

SB

299

**BANKSTON, GRONNING, O'HARA,
SEDOR, MILLS, GIVENS & HEAPHEY**

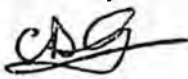
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 W. 6TH AVENUE, SUITE 900
ANCHORAGE, ALASKA 99501
(907) 276-1711
FACSIMILE (907) 279-5358
WWW.BANKSTON.TO

WILLIAM M. BANKSTON
LEA E. FILIPPI
JON T. GIVENS
CHRIS D. GRONNING
CHRISTOPHER J. HEAPHEY
MICHAEL R. MILLS

BARBRA Z. NAULT
STEVEN T. O'HARA
JOHN M. SEDOR
BRIAN J. STIBITZ
THOMAS V. WANG, JR.

MEMORANDUM

TO: Will Fancher, Manager
Cornerstone Credit Services, LLC

FROM: Chris D. Gronning 

DATE: March 22, 2004

FILE NO: C-3570-9999

RE: Amendments to AS 09.68.115

In my March 9, 2004 memorandum, I made reference to a legal maxim: The greater encompasses the lesser. This is a longstanding common law principle that has been used by state and federal courts in a variety of settings. I used this general principle to illustrate that one who is empowered to impose a fee also has the power to impose a lesser fee, or to waive the fee entirely. In the context of AS 09.68.115(a)(2), this principle recognizes that one who has the legal authority to collect a fee or charge for a bad check, necessarily has the power to waive that fee or charge. No express language need be added to the statute to confirm this right.¹

The 'greater includes the lesser' maxim has found historical expression in Latin (*In eo quod plus sit, semper inest et minus*: in the greater is always included the lesser

¹ Indeed, the power to waive a right is itself expressly stated in another maxim: *Quilibet potest renunciare juri pro se introducto*: everyone may renounce or relinquish a right introduced for his own benefit. Black's Law Dictionary. I do not know whether the Alaska Supreme Court has ever quoted this principle, but it certainly recognizes it in the general common law concept of waiver, which the Alaska Supreme Court defines as the "voluntary relinquishment of a known right." *Miscovich v. Tryck*, 875 P.2d 1293, 1301 (Alaska 1994); *Milne v. Anderson*, 576 P.2d 109, 112 (Alaska 1978).

also; Black's Law Dictionary) and French (*Qui peut le plus peut le moins*: he who can do more can do less).

This principle has been recognized and applied by the United States Supreme Court. In 1897, the Court ruled that the legislative authority to ban public use of certain common land contained within itself the power to impose lesser limits on public use of the land: "The right to absolutely exclude all right to use necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser."² This general principle has been applied by the United States Supreme Court at least as recently as 1986, when the Court recognized that: "The greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling...."³ However, the Supreme Court has also recognized that the exercise of certain powers may be constrained by Constitutional provisions. For example, the principle may not be used by the government to withhold services based on constitutionally impermissible factors such as race and religion.⁴

State courts have also recognized the 'greater includes the lesser' principle. What follows is a short sample of case quotes and citations.

"A greater power may include a lesser power when the lesser power is one of the same character with the greater and is essential to its execution.... The principle that "the lesser is included in the greater," followed in civil proceedings involving the interpretation of contractual instruments, may, nonetheless, be invoked in the construction of a constitutional provision if it be necessary to give effectiveness to such a provision."⁵

"The sovereign power in a state to create, organize and classify cities includes the power to enlarge their limits by annexation. And, because the greater includes the lesser, the state may delegate the power of annexation to the cities and prescribe the mode, method and conditions by and under which the delegated authority may be exercised by

² *Davis v. Massachusetts*, 167 US 43, 48 (1897).

³ *Posada D. Puerto Rico Assoc. v. Tourism Co.*, 478 US 328, 345-346 (1986). Although the maxim itself is not disputed, its above quoted application in *Posada* is not unchallenged: "...Although we do not dispute the proposition that greater powers include lesser ones, we fail to see how that syllogism requires the conclusion that the state's power to regulate commercial activity is 'greater' than its power to ban truthful, nonmisleading commercial speech. Contrary to the assumption in *Posada*, we think it quite clear that banning speech may sometimes prove far more intrusive than banning conduct." *44 Liquor Mart, Inc. v. Rhode Island*, 517 US 484, 511 (1996). In effect, the Supreme Court recognizes that in our constitutional scheme, regulating speech is at times a greater power than regulating conduct, and the power to regulate the latter does not therefore always include the power to regulate the former.

⁴ *Yick Wo v. Hopkins*, 118 US 356 (1886); *Sherbert v. Verner*, 374 US 398 (1963).

⁵ *Application of Lamb*, 169 A.2d 822 (Sup. Ct. App. Div., N.J. 1961), internal citations omitted.

the cities. But the ultimate power of annexation, like the power to grant franchises, rests exclusively in the state.”⁶

“[T]he First Amendment is a complete and absolute defense to any prosecution under [Kentucky statute] §KRS 121.310(1). That is, the greater includes the lesser... Since the First Amendment extends so far as to protect hate speech, it likewise protects an employer’s communications which are subject to the inference of coercion or direction.”⁷

“Because it has discretion to decline jurisdiction over a declaratory judgment action in its entirety, it follows that a court may decide some of the issues raised and refused to rule on others. The maxim that the greater includes the lesser applies; if the court may choose to rule on all or none of the issues presented, it may decide only those it finds appropriate for a declaration.”⁸

Alaska courts also recognize the ‘greater includes the lesser’ principle in the context of certain criminal law settings: “A lesser included offense is ