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STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: February 6, 1984

REQUEST

Bill/Resolution No.: SB 360  
Title: An act relating to Checking  
Accounts  
Sponsor: Rav and Kertula  
Requestor: \_\_\_\_\_  
Date of Request: 1/19/84

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.  
Program Category Affected: Consumer  
Protection  
BRU, Program or Subprogram(s) Affected:  
Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521

Date: 2/6/84

Approved by Commissioner: Richard A. Lyon  
Agency: Commerce and Economic Development

Date: 2/7/84

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

Fiscal Note

- PAULA -

PROPOSED BAD CHECK CIVIL PENALTIES

PREPARED BY GARY L. JENKINS

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

\*Section \_\_. AS 11.46. is amended by adding a new section to read:

Sec. 11.46.290. BAD CHECK CIVIL PENALTIES. (a) In any action against a person who makes any check for the payment of money which has been dishonored, the plaintiff may recover from the defendant damages in an amount equal to \$100.00 or triple the amount for which the check is drawn, whichever is greater. However, damages recovered under this section shall not exceed by more than \$1,000.00 the amount of the check and may be awarded only if the plaintiff made written demand of the defendant for payment of the amount of the check not less than 15 days before commencing the action and if the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the original amount of the check plus costs incurred by the plaintiff not to exceed \$25.00.

(b) A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

(c) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check plus the plaintiff's incurred court, legal and service costs, not to exceed \$150.00.

(d) In this section

(1) "check" means the same as defined in AS 11.46.280(c)(2);

(2) "dishonored", in addition to meaning the same as defined in AS 11.46.280(b), means a check which is not paid due to a stop payment being issued without cause;

(3) "written demand" means providing a notice in writing to the maker at the address shown on the dishonored check by first class mail or hand delivery advising the drawer that the check has been dishonored and explaining the civil penalties stipulated by this section.

CSSB 360 (L&C)

SECTIONAL ANALYSIS

Section 1

- a) Before opening a checking account, the applicant must provide identifiable information, including a driver's license or another identifying document which includes the applicant's photograph.
- b) The applicant who falsifies the information is guilty of a class B misdemeanor.
- c) A bank may not authorize the checking account if the applicant cannot provide "photo ID". If the applicant is a minor, the parent/ guardian can provide identification.

The bank can waive this requirement if the applicant has had another type of account with the bank for at least a year.

- d) The bank shall print checks indicating the month and year the account was opened. If the applicant had a checking account for 2 years or more within 5 years of the date of the new request, the bank can print the month and year of the earlier account.
- e) These requirements, except as provided in (c) of this section, do not limit the bank's discretion whether to grant or deny the application.

Section 06.55.020

- a) A person who issues a bad check and who fails to pay the amount of the check within 30 days after receiving a written demand for payment is liable for the amount of the check plus 3 times the check value. The damages, exclusive of the amount of the check, may not be less than \$100 or more than \$500.
- b) The check is prima facie evidence if the payee records identifying information on the check and verifies the information against a photo ID.

Section 06.55.500

This section lists a variety of definitions. "Financial institution" is defined as a "bank, savings and loan association, credit union, or other business association authorized to offer transaction accounts in the state.



ALASKA STATE LEGISLATURE - SENATE  
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

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OFFICIAL BUSINESS

MEMORANDUM

TO: Senator Bill Ray, Chair  
Senate Judiciary Committee

FROM: Senator Dick Eliason *Dick*

RE: SB 360 - "An Act relating to checking accounts"

DATE: April 18, 1984

The Senate Labor and Commerce Committee recently held two hearings on SB 360 - "An Act relating to checking accounts". Two distinct versions of this legislation were considered by the Committee. In both instances the banking community opposed sections of SB 360. However, this does not mean the bankers are against legislation which addresses the problem of "bad check" writers. On the contrary, the Alaska Bankers Association supports the intent and objectives of this legislation.

The original version of SB 360 was based on legislation enacted by the State of Minnesota. This version required the banks to verify an applicant's financial stability before a checking account could be opened. As there is no central data base where an applicant's financial history is recorded, representatives from the banks testified that it would be virtually impossible to accurately and efficiently verify the applicant's information before opening a checking account.

The main objections to a committee substitute drafted by the Senate Labor and Commerce Committee centered on the requirement that a photo ID be a requirement for opening a checking account and the stipulation that each check indicate when the account was opened. Testimony indicated that the absolute requirement for a photo ID may be a potential hardship for bush area customers where some people do not have drivers' licenses.

The stipulation that banks print checks indicating the date in which the account was established would prove unenforceable according to a bank representative. If a customer objects strongly to this requirement, the checks could be printed by any publishing house.

In summary, in recognition of the problem stemming from "bad check" writers, I offer a committee substitute based on legislation recently enacted by California. The major thrust of this version is to increase the civil penalties for writing a NSF check.

