
HOUSE BILL 1347

State of Washington 59th Legislature 2005 Regular Session

By Representatives Lantz, Williams and Newhouse

Read first time 01/20/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to dishonored checks; and amending RCW 62A.3-515,
2 62A.3-520, 62A.3-522, and 62A.3-525.

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

4 **Sec. 1.** RCW 62A.3-515 and 2000 c 215 s 1 are each amended to read
5 as follows:

6 (a)(1) If a check as defined in RCW 62A.3-104 is dishonored by
7 nonacceptance or nonpayment, the payee or person entitled to enforce
8 the check under RCW 62A.3-301 may collect a reasonable handling fee for
9 each instrument. If the check is not paid within fifteen days and
10 after the person entitled to enforce the check or the person's agent
11 sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer
12 at the drawer's last known address, and if the instrument does not
13 provide for the payment of interest or collection costs and attorneys'
14 fees, the drawer of the instrument is liable for payment of interest at
15 the rate of twelve percent per annum from the date of dishonor, and
16 cost of collection not to exceed forty dollars or the face amount of
17 the check, whichever is less, payable to the person entitled to enforce
18 the check. In addition, in the event of court action on the check, the
19 court, after notice and the expiration of the fifteen days, shall award

1 reasonable attorneys' fees, and three times the face amount of the
2 check or three hundred dollars, whichever is less, as part of the
3 damages payable to the person enforcing the check. This section does
4 not apply to an instrument that is dishonored by reason of a
5 justifiable stop payment order.

6 (2) If a check as defined in RCW 62A.3-104 is dishonored by
7 nonacceptance or nonpayment and the check is assigned or written to a
8 collection agency as defined in RCW 19.16.100, the collection agency
9 may collect a reasonable handling fee for each instrument. If the
10 collection agency or its agent provides a notice of dishonor in the
11 form provided in RCW 62A.3-520 to the drawer and the check amount plus
12 the reasonable handling fee are not paid within thirty-three days after
13 providing the notice of dishonor, then, unless the instrument otherwise
14 provides, the drawer of the instrument is liable for payment of
15 interest at the rate of twelve percent per annum from the date of
16 dishonor, and a cost of collection of forty dollars or the face amount
17 of the check, whichever is less, payable to the collection agency. In
18 addition, in the event of court action on the check and after notice
19 and the expiration of the thirty-three days, the court shall award
20 reasonable attorneys' fees, and three times the face amount of the
21 check or three hundred dollars, whichever is less, as part of the
22 damages payable to the collection agency. This section does not apply
23 to an instrument that is dishonored by reason of a justifiable stop
24 payment order.

25 (b)(1) Subsequent to the commencement of an action on the check
26 (subsection (a)) but prior to the hearing, the defendant may tender to
27 the plaintiff as satisfaction of the claim, an amount of money equal to
28 the face amount of the check, a reasonable handling fee, accrued
29 interest, collection costs equal to the face amount of the check not to
30 exceed forty dollars, and the incurred court costs, service costs, and
31 statutory attorneys' fees.

32 (2) Nothing in this section precludes the right to commence action
33 in a court under chapter 12.40 RCW for small claims.

34 **Sec. 2.** RCW 62A.3-520 and 1993 c 229 s 68 are each amended to read
35 as follows:

36 (1) The notice of dishonor shall be sent by mail to the drawer at

1 the drawer's last known address, and the notice shall be substantially
2 in the following form:

3 NOTICE OF DISHONOR OF CHECK

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

8 You are CAUTIONED that unless you pay the amount of this check
9 within fifteen days after the date this letter is postmarked, you may
10 very well have to pay the following additional amounts:

11 ~~((1))~~ (a) Costs of collecting the amount of the check, including
12 an attorney's fee which will be set by the court;

13 ~~((2))~~ (b) Interest on the amount of the check which shall accrue
14 at the rate of twelve percent per annum from the date of dishonor; and

15 ~~((3))~~ (c) Three hundred dollars or three times the face amount of
16 the check, whichever is less, by award of the court.

17 You are also CAUTIONED that law enforcement agencies may be
18 provided with a copy of this notice of dishonor and the check drawn by
19 you for the possibility of proceeding with criminal charges if you do
20 not pay the amount of this check within fifteen days after the date
21 this letter is postmarked.

