

HOUSE BILL REPORT

EHB 2609

As Passed Legislature

Title: An act relating to notices of dishonored checks.

Brief Description: Allowing agents to give notice of dishonored checks.

Sponsors: Representatives Carrell, Constantine, Mulliken and G. Chandler.

Brief History:

Committee Activity:

Judiciary: 2/3/00 [DP].

Floor Activity:

Passed House: 2/14/00, 95-0.

Senate Amended.

Passed Senate: 3/3/00, 45-0.

House Concurred.

Passed House: 3/6/00, 98-0.

Passed Legislature.

<h3>Brief Summary of Bill</h3>

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| <ul style="list-style-type: none">· Expands the scope of persons who have a right or remedy for a dishonored check. |
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HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Chad Barnes (786-5793); Bill Perry (786-7123).

Background:

Article 3 of the Uniform Commercial Code (UCC) applies to negotiable instruments. A check is a negotiable instrument, and is defined as a draft payable on demand and drawn on a bank, a cashier's check, or a teller's check.

If a check is dishonored due to nonpayment or nonacceptance, currently only the payee and the holder of the check have a remedy. The payee or the holder of a dishonored check is entitled to collect a reasonable handling fee. The holder of a dishonored check is also entitled to additional remedies if a notice of dishonor is sent to the drawer of the check and an affidavit of service is retained. These remedies include the cost of collection, interest, attorney fees, and damages of \$300 or three times the face amount of the check, whichever is less.

Under the UCC a "person entitled to enforce" a check includes both a holder of a check and also a nonholder who has possession of a check and the rights of a holder.

Generally, collection agencies send a notice of dishonor on behalf of their client and collect the applicable fees. This practice has been challenged in a number of lawsuits, alleging a collection agency is not a "holder" of the check.

Summary of Bill:

The payee or person entitled to enforce a check may collect a reasonable handling fee.

The person entitled to enforce the check may also receive collection costs and interest if not provided for in the instrument.

If the person entitled to enforce the check must go to court in order to collect the debt he or she is also entitled to reasonable attorney fees and damages of \$300 or three times the face amount of the check, whichever is less.

The person entitled to enforce the check, or that person's agent, may send the notice of dishonor.

The person enforcing the check must retain the affidavit of service with the check.

Interest, collection costs, and attorneys' fees may not be recovered if the person enforcing the check or that person's agent, employee, or assign demands:

- (1) Interest or collection costs beyond those allowed by statute; or
- (2) Interest, collection costs, or attorney fees within 15 days of mailing the notice of dishonor; or
- (3) Attorneys' fees which have not been set by the court.

If a check for child support paid to the state child support registry is dishonored, the fees and costs provisions of the UCC apply. The Department of Social and Health Services is authorized to adopt rules to enforce the amendment.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Collections agencies frequently send a notice of dishonor on behalf of their clients. This bill clarifies that existing business practices are legal.

Testimony Against: None.

Testified: Judy Warnick, Washington Collectors Association.