

SB

1988

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Title: An Act relating to dishonored checks  
amending Alaska Rules of Civil Procedure 79 & 82

Sponsor: \_\_\_\_\_

Requestor: \_\_\_\_\_

Bill Version: SB 198  
Publish Date: \_\_\_\_\_

Agency Affected: Comm. & Econ. Dev.

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :**

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Division of Banking, Securities & Corporations Date: March 25, 1987

Approved by Commissioner: Anthony Smith, Commissioner Date: March 25, 1987

Agency: Department of Commerce and Economic Development

**Distribution (by preparer):**

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STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 23, 1987

SUBJECT: Sectional analysis of SB 198  
TO: Senator Jim Duncan  
FROM: Theresa L. Bannister *TB*  
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections 1 - 3 indicate the changes made by the bill to AS 09.65.115(a).

Section 1 allows a plaintiff to recover a returned check charge and, up to a maximum of \$150, attorney's fees, process service costs, and court costs, in addition to damages. Limits a returned check charge to \$25.00 and eliminates the need to justify the charge. Allows a defendant to avoid paying damages to the plaintiff if the defendant offers the amount of the check and the returned check charge before the action is filed, or if after the case is filed but not tried, the defendant offers the amount of the check, a returned check charge, and, up to a maximum of \$150 for each check, payment of plaintiff's attorney's fees, process service expense, and court costs accrued before the offer. Substitutes "filing" of the action for "beginning" of the action.

Section 2 requires, if a defendant wishes to settle a dishonored check court action that has been filed but not tried, that the defendant pay a returned check charge in addition to payment of the amount of the check and attorney, process and court costs.

Senator Duncan  
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Section 3 alters the definition of "written demand" to require the person making the demand to send it to a better address, if known, than the one on the check.

Sections 4 and 5 explain how sec. 1 of the bill changes certain court rules.

Section 6 gives the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:mkr  
m11/055

TO: Senator Jim Duncan

FROM: Gary L. Jenkins, Director,  
Governmental Relations, NFIB/Alaska

SUBJECT: Justification-SB 198

DATE: March 20, 1987

The amendments to the current law are intended to clarify the specific intent of the original act to insure that it is properly interpreted by the courts. In applying the provisions of the current law the courts have been applying the law as follows:

A. If a business takes a bad check writer to court and obtains a judgement, several judges have taken the position that the triple damage provision supplants the returned check charge and the reimbursement of costs provision resulting in it costing more to obtain the judgement than it is possible to recover.

This legislation will modify existing law to clarify the provisions dealing with the payment of the fees and penalty by the writer of a bad check so that the severity of the fees and penalties will increase as the costs incurred and time involved in attempting to collect the funds due increase. The fees and penalties are to accumulate as collection efforts progress. The provisions are designed to function as follows:

(1). Level 1 - The receiver of a check is notified by his/her bank that a check has been returned unpaid. The receiver then must contact the maker of the check and request payment. If the check is made good at that time, the receiver of the check may collect a fee of up to \$25.00. At this level, there is minimal effort required so the fee is accordingly limited. This charge is to compensate the receiver of the check for the aggravation caused by the check being returned, i.e. his/her bank account being reduced without notice by the returned check, having to contact the maker of the check and attempting to collect or collecting the amount due. Normally, there are no significant costs incurred to collect the amount due.

(2). Level 2 - After the receiver of the check has made the initial contact with the maker and received no response, the next step would be to proceed with the required formal notifications and filing in court. If the maker then makes the check good prior to formal court action being taken, the receiver may collect costs, up to the maximum of \$150.00. The costs paid at this level are to be paid in addition to the returned check charge of \$25.00, thus allowing the receiver of the check to be reimbursed for the additional costs over and above the initial notification which are incurred in pursuing collection of the amount due.

(3). Level 3 - If the receiver of the check has not received payment of the amount due plus the returned check charge and costs, and subsequently obtains a judgement in court, the penalty for this level would be an amount equal to three times the amount of the check, but not more than \$1,000.00 or less than \$100.00. It is intended that this penalty is in addition to the amounts due under levels 1 and 2.

B. If an individual has written several bad checks to one or more businesses and they are subsequently turned over to a collection agency to obtain a judgement, a few judges have ruled that the maximum cost that could be reimbursed is \$150.00 even though the actual costs exceed that amount. This legislation will resolve this problem by allowing actual costs incurred up to a total of \$150.00 for each bad check.

C. In at least one case, a judge has ruled that process service expenses were not allowable. This legislation would remedy that problem.

D. At least one judge has ruled that if the writer of a bad check has moved and left no forwarding address, the person seeking the judgement must first obtain a correct address before a judgement will be rendered. This legislation will require that notification shall be sent to the address on the check unless the holder has been made aware of a better address.