The various versions of SB 360 are attached for your consideration.

# Proposed bill might put a stop to bad check writing

By DEBBIE REINWAND ROSE

The Juneau Empire

A bill which would require banks to compile information on a potential customer's financial history before issuing that customer a checking account faces re-working by the Senate Labor and Commerce Committee.

Empire 2/9/89

The measure, which was heard by the committee Tuesday, is targeted at decreasing the number of bad checks written in Alaska, said sponsor Sen. Bill Ray, D-Juneau.

"We've been trying for the last five or six years to find a way to combat the NSF (non-sufficient funds) check problem so we can get a handle

on it," said Ray. "Minnesota passed a similar law last year and it has cut down their bad check rate by 25 percent."

Under the bill's provisions, in addition to asking for basic vital statistics, banks would have to ask customers for information about their past checking accounts, whether any accounts were closed due to ap-

plicants' writing bad checks, and whether applicants had been convicted of writing bad checks in the past two years.

Banks would also be required to issue picture identification cards.

Testimony from local bank officials was primarily against the legislation, although suggestions for changes to the

bill were offered.

"We are neither in favor or against the bill, but want to point out the problems with it as written," said B.M. Behrends Bank Executive Vice President Craig Dahl.

"There's nothing wrong with the bill, but the mechanisms don't exist at this time to make this come about. In Minnesota they have check systems set up which means everytime they close a customer's account for an overdraw situation, it is reported," said Dahl. "We have no central system to turn to get this kind of information. Someone could tell us they had never had bad check problems, but we still have to try to confirm their history."

In addition, the delay to "99 percent of the customers who

are honest" would be unnecessary, said Dahl.

However, Labor and Commerce Chairman Sen. Dick Eliason, R-Sitka, said banks "are very careful about a person's financial history when it comes to loaning money because they then have something at risk."

During committee work on the measure, which is co-sponsored by Senate President Jay Kerttula, D-Palmer, Eliason hopes to "find some kind of balance we can agree on."

NewsPaper

CALIFORNIA CREDIT UNION LEAGUE

**TOPS MANDATORY**  
TECHNICAL OPERATION PROCEDURES  
- A D V A N C E -

T.B. 83-66

AUGUST 30, 1983

TO: ALL CREDIT UNIONS

SUBJECT: BAD CHECKS OR DRAFTS (A.B. 1226)

Effective January 1, 1984, if a member writes a bad check or draft made payable to the credit union, you may make a claim for the face amount, plus triple the amount owing. Checks or drafts written prior to January, that are dishonored after the effective date, are subject to the new law.

Regardless of the check or draft amount, you may make a claim for at least \$100. You may not, however, make a claim exceeding \$500.

Example 1: A member writes a \$15 bad check. You may make a claim for \$100.

Example 2: A member writes a \$100 bad check. You may make a claim for \$400 - [ $\$100 + (3 \times \$100)$ ].

Example 3: A member writes a \$300 bad check. You may make a claim for \$500.

Claims may be filed in small claims court, or any other appropriate court. Before filing a claim, your credit union must deliver, by certified mail, a written demand for payment in cash. After the demand is delivered, the member has 30 days to pay. If the member doesn't pay, you may then make your claim.

This new law applies not only to members that write bad checks or drafts; it also applies to all other persons or organizations. This law does not allow the credit union to file a claim when a share draft, made payable to a third party and drawn on the credit union, is dishonored.

Assembly Bill No. 1226

CHAPTER 522

An act to add Section 1719 to the Civil Code, relating to commercial paper.

[Approved by Governor July 28, 1933. Filed with Secretary of State July 28, 1933.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1226, Katz. Bad checks: punitive damages.

Existing law makes it a crime to fraudulently write a bad check, knowing that it is made upon insufficient funds.

This bill would create a cause of action for treble the amount owing but in no case less than \$100 or more than \$500 for failure to pay upon a dishonored check, in cash, within 30 days of demand for payment, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1719 is added to the Civil Code, to read:

1719. Notwithstanding any penal sanctions which may apply, any person who makes, utters, draws, or delivers any check, or draft, or order upon any bank or depository, or person, or firm, or corporation, for the payment of money, which refuses to honor the same for lack of funds or credit to pay, or because the maker has no account with the drawee, and who fails to pay the same amount in cash to the payee within 30 days following a written demand therefor delivered to the maker by certified mail, shall be liable to the payee, in addition to the amount owing upon such check or draft or order damages of treble the amount so owing, but in no case less than one hundred dollars (\$100), and in no case more than five hundred dollars (\$500).

A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

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Opponents argue that the federal discount rate does not necessarily indicate the cost of funds to financial institutions or businesses. A variety of other factors affect the cost of funds to a particular entity. They argue, therefore, that it is more appropriate to remove all limitations and let market conditions establish the rates.

