

SENATE BILL REPORT

EHB 2609

As Reported By Senate Committee On:
Judiciary, February 25, 2000

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: 2/24/2000, 2/25/2000 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Heavey, Chair; Costa, Goings, Hargrove, Johnson, Long, Thibaudeau and Zarelli.

Staff: Dick Armstrong (786-7460)

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

If a check is dishonored due to nonpayment or nonacceptance, currently only the payee (person to whom the check is made out to) and the holder of the check (named payee or the person in possession, if no named payee) 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.

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 as defined in statute.

Summary of Bill: The payee, or person entitled to enforce the check, may collect a reasonable handling fee.

The person entitled to enforce the check 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 their 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill clarifies that a business can hire a collection agency to collect on a dishonored check and the collection agency would be entitled to get collection costs currently allowed under UCC Article 3 (governing negotiable instruments).

Testimony Against: None.

Testified: Kevin Underwood, Washington Collectors Association (pro).