

SENATE BILL REPORT

HB 1145

As Reported By Senate Committee On:
Judiciary, March 21, 2007

Title: An act relating to the limitations period for an account receivable.

Brief Description: Modifying the definition of an "account receivable" for purposes of commencing an action.

Sponsors: Representatives Lantz, Warnick, Williams, Rodne, O'Brien, Campbell, Goodman and Moeller.

Brief History: Passed House: 1/29/07, 97-0.

Committee Activity: Judiciary: 3/16/07, 3/21/07 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Dawn Noel (786-7472)

Background: A plaintiff must commence an action within the statute of limitations for that particular type of action or else the action is barred. The statute of limitations is three years for an action based on a contract which is not in writing, except if the contract is an account receivable. The statute of limitations for actions based on an account receivable incurred in the ordinary course of business is six years.

Recently, the Washington Court of Appeals defined "account receivable" as an "open account," meaning an "account that is left open for ongoing debit and credit entries by two parties and that has a fluctuating balance until either party finds it convenient to close" *Tingey v. Haisch*, 129 Wn. App. 109 (2005).

In *Tingey*, an attorney sued his former client for legal fees. The parties did not have a written fee agreement. At issue was whether the attorney's claim for fees was an account receivable or an oral contract. Noting that the term "account receivable" was not defined in the statute and is ambiguous, the court of appeals examined legislative intent. The court referenced an exchange on the Senate Floor where a senator indicated that an account receivable was an open account. The court found that the attorney's fee agreement was not an account receivable because the client retained the attorney for a single transaction, and the transaction did not

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involve a fluctuating balance of debit and credit entries between the parties involving multiple transactions.

The Washington Supreme Court accepted review of *Tingey*, and reversed the Court of Appeals decision in an opinion issued February 15, 2007. The majority defined "account receivable" to be "an amount due a business on account from a customer who has bought merchandise or received services." From this, the majority determined that this meaning of "account receivable" encompassed a balance owed by a client to an attorney for legal services performed on behalf of a client on an hourly basis without a written fee agreement. The majority clarified its definition by stating that only oral contracts exhibiting the following characteristics could qualify for the six-year statute of limitation: (1) the parties to the contract are a customer and a business; (2) the character of the transaction involves a purchase by the customer; (3) the business has completed performance (i.e., the customer has bought or received the merchandise or services); and (4) the remaining obligation is monetary in nature.

Summary of Bill: The term "account receivable" for the purposes of the six-year statute of limitations is defined as any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance. The amended definition applies to all causes of action on accounts receivable, whether commenced before or after the effective date of the act.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill clarifies the existing definition of account receivable in the ordinary course of business. The Washington Supreme Court eventually reversed the Court of Appeals on this issue, but the pending nature of the case begged clarification of the term; therefore, this legislation was introduced. Even though there's no written contract, indices of reliability exist in business records regularly maintained. This is not a slam dunk for a plaintiff, who still must prove the case, but has six years to do it.

Persons Testifying: PRO: Representative Lantz, prime sponsor; Kevin Underwood, Washington Collector's Association.