

SB

1988

1 IN THE SENATE

BY DUNCAN

2

SENATE BILL NO. 198

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to dishonored checks; amending
7 Alaska Rules of Civil Procedure 79 and 82; and pro-
8 viding for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 09.65.115(a) is repealed and reenacted to read:

11 (a) In an action against a person who issues a check that is
12 dishonored, the plaintiff may recover the amount of the check, a
13 returned check charge, expenses, up to a maximum of \$150 for each
14 dishonored check, for attorney's fees, process service, and court
15 costs, and damages in an amount equal to the greater of \$100 or three
16 times the amount of the check. For the purposes of this section, a
17 returned check charge may not be more than \$25 and does not require a
18 specific cost justification. The damages recovered under this sub-
19 section for each dishonored check may not exceed the amount of the
20 check by more than \$1,000 and may not be awarded unless

21 (1) the plaintiff makes a written demand for payment of the
22 check at least 15 days before filing the action; and

23 (2) the defendant fails to tender,

24 (A) before the action is filed, an amount equal to at
25 least the amount of the check, plus a returned check charge; or

26 (B) after the filing of the action but before the case
27 is tried, an amount equal to the amount computed under (c) of
28 this section.

29 * Sec. 2. AS 09.65.115(c) is repealed and reenacted to read:

1 (c) After the filing of an action under this section but before
2 the case is tried, the defendant may satisfy the claim by tendering

3 (1) the amount of the check;

4 (2) a returned check charge; and

5 (3) payment of plaintiff's attorney's fees, process service
6 expense, and court costs accrued before the tender; the maximum pay-
7 ment required by this paragraph is \$150 for each dishonored check.

8 * Sec. 3. AS 09.65.115(d) is amended to read:

9 (d) In this section

10 (1) "check" has the meaning given in AS 11.46.280;

11 (2) "dishonored" means the nonpayment of a check because of

12 (A) lack of funds;

13 (B) closure or nonexistence of an account; or

14 (C) a stop payment order issued without cause;

15 (3) "written demand" means a written notice to the issuer
16 of a dishonored check personally delivered or sent by first class mail
17 to the address shown on the dishonored check, or to a better address
18 that is known by the person giving notice, advising the issuer that
19 the check has been dishonored, and explaining the civil penalties set
20 out in this section.

21 * Sec. 4. AS 09.65.115(a), as amended by sec. 1 of this Act, and
22 AS 09.65.115(c), as amended by sec. 2 of this Act, amend Alaska Rule of
23 Civil Procedure 79 by setting a limit on the costs that may be recovered in
24 an action under AS 09.65.115.

25 * Sec. 5. AS 09.65.115(a), as amended by sec. 1 of this Act, and
26 AS 09.65.115(c), as amended by sec. 2 of this Act, amend Alaska Rule of
27 Civil Procedure 82 by setting different criteria for establishing the
28 amount of attorney fees to be awarded in an action under AS 09.65.115.

29 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

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

Bill Version : SB 198
 Publish Date : _____
 REQUEST: _____
 Revision Date: _____ Agency Affected: Comm. & Econ. Dev.
 Title: An Act relating to dishonored checks
amending Alaska Rules of Civil Procedure 79 & 82
 Sponsor : _____ Components : _____
 Requestor : _____

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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

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):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary
 5683W32587a

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.