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**SUBSTITUTE HOUSE BILL 1347**

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**State of Washington                      59th Legislature                      2005 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Lantz, Williams and Newhouse)

READ FIRST TIME 02/09/05.

1            AN ACT Relating to dishonored checks; and adding new sections to  
2 chapter 62A.3 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

1 as part of the damages payable to the collection agency. This section  
2 does not apply to an instrument that is dishonored by reason of a  
3 justifiable stop payment order.

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

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

13 NEW SECTION. **Sec. 2.** (1) If a check is assigned or written to a  
14 collection agency as defined in RCW 19.16.100 and the collection agency  
15 or its agent provides a notice of dishonor, the notice of dishonor may  
16 be sent by mail to the drawer at the drawer's last known address. The  
17 drawer is conclusively presumed to have received the notice of dishonor  
18 on the third day from the date it is mailed. The collection agency  
19 may, as an alternative to providing a notice in the form described in  
20 RCW 62A.3-520, provide a notice in substantially the following form:

21 NOTICE OF DISHONOR OF CHECK

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

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

- 30 (a) Costs of collecting the amount of the check in the lesser of  
31 the check amount or forty dollars, plus, in the event of legal action,  
32 court costs and attorneys' fees, which will be set by the court;
- 33 (b) Interest on the amount of the check which shall accrue at the  
34 rate of twelve percent per annum from the date of dishonor; and
- 35 (c) Three hundred dollars or three times the face amount of the  
36 check, whichever is less, by award of the court.

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

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

8 (2) The cautionary statement regarding law enforcement in  
9 subsection (1) of this section need not be included in a notice of  
10 dishonor sent by a collection agency. However, if included and whether  
11 or not the collection agency regularly refers dishonored checks to law  
12 enforcement, the cautionary statement in subsection (1) of this section  
13 shall not be construed as a threat to take any action not intended to  
14 be taken or that cannot legally be taken; nor shall it be construed to  
15 be harassing, oppressive, or abusive conduct; nor shall it be construed  
16 to be a false, deceptive, or misleading representation; nor shall it be  
17 construed to be unfair or unconscionable; nor shall it otherwise be  
18 construed to violate any law.

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

23 AFFIDAVIT OF SERVICE BY MAIL

24 I, . . . . ., hereby certify that on the . . . . . day of  
25 . . . . ., 20. . . ., a copy of the foregoing Notice was served on  
26 . . . . . by mailing via the United States Postal Service, postage  
27 prepaid, at . . . . ., Washington.

28 Dated: . . . . .  
29 (Signature)

30 (4) The person enforcing a check under this section may retain the  
31 affidavit or may file the affidavit and check, or a true copy thereof,  
32 with the clerk of the court in which an action on the check is  
33 commenced as permitted by court rule or practice.

34 NEW SECTION. **Sec. 3.** No interest, collection costs, and  
35 attorneys' fees, except handling fees, are recoverable on any

1 dishonored check under the provisions of section 1 of this act where a  
2 collection agency or its agent, employee, or assign has demanded:

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

5 (2) Interest or collection costs prior to the expiration of thirty-  
6 three days after the serving or mailing of the notice of dishonor, as  
7 provided by section 1 or 2 of this act; or

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

12 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act are each  
13 added to chapter 62A.3 RCW under the subchapter heading "DISHONOR."

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