
Judiciary Committee

HB 1347

Title: An act relating to dishonored checks.

Brief Description: Changing provisions relating to dishonored checks.

Sponsors: Representatives Lantz, Williams and Newhouse.

Brief Summary of Bill

- Provides procedures, including notice requirements and a grace period, applicable to collection agencies enforcing dishonored checks.

Hearing Date: 2/4/05

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Collection of dishonored checks

If a check is dishonored by nonacceptance or nonpayment, the payee or the person entitled to enforce the check may collect a reasonable handling fee for each dishonored check. If the payee sends the statutory notice of dishonor to the payor and the payor does not pay the check within 15 days of mailing the notice, then unless the instrument provides otherwise, the payor is liable for:

- interest at the rate of 12 percent from the date of dishonor; and
- collection costs equal to the face amount of the check or \$40, whichever is less.

In addition, if the payee institutes a lawsuit to collect on the check, he or she is entitled to a reasonable attorney's fee plus three times the face amount of the check or \$300, whichever is less, as part of the damages awarded in the action.

After a lawsuit has begun but prior to the hearing, the payor may satisfy the claim by paying an amount equal to the amount of the check, the reasonable handling fee, interest, collection costs in the face amount of the check or \$40 (whichever is less), court costs, service costs, and a statutory attorney's fee.

Statutory notice of dishonor

The statutory notice of dishonor must be sent by mail to the payor at his or her last known address and must substantially follow the form provided in statute. The payee must attach the affidavit to a copy of the notice and retain it with the check.

The statutory notice includes a cautionary warning that law enforcement agencies may be provided with a copy of the notice of dishonor for the possibility of criminal charges.

Statutes regulating collection agency practices prohibit an agency from threatening a debtor with criminal prosecution. A 1992 Attorney General opinion stated that a collection agency may use the cautionary statement provided in the statutory notice without violating the prohibition against threats.

A payee may not collect interest, collection costs, and attorney's fees if the payee demanded:

- interest or collection costs in excess of those allowed in the statute;
- interest or collection costs prior to the expiration of the 15 days after mailing the notice; or
- attorney's fees that have not been set by the court or that have been demanded prior to the expiration of the 15 days after mailing the notice.

Summary of Bill:

Procedures for enforcing dishonored checks are created specifically for collection agencies. These procedures are very similar to the current statutes, with changes made to the grace period allowed for payment, the statutory notice, and the affidavit requirement.

Collection of dishonored checks

The time period in which a payor has to remit payment after the statutory notice is sent and before interest and collection costs are incurred is expanded to 33 days when a collection agency is enforcing a dishonored check. If a collection agency sends the required statutory notice of dishonor to the payor, and the payor does not pay the face amount of the check plus the handling fee within 33 days after notice is given, then, unless the instrument provides otherwise, the payor is liable for:

- interest at 12 percent from the date of dishonor; and
- cost of collection of \$40 or the face amount of the check, whichever is less.

If the collection agency brings a lawsuit, then after 33 days of giving notice, the court shall award reasonable attorneys' fees plus three times the face amount of the check or \$300, whichever is less, as part of the damages payable to the collection agency.

Statutory notice of dishonor

The collection agency may send the notice of dishonor to the payor by mail to the payor's last known address. The payor is conclusively presumed to have received the notice of dishonor not more than three days after the date it is mailed.

The statutory notice of dishonor for collection agencies reflects the 33-day grace period. However, the cautionary statement regarding law enforcement does not need to be included in the notice of dishonor sent by a collection agency. If it is included and whether or not the collection agency regularly refers dishonored checks to law enforcement, the cautionary statement shall not be construed as a threat to take any action not intended to be taken and shall not be construed to be false or deceptive or violating any law.

Keeping the affidavit or filing the affidavit with the court is made discretionary as opposed to mandatory.

A collection agency may not recover interest, collection costs, and attorneys' fees on a dishonored check if the collection agency had demanded:

- interest or collection costs in excess of that provided by statute;
- interest or collection costs before the 33 days have passed since service of the notice; or
- attorneys' fees (other than statutory attorneys' fees) without having the fees set by the court, or any attorneys' fees before the 33 days have passed since serving the notice.

Appropriation: None.

Fiscal Note: Not requested.

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