

FINAL BILL REPORT

EHB 2609

C 215 L 00

Synopsis as Enacted

Brief Description: Allowing agents to give notice of dishonored checks.

Sponsors: Representatives Carrell, Constantine, Mulliken and G. Chandler.

House Committee on Judiciary

Senate Committee on Judiciary

Background:

Article 3 of the Uniform Commercial Code (UCC) applies to negotiable instruments. A check is a negotiable instrument and is defined as a draft payable on demand and drawn on a bank, a cashier's check, or a teller's check.

If a check is dishonored due to nonpayment or nonacceptance, only the payee and the holder of the check are expressly given remedies under Article 3. The payee or the holder of a dishonored check is entitled to collect a reasonable handling fee. The holder of a dishonored check is also entitled to additional remedies if a notice of dishonor is sent to the drawer of the check and an affidavit of service is retained. These remedies include the cost of collection, interest, attorney fees, and damages of \$300 or three times the face amount of the check, whichever is less.

The holder of a dishonored check must execute an affidavit indicating that the notice of dishonor has been sent and must retain the affidavit along with the check in order to seek enforcement of the check in court. A holder of a dishonored check forfeits the right to remedies other than the handling fee if the holder makes unauthorized demands for interest, costs or fees.

Under the UCC, a "person entitled to enforce" a check includes both a holder of a check and also a nonholder who has possession of a check and the rights of a holder.

Collection agencies often send notices of dishonor on behalf of their clients and also collect the applicable fees. This practice has been challenged in a number of lawsuits, on the ground that a collection agency is not a "holder" of the check.

The remedies in Article 3 are not limited to checks written for any particular purpose or to any particular payee.

Summary of Bill:

Generally, a "person entitled to enforce" a check is given the rights and responsibilities of a holder with respect to enforcing a dishonored check.

A person entitled to enforce a check, and that person's agent, are given express authority to send a notice of dishonor.

A person entitled to enforce a check may also collect the reasonable handling fee and is entitled to the other Article 3 remedies of recovering the costs of collection, interest, attorney's fees, and damages of \$300 or three times the face amount of the check, whichever is less.

Any person enforcing a check is responsible for retaining the check and the required affidavit. Any person otherwise entitled to the Article 3 remedies for a dishonored check is barred from those remedies if the person makes unauthorized demands for interest, costs or fees.

A new section is added to the child support laws expressly providing that if a check for child support has been paid to the state child support registry and is dishonored, the fees and costs provisions of Article 3 apply. The Department of Social and Health Services is authorized to adopt rules to enforce this new provision.

Votes on Final Passage:

House 95 0
Senate 45 0 (Senate amended)
House 98 0 (House concurred)

Effective: June 8, 2000