#### Bad Check Penalties

3. Do you favor or oppose increased civil and/or criminal penalties as an effective deterrent to the writing of bad checks?

$\frac{95\%}{1}$  Favor  $\frac{4\%}{1}$  Oppose  $\frac{1\%}{3}$  Undecided

**BACKGROUND:** It is well established that bad checks are a problem that every business must deal with to some degree. However, the question has been raised whether the laws of Alaska are presently adequate to deal with the problem. It has been suggested that either or both the civil or criminal penalties should be made stronger to attempt to reduce the impact of this problem.

#### Bad Check Civil Penalties

4. Should legislation be adopted to require that bad-check writers repay not only the face value of the check and any court costs incurred by the receiver but also civil damages of \$100 (minimum) or triple the amount of the check?

$\frac{86\%}{1}$  Favor  $\frac{10\%}{1}$  Oppose  $\frac{4\%}{3}$  Undecided

**BACKGROUND:** Law enforcement officials frequently do not pursue those who write bad checks for small amounts. Thus, the only deterrent to writing a bad check is the receiver's (merchant) collection efforts. Checks written for small amounts, which together may represent a deep cut in a business's profit, frequently cost more to collect than they are worth.

If the merchant was allowed to collect from the bad-check writer a minimum of \$100 or triple the amount of the check as damages, in addition to the base value of the check and any court costs incurred, there would be a real incentive for the merchant to collect and a deterrent to bad-check writing.

#### Check Information

5. Should financial institutions be required to number checks on new accounts beginning at #101 and display on the face of the check the month and year the account was opened?

$\frac{41\%}{1}$  Favor  $\frac{49\%}{2}$  Oppose  $\frac{10\%}{3}$  Undecided

- 5A. Should banks be allowed to disclose to merchants the bank account information of those who issue checks which are returned because of insufficient funds? Such information might include account status, current address, phone number, and history of returned checks.

$\frac{66\%}{1}$  Favor  $\frac{33\%}{2}$  Oppose  $\frac{1\%}{3}$  Undecided

**BACKGROUND:** In the United States, approximately 400,000 worthless checks are written every day. Eighty percent of those checking accounts are six months old or less. Numerical listing and date of account opening would alert merchants to new accounts and to take care in deciding whether to accept those checks. Additionally, several states have given financial institutions permission to disclose account information to either law enforcement officials or merchants who receive a worthless check.

Opponents of the numbering system believe it would create problems for individuals and businesses who for continuity purposes want to continue to number checks from where the old account left off.

#### LABOR

##### Mandatory Overtime Wages

6. Should existing law be repealed which requires a business with four or more employees to pay overtime to an employee who works more than 8 hours in one day, but does not work over 40 hours per week?

$\frac{73\%}{1}$  Favor  $\frac{24\%}{1}$  Oppose  $\frac{3\%}{3}$  Undecided

**BACKGROUND:** Most small businesses require that a particular job be accomplished within a certain period. This may require an employee to work more than 8 hours on a particular day. However, the employee is given time off on other days of the week so as not to work more than 40 hours that particular week. Proponents of a change

say that law is particularly unfair smaller businesses whose workload heavy at certain times and slack other days of the week. This flexibility of worker time should not impose additional financial burden on small businesses.

Opponents to changing the law argue that employees working more than hours in any one day should be given extra compensation in the form of overtime pay, whether they work voluntarily or were required to do by their employer. They feel daily overtime pay should be independent of the requirement to pay overtime to an employee who works more than 40 hours a week.

#### GOVERNMENT

##### Permanent Fund Income

7. Should the unused portion of the income from the Permanent Fund not allocated to the Dividend Program be authorized for the following?

- a. The Longevity Bonus Program for the elderly

$\frac{41\%}{1}$  Favor  $\frac{51\%}{1}$  Oppose  $\frac{8\%}{3}$  Undecided

##### Municipal Assistance Program

$\frac{24\%}{1}$  Favor  $\frac{66\%}{2}$  Oppose  $\frac{10\%}{3}$  Undecided

**BACKGROUND:** During the 1982 Legislative Session bills were introduced which would require that part of the income of the Permanent Fund be held to finance the Longevity Bonus program and/or finance the municipal revenue sharing program. In the past, funding for such programs has been from the state's General Fund.

Proponents of using the income from the Permanent Fund to provide funds for these programs contend that this would not violate the intent of the Permanent Fund financing activities to benefit the maximum number of residents of the state. They argue that programs like the municipal assistance program are helping all communities of the state directly and thus benefit the residents of the various communities indirectly by reducing local taxation and providing needed services.

Opponents argue that the Legislature is merely looking for new sources to fund the expensive programs they have created the past few years which they do