
Judiciary Committee

PSHB 2491

Title: An act relating to dishonored checks.

Brief Description: Modifying dishonored check provisions.

Sponsors: Representatives Lantz, Carrell and Holmquist.

Brief Summary of the Proposed Substitute Bill

- Caps handling fee for dishonored checks at \$45.00.
- Extends the "grace period" beyond 15 days at payee's discretion.
- Sets the cost of collection at \$40.00, or the face amount of the check, whichever is less.
- Creates a presumption that payors receive the notice of dishonor three days after it has been mailed.
- Provides that payees no longer need to include the cautionary statement alerting payors of possible criminal consequences in the notice of dishonor.
- Adds a provision declaring that if the cautionary statement is included in the notice of dishonor, even if the payee does not intend to contact law enforcement, that statement cannot be construed as a threat, misconduct, misrepresentation or a violation of law.
- Makes other changes to the statutes governing dishonored checks.

Hearing Date: 1/30/04

Staff: Sarah Shirey (786-5793); Trudes Tango Hutcherson (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

Under current law, 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, is guilty of 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, dictated word-for-word in statute, 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 Proposed Substitute Bill:

Fees

A person entitled to enforce a check may collect a reasonable handling fee of up to \$45 for a dishonored check. If the check is not paid within the prescribed fifteen day period, or the period specified in the notice of dishonor, the payee 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 person entitled to enforce a check may charge lesser amounts than those provided in statute.

Remittance period

A person entitled to enforce a check may extend the "grace period" to more than 15 days by specifying the longer period in the notice of dishonor.

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 person entitled to enforce a check 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 person entitled to enforce a check is responsible for either retaining the check and the required affidavit or filing them with the court.

Appropriation: None.

Fiscal Note: Not requested.

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