
SUBSTITUTE HOUSE BILL 2491

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Judiciary (originally sponsored by
Representatives Lantz, Carrell and Holmquist)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to dishonored checks; and adding new sections to
2 chapter 62A.3 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (a) If a check as defined in RCW 62A.3-104
5 is dishonored by nonacceptance or nonpayment and the check is assigned
6 to a collection agency as defined in RCW 19.16.100, the collection
7 agency may collect a reasonable handling fee of up to forty-five
8 dollars for each instrument. If the collection agency or its agent
9 sends a notice of dishonor as provided by section 2 of this act to the
10 drawer at the drawer's last known address and the check amount plus the
11 reasonable handling fee are not paid within thirty-three days after the
12 sending of the notice of dishonor, then, unless the instrument
13 otherwise provides, the drawer of the instrument is liable for payment
14 of interest at the rate of twelve percent per annum from the date of
15 dishonor, and a cost of collection of forty dollars or the face amount
16 of the check, whichever is less, payable to the collection agency. In
17 addition, in the event of court action on the check, the court, after
18 notice and the expiration of the thirty-three days, shall award
19 reasonable attorneys' fees, and three times the face amount of the

1 check or three hundred dollars, whichever is less, as part of the
2 damages payable to the collection agency. This section does not apply
3 to an instrument that is dishonored by reason of a justifiable stop
4 payment order.

5 (b) Subsequent to the commencement of an action on the check under
6 subsection (a) of this section but prior to the hearing, the defendant
7 may tender to the plaintiff as satisfaction of the claim, an amount of
8 money equal to the face amount of the check, a reasonable handling fee
9 of up to forty-five dollars, accrued interest, collection costs equal
10 to the lesser of the face amount of the check or forty dollars, and the
11 incurred court costs, service costs, and statutory attorneys' fees.

12 (c) Nothing in this section precludes the right to commence action
13 in a court under chapter 12.40 RCW for small claims. Nothing in this
14 section prevents a collection agency or its agent from charging the
15 drawer lesser amounts than the amounts provided for in this section.

16 NEW SECTION. **Sec. 2.** (a) If a check is assigned to a collection
17 agency as defined in RCW 19.16.100 and the collection agency or its
18 agent sends a notice of dishonor, the notice of dishonor shall be sent
19 by mail to the drawer at the drawer's last known address. The drawer
20 will be presumed to have received the notice of dishonor not more than
21 three days from the date it is mailed. The notice shall be
22 substantially in the following form:

23 NOTICE OF DISHONOR OF CHECK

24 A check drawn by you and made payable by you to in the
25 amount of has not been accepted for payment by,
26 which is the drawee bank designated on your check. This check is dated
27, and it is numbered, No.

28 You are CAUTIONED that unless you pay the amount of this check and
29 a handling fee of within thirty-three days after the date
30 this letter is postmarked, you may have to pay the following additional
31 amounts:

32 (1) Costs of collecting the amount of the check in the lesser of
33 the check amount or forty dollars, plus, in the event of legal action,
34 court costs and attorneys' fees which will be set by the court;

35 (2) Interest on the amount of the check which shall accrue at the
36 rate of twelve percent per annum from the date of dishonor; and

1 (3) Three hundred dollars or three times the face amount of the
2 check, whichever is less, by award of the court.

3 You are also CAUTIONED that law enforcement agencies may be
4 provided with a copy of this notice of dishonor and the check drawn by
5 you for the possibility of proceeding with criminal charges if you do
6 not pay the amount of this check within thirty-three days after the
7 date this letter is postmarked.

8 You are advised to make your payment of \$. to
9 . at the following address:

10 (b) The cautionary statement regarding law enforcement need not be
11 included in a notice of dishonor sent by a collection agency. However,
12 if included and whether or not the collection agency regularly refers
13 dishonored checks to law enforcement, the above cautionary statement
14 shall not be construed as a threat to take any action not intended to
15 be taken or that cannot legally be taken; nor shall it be construed to
16 be harassing, oppressive, or abusive conduct; nor shall it be construed
17 to be a false, deceptive, or misleading representation; nor shall it be
18 construed to be unfair or unconscionable; nor shall it otherwise be
19 construed to violate any law.

20 NEW SECTION. **Sec. 3.** (a) If a notice of dishonor is sent by a
21 collection agency or its agent under section 2 of this act, the person
22 sending notice shall execute an affidavit certifying service of the
23 notice by mail. The affidavit of service by mail must be attached to
24 a copy of the notice of dishonor and must be substantially in the
25 following form:

26 AFFIDAVIT OF SERVICE BY MAIL

27 I,, hereby certify that on the day of . .
28, 20. . . ., a copy of the foregoing Notice was served on
29 . . by mailing via the United States Postal Service, postage prepaid,
30 at, Washington.

31 Dated:

32 (Signature)

33 (b) The person enforcing the check shall retain the affidavit with
34 the check or may file the affidavit and check with the clerk of the
35 court in which an action on the check is commenced as permitted by
36 court rule or practice.

1 NEW SECTION. **Sec. 4.** No interest, collection costs, and
2 attorneys' fees, except handling fees, are recoverable on any
3 dishonored check under the provisions of section 1 of this act where a
4 collection agency or its agent, employee, or assign has demanded:

5 (1) Interest or collection costs in excess of that provided by
6 section 1 of this act;

7 (2) Interest or collection costs prior to the expiration of
8 thirty-three days after the mailing of notice of dishonor, as provided
9 by section 1 of this act; or

10 (3) Attorneys' fees other than statutory attorneys' fees without
11 having the fees set by the court, or any attorneys' fees prior to
12 thirty-three days after the mailing of the notice of dishonor, as
13 provided by section 1 of this act.

14 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act are each
15 added to chapter 62A.3 RCW.

--- END ---