22 You are advised to make your payment to at the
23 following address:

24 (2)(a) If a check is assigned or written to a collection agency as
25 defined in RCW 19.16.100 and the collection agency or its agent
26 provides a notice of dishonor, the notice of dishonor may be sent by
27 mail to the drawer at the drawer's last known address. The drawer is
28 conclusively presumed to have received the notice of dishonor not more
29 than three days from the date it is mailed. The collection agency may,
30 as an alternative to providing a notice in the form described in
31 subsection (1) of this section, provide a notice in substantially the
32 following form:

33 NOTICE OF DISHONOR OF CHECK

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

1 You are CAUTIONED that unless you pay the amount of this check and
2 a handling fee of within thirty-three days after the date
3 this letter is postmarked or personally delivered, you may very well
4 have to pay the following additional amounts:

5 (i) Costs of collecting the amount of the check in the lesser of
6 the check amount or forty dollars, plus, in the event of legal action,
7 court costs and attorneys' fees, which will be set by the court;

8 (ii) Interest on the amount of the check which shall accrue at the
9 rate of twelve percent per annum from the date of dishonor; and

10 (iii) Three hundred dollars or three times the face amount of the
11 check, whichever is less, by award of the court.

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

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

19 (b) The cautionary statement regarding law enforcement in (a) of
20 this subsection need not be included in a notice of dishonor sent by a
21 collection agency. However, if included and whether or not the
22 collection agency regularly refers dishonored checks to law
23 enforcement, the cautionary statement in (a) of this subsection shall
24 not be construed as a threat to take any action not intended to be
25 taken or that cannot legally be taken; nor shall it be construed to be
26 harassing, oppressive, or abusive conduct; nor shall it be construed to
27 be a false, deceptive, or misleading representation; nor shall it be
28 construed to be unfair or unconscionable; nor shall it otherwise be
29 construed to violate any law.

30 **Sec. 3.** RCW 62A.3-522 and 2000 c 215 s 2 are each amended to read
31 as follows:

32 (1) In addition to sending a notice of dishonor to the drawer of
33 the check under RCW 62A.3-520, the person sending notice shall execute
34 an affidavit certifying service of the notice by mail. The affidavit
35 of service by mail must be attached to a copy of the notice of dishonor
36 and must be substantially in the following form:

37 AFFIDAVIT OF SERVICE BY MAIL

1 I,, hereby certify that on the day of
2, 20. . . ., a copy of the foregoing Notice was served on
3 by mailing via the United States Postal Service, postage
4 prepaid, at, Washington.

5 Dated:

6 (Signature)

7 (2)(a) The person enforcing ((the)) a check under RCW 62A.3-520(1)
8 shall retain the affidavit with the check but shall file a copy of the
9 affidavit with the clerk of the court in which an action on the check
10 is commenced.

11 (b) The person enforcing a check under RCW 62A.3-520(2) may retain
12 the affidavit or may file the affidavit and check, or a true copy
13 thereof, with the clerk of the court in which an action on the check is
14 commenced as permitted by court rule or practice.

15 **Sec. 4.** RCW 62A.3-525 and 2000 c 215 s 3 are each amended to read
16 as follows:

17 (1) No interest, collection costs, and attorneys' fees, except
18 handling fees, are recoverable on any dishonored check under the
19 provisions of RCW 62A.3-515(a)(1) where a person entitled to such
20 recovery or any agent, employee, or assign has demanded:

21 ((+1)) (a) Interest or collection costs in excess of that provided
22 by RCW 62A.3-515(a)(1); or

23 ((+2)) (b) Interest or collection costs prior to the expiration of
24 fifteen days after the mailing of notice of dishonor, as provided by
25 RCW 62A.3-515(a)(1) and 62A.3-520(1); or

26 ((+3)) (c) Attorneys' fees either without having the fees set by
27 the court, or prior to the expiration of fifteen days after the mailing
28 of notice of dishonor, as provided by RCW 62A.3-515(a)(1) and 62A.3-
29 520(1).

30 (2) No interest, collection costs, and attorneys' fees, except
31 handling fees, are recoverable on any dishonored check under the
32 provisions of RCW 62A.3-515(a)(2) where a collection agency or its
33 agent, employee, or assign has demanded:

34 (a) Interest or collection costs in excess of that provided by RCW
35 62A.3-515(a)(2); or

36 (b) Interest or collection costs prior to the expiration of thirty-

1 three days after the serving or mailing of the notice of dishonor, as
2 provided by RCW 62A.3-515(a)(2) or 62A.3-520(2); or
3 (c) Attorneys' fees other than statutory attorneys' fees without
4 having the fees set by the court, or any attorneys' fees prior to
5 thirty-three days after the serving or mailing of the notice of
6 dishonor, as provided by RCW 62A.3-515(a)(2) or 62A.3-520(2).

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