

HOUSE BILL REPORT

HB 2491

As Reported by House Committee On:
Judiciary

Title: An act relating to dishonored checks.

Brief Description: Modifying dishonored check provisions.

Sponsors: Representatives Lantz, Carrell and Holmquist.

Brief History:

Committee Activity:

Judiciary: 1/30/04, 2/5/04 [DPS].

Brief Summary of Substitute Bill

- Creates provisions on dishonored checks that apply to third party collection agencies;
- Caps handling fee for dishonored checks at \$45.00;
- Extends the "grace period" for payors of checks held by collection agencies from 15 days to 33 days;
- Creates a presumption that payors receive the notice of dishonor three days after it has been mailed;
- Provides that collection agencies no longer need include the cautionary statement alerting payors of possible criminal consequences in the notice of dishonor; and
- Adds a provision declaring that if a cautionary statement is included in the notice of dishonor, even if a collection agency does not intend to contact law enforcement, that statement cannot be construed as a threat, misconduct, misrepresentation or a violation of law.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do

pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Sarah Shirey (786-5793); Trudes Tango Hutcheson (786-7384).

Background:

A check is considered "dishonored" if a person who writes a check (the "payor") does not have sufficient funds to cover the amount on the face of the check. A holder of a dishonored check (the "payee") is entitled to collect a reasonable handling fee along with the face amount of the check, if the check is paid within fifteen days after the payee has given notice to the payor. Current law does not specify what a reasonable handling fee is. If a check is not paid within the prescribed fifteen day period, a payee is entitled to additional remedies including the cost of collection up to \$40, interest, attorney fees, and damages of \$300 or three times the face amount of the check, whichever is less.

Collection procedures

In order to collect these remedies, a holder of a dishonored check must send a notice of dishonor as specified in statute to the payor of the check. In addition, a holder 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. Collection agencies often send notices of dishonor on behalf of their clients and also collect the applicable fees.

Criminal Consequences

A person who intentionally delivers to another person a check, knowing that he or she does not have sufficient funds or credit with a bank, commits unlawful issuance of a check or draft. When a series of unlawful checks are cashed that are considered part of a common scheme or plan, and the total value of all the transactions has a value greater than \$250, the payor is guilty of a class C felony offense of unlawful issuance of a check or draft. If the total value of all the transactions has a value of \$250 or less, the payor is guilty of a gross misdemeanor offense of unlawful issuance of a check or draft.

Because unlawful issuance of a check is a crime, current statute requires the notice of dishonor sent to payors to include a cautionary statement. The statement is established in statute and informs the payor that law enforcement agencies may be informed and that there are possible criminal consequences. Both the Washington Collection Act and the Federal Fair Debt Collection Practices Act, however, prohibit payees or their collection agencies from threatening to inform law enforcement of dishonored checks unless they actually intend to contact law enforcement.

Summary of Substitute Bill:

Provisions on dishonored checks are created to apply to collection agencies.

Fees

A collection agency entitled to enforce a check may collect a reasonable handling fee of up to \$45 for a dishonored check. If, after mailing a notice of dishonor, the check is not paid within the prescribed 33 day period, the collection agency is entitled to additional remedies including the cost of collection of \$40 or the face value of the check, whichever is less, interest, attorney fees, and the lesser of \$300 or three times the face amount of the check. Statutory attorneys' fees need not be set by the court. A collection agency may charge lesser amounts than those provided in statute.

Grace period

The payor of a check has 33 days after the notice of dishonor has been sent to remit the face amount of the check and the handling fee before becoming liable for other fees.

Notice of Dishonor

A payor of a dishonored check is presumed to receive the notice of dishonor three days after it has been mailed.

A collection agency may, but need not, include the cautionary statement prescribed in statute. The cautionary statement alerts writers of dishonored checks that if they do not remit the amount of the check within the specified period, law enforcement may be provided with a copy of the check and the notice of dishonor for the possibility of proceeding with criminal charges. If this cautionary statement is included in the notice of dishonor, even if the creditor does not intend to contact law enforcement, that statement cannot be construed as a threat to take any action not intended to be taken or that cannot legally be taken. It also may not be construed as harassing, oppressive, or abusive conduct, nor false, deceptive, or misleading representation. The cautionary statement may not be construed as unfair, unconscionable, or in violation of any law.

Affidavit

A collection agency is responsible for either retaining the check and the required affidavit or filing them with the court.

Substitute Bill Compared to Original Bill:

The original bill amended the existing statutes on dishonored checks that apply to retailers, merchants, and collection agencies. The substitute bill creates new provisions that will apply only to collection agencies.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This legislation is necessary to bring Washington's dishonored check law into compliance with current federal law. Currently, Washington law requires collection agencies to follow procedures that are prohibited by the Federal Fair Debt Collection Act. As a result, collection agencies are not able to comply with both laws. This bill would provide certainty to the collection agencies about how to proceed when collecting dishonored checks.

(With concerns) There is support for a proposed substitute that would limit the new provisions to apply to only third party collection agencies. Current law is working well for the business community. The original bill would have adverse effects on retailers' bookkeeping procedures and ability to collect outstanding debts.

Testimony Against: None.

Persons Testifying: (In support) Kevin Underwood and Christina Trott, Washington Collectors Association.

(With concerns) Carolyn Logne, National Federation of Independent Business; and Bob Gee, Washington Food Industry.

Persons Signed In To Testify But Not Testifying: None.