

**FINAL BILL REPORT**

**ESSB 5494**

**C 168 L 91**

**SYNOPSIS AS ENACTED**

**Brief Description:** Changing remedies for collection of debts.

**SPONSORS:** Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators von Reichbauer, Pelz, Johnson, Owen, Thorsness, Vognild, Sellar and Moore).

**SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE**

**HOUSE COMMITTEE ON JUDICIARY**

**BACKGROUND:**

Merchants must collect from consumers checks used to purchase items that are later dishonored. Collection agencies, paid based on the fees permitted by state law, often are used to collect bad checks. Both federal and state laws regulate the collection of consumer debt. States may not permit collection practices that are inconsistent with the federal Consumer Credit Protection Act, but may provide the consumer with greater protection than does the federal law. Washington has adopted the Fair Debt Collection Act, which is a uniform act limiting the collection activity of agencies or merchants.

Action in civil court to collect a bad check typically occurs in district or small claims court. These courts of limited jurisdiction will not let "agents" of the person suing appear, requiring only primary parties to the litigation. This prevents merchants from using collection agencies to enforce judgments obtained against bad check writers.

Action in criminal court to punish bad check writers requires the prosecutor's office to present proof of the intent to write a bad check, and proof of the act of writing a bad check. Generally, an overdrawn balance at the time the check was drafted creates a presumption of intent. To obtain a writer's bank statement to prove this fact, the prosecutor must follow a lengthy process that is often deemed a low priority due to other concerns of the prosecutor's office. Hence, it has been reported that prosecuting for bad checks does not occur on the smaller checks that cannot be collected by the merchants through collection efforts, and that these bad check writers as a practical matter face neither civil nor criminal penalty. Merchants report that only 50 percent of bad checks are recovered.

**SUMMARY:**

The penalty for dishonored checks in the event of judgment is payment of three times the face amount of the check or \$300, whichever is less. The notice of dishonor includes notice that if the check is not redeemed within 15 days, the drawer may face criminal charges.

**VOTES ON FINAL PASSAGE:**

Senate	44	1	
House	94	3	(House amended)
Senate	42	2	(Senate concurred)

**EFFECTIVE:** July 28, 1991