<u>SHB 1347</u> - S COMM AMD By Committee on Financial Institutions, Housing & Consumer Protection

ADOPTED 04/15/2005

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) If a check as defined in RCW 62A.3-104 3 4 is dishonored by nonacceptance or nonpayment and the check is assigned 5 or written to a collection agency as defined in RCW 19.16.100, the 6 collection agency may collect a reasonable handling fee for each 7 instrument. If the collection agency or its agent provides a notice of 8 dishonor in the form provided in section 2 of this act to the drawer 9 and the check amount plus the reasonable handling fee are not paid 10 within thirty-three days after providing the notice of dishonor, then, unless the instrument otherwise provides, the drawer of the instrument 11 12 is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and a cost of collection of forty 13 14 dollars or the face amount of the check, whichever is less, payable to 15 the collection agency. In addition, in the event of court action on 16 the check and after notice and the expiration of the thirty-three days, 17 the court shall award reasonable attorneys' fees, and three times the 18 face amount of the check or three hundred dollars, whichever is less, 19 as part of the damages payable to the collection agency. This section 20 does not apply to an instrument that is dishonored by reason of a 21 justifiable stop payment order.

(2) Subsequent to the commencement of an action on the check under subsection (1) of this section but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(3) Nothing in this section precludes the right to commence actionin a court under chapter 12.40 RCW for small claims.

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<u>NEW SECTION.</u> Sec. 2. (1) If a check is assigned or written to a collection agency as defined in RCW 19.16.100 and the collection agency or its agent provides a notice of dishonor, the notice of dishonor may be sent by mail to the drawer at the drawer's last known address. The collection agency may, as an alternative to providing a notice in the form described in RCW 62A.3-520, provide a notice in substantially the following form:

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NOTICE OF DISHONOR OF CHECK

9 A check drawn by you and made payable by you to in the 10 amount of has not been accepted for payment by, 11 which is the drawee bank designated on your check. This check is dated 12 , and it is numbered, No.

You are CAUTIONED that unless you pay the amount of this check and a handling fee of within thirty-three days after the date this letter is postmarked or personally delivered, you may very well have to pay the following additional amounts:

(a) Costs of collecting the amount of the check in the lesser of
the check amount or forty dollars, plus, in the event of legal action,
court costs and attorneys' fees, which will be set by the court;

20 (b) Interest on the amount of the check which shall accrue at the 21 rate of twelve percent per annum from the date of dishonor; and

(c) Three hundred dollars or three times the face amount of thecheck, whichever is less, by award of the court.

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

You are advised to make your payment of \$....to....
at the following address:

The cautionary statement regarding law enforcement 31 (2) in subsection (1) of this section need not be included in a notice of 32 dishonor sent by a collection agency. However, if included and whether 33 34 or not the collection agency regularly refers dishonored checks to law enforcement, the cautionary statement in subsection (1) of this section 35 shall not be construed as a threat to take any action not intended to 36 37 be taken or that cannot legally be taken; nor shall it be construed to 38 be harassing, oppressive, or abusive conduct; nor shall it be construed

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to be a false, deceptive, or misleading representation; nor shall it be construed to be unfair or unconscionable; nor shall it otherwise be construed to violate any law.

4 (3) In addition to sending a notice of dishonor to the drawer of
5 the check under this section, the person sending notice shall execute
6 an affidavit certifying service of the notice by mail. The affidavit
7 of service by mail must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

9 I, , hereby certify that on the day of 10 , 20. . ., a copy of the foregoing Notice was served on 11 by mailing via the United States Postal Service, postage 12 prepaid, at , Washington.

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15 (4) The person enforcing a check under this section shall file the 16 affidavit and check, or a true copy thereof, with the clerk of the 17 court in which an action on the check is commenced as permitted by 18 court rule or practice.

19 <u>NEW SECTION.</u> Sec. 3. No interest, collection costs, and 20 attorneys' fees, except handling fees, are recoverable on any 21 dishonored check under the provisions of section 1 of this act where a 22 collection agency or its agent, employee, or assign has demanded:

23 (1) Interest or collection costs in excess of that provided by 24 section 1 of this act; or

(2) Interest or collection costs prior to the expiration of thirtythree days after the serving or mailing of the notice of dishonor, as
provided by section 1 or 2 of this act; or

(3) Attorneys' fees other than statutory attorneys' fees without having the fees set by the court, or any attorneys' fees prior to thirty-three days after the serving or mailing of the notice of dishonor, as provided by section 1 or 2 of this act.

32 <u>NEW SECTION.</u> Sec. 4. Sections 1 through 3 of this act are each 33 added to chapter 62A.3 RCW under the subchapter heading "DISHONOR.""

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1 On page 1, line 1 of the title, after "checks;" strike the

2 remainder of the title and insert "and adding new sections to chapter

3 62A.3 RCW."

<u>EFFECT:</u> First, the conclusive presumption that the debtor received notice of a dishonored check three days after mailing a notice is taken out, allowing a debtor to demonstrate that he or she did not receive notice.

Second, instead of allowing a collection agency to either retain an affidavit certifying notice or file the affidavit with the court, the agency is required to file the affidavit and check (or a copy thereof) with the court.

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