debt collection agencies to charge administrative costs are deleted.

The civil penalty for dishonored checks is reduced from \$500 to \$300 as the ceiling. The contents of the notice of dishonor are modified to reflect the change in the penalty amount and to notify the drafter of the dishonored check that criminal charges are possible if the check is not redeemed.