
HOUSE BILL 2491

State of Washington 58th Legislature 2004 Regular Session

By Representatives Lantz, Carrell and Holmquist

Read first time 01/15/2004. 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) 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 of
9 forty-five dollars for each instrument. If the check is not paid
10 within (~~fifteen~~) thirty-five days (~~and~~) after the person entitled
11 to enforce the check or the person's agent sends a notice of dishonor
12 as provided by RCW 62A.3-520 to the drawer at the drawer's last known
13 address, and (~~if the instrument does not provide~~) unless the
14 instrument otherwise provides for the payment of interest or collection
15 costs and attorneys' fees, the drawer of the instrument is liable for
16 payment of interest at the rate of twelve percent per annum from the
17 date of dishonor, and a cost of collection (~~not to exceed~~) of forty
18 dollars or the face amount of the check, whichever is less, payable to
19 the person entitled to enforce the check. In addition, in the event of

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

7 (b)(1) Subsequent to the commencement of an action on the check
8 (subsection (a)) but prior to the hearing, the defendant may tender to
9 the plaintiff as satisfaction of the claim, an amount of money equal to
10 the face amount of the check, a reasonable handling fee of forty-five
11 dollars, accrued interest, collection costs equal to the lesser of the
12 face amount of the check (~~((not to exceed))~~) or forty dollars, and the
13 incurred court costs, service costs, and statutory attorneys' fees.

14 (2) Nothing in this section precludes the right to commence action
15 in a court under chapter 12.40 RCW for small claims. Nothing in this
16 section prevents a person entitled to enforce a check or that person's
17 agent from charging the drawer lesser amounts than the amounts provided
18 for in this section.

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

21 (a) The notice of dishonor shall be sent by mail to the drawer at
22 the drawer's last known address(~~(, and)~~). The drawer will conclusively
23 be presumed to have received the notice of dishonor not more than five
24 days from the date it is mailed. The notice shall be substantially in
25 the following form:

26 NOTICE OF DISHONOR OF CHECK

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

31 You are CAUTIONED that unless you pay the amount of this check and
32 a handling fee of forty-five dollars within (~~((fifteen))~~) thirty-five
33 days after the date this letter is postmarked, you may very well have
34 to pay the following additional amounts:

35 (1) Costs of collecting the amount of the check(~~(, including an~~
36 ~~attorney's fee)) in the lesser of the check amount or forty dollars,~~

1 plus, in the event of legal action, court costs and attorneys' fees
2 which will be set by the court;

3 (2) Interest on the amount of the check which shall accrue at the
4 rate of twelve percent per annum from the date of dishonor; and

5 (3) Three hundred dollars or three times the face amount of the
6 check, whichever is less, by award of the court.

7 You are also CAUTIONED that law enforcement agencies may be
8 provided with a copy of this notice of dishonor and the check drawn by
9 you for the possibility of proceeding with criminal charges if you do
10 not pay the amount of this check within (~~fifteen~~) thirty-five days
11 after the date this letter is postmarked.

12 You are advised to make your payment to at the
13 following address:

14 (b) The cautionary statement regarding law enforcement need not be
15 included in a notice of dishonor. However, the policy of this state is
16 to encourage providing notice to the drawers of dishonored checks of
17 the possibility of criminal action, whether or not the creditor or
18 collector of the check intends to refer a specific check to law
19 enforcement at the time the notice of dishonor is sent, or whether or
20 not the creditor or collector regularly refers dishonored checks to law
21 enforcement. Therefore, including the cautionary statement shall not
22 be construed to be a threat to refer the check to law enforcement, to
23 take any action not intended to be taken or to take any action that
24 cannot legally be taken; nor shall it be construed to be harassing,
25 oppressive, or abusive conduct; nor shall it be construed to be a
26 false, deceptive, or misleading representation; nor shall it be
27 construed to be an unfair or unconscionable means of collecting the
28 dishonored check; nor shall it be construed to be a violation of any
29 state, federal, or other law, including but not limited to the common
30 law, the Washington consumer protection act (chapter 19.86 RCW) and the
31 federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et
32 seq.).

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

35 In addition to sending a notice of dishonor to the drawer of the
36 check under RCW 62A.3-520, the person sending notice shall execute an

1 affidavit certifying service of the notice by mail. The affidavit of
2 service by mail must be attached to a copy of the notice of dishonor
3 and must be substantially in the following form:

4 AFFIDAVIT OF SERVICE BY MAIL

5 I,, hereby certify that on the day of
6, 20. . . ., a copy of the foregoing Notice was served on
7 by mailing via the United States Postal Service, postage
8 prepaid, at, Washington.

9 Dated:
10 (Signature)

11 ~~((The person enforcing the check shall retain the affidavit with
12 the check but shall file a copy of the affidavit with the clerk of the
13 court in which an action on the check is commenced.))~~

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

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

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

22 (2) Interest or collection costs prior to the expiration of
23 ~~((fifteen))~~ thirty-five days after the mailing of notice of dishonor,
24 as provided by RCW 62A.3-515 and 62A.3-520; or

25 (3) Attorneys' fees ~~((either))~~ other than statutory attorneys' fees
26 without having the fees set by the court, or any attorneys' fees prior
27 to the expiration of ~~((fifteen))~~ thirty-five days after the mailing of
28 notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520.

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