

SENATE BILL REPORT

HB 1771

As Reported By Senate Committee On:
Financial Institutions & Housing, March 30, 1995

Title: An act relating to dishonored checks.

Brief Description: Requiring a handling fee to be paid when a check is dishonored.

Sponsors: Representatives Hickel, Basich, Padden, Kremen, Chappell and Carrell.

Brief History:

Committee Activity: Financial Institutions & Housing: 3/30/95 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & HOUSING

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair; Hale, Roach, Sellar, Smith and Sutherland.

Staff: Catherine Mele (786-7470)

Background: The Uniform Commercial Code (UCC) describes procedures for defining and processing negotiable instruments such as checks. A check is dishonored if it is properly presented for payment and not paid. The UCC allows a person or business holding a bad check to collect a reasonable handling fee. "Reasonable" is not defined. In addition, if a statutory notice is given and 15 days have elapsed, the person or business can recover collection costs of the lesser of \$40 or the amount of the check, and interest at 12 percent per year.

If court action is necessary, and the notice was sent and 15 days have elapsed, reasonable attorneys' fees plus the lesser of \$300 or three times the amount of the check can be collected. In addition, the holder may also recover prevailing party costs. Such costs include filing fees, service of process fees, costs for service by publication, notary fees, reasonable expenses for reports and records introduced at trial, and statutory attorneys' fees.

Statutory attorneys' fees are \$125. "Reasonable" attorneys' fees are set by the court based on a variety of factors including the amount of time spent on the case, and the customary hourly rate charged by attorneys in the area.

If the holder of a bad check files a lawsuit, and it has not gone to trial, the drawer can satisfy the claim by paying the face value of the check, a reasonable handling fee, accrued interest, collection costs of up to the lesser of \$40 or the value of the check, and incurred court and service costs.

There has been some uncertainty about whether statutory attorneys' fees are recoverable as incurred costs when a lawsuit has been filed, but has not gone to trial.

Summary of Bill: The amount that the drawer of a bad check must pay before trial in order to satisfy the claim of a holder who files a suit is explicitly expanded to include statutory attorneys' fees of \$125.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill clarifies a situation where some courts now allow these fees, and some do not.

Testimony Against: None.

Testified: Cathy Rovner, Mark Gjurasic, WA Collectors Assn. (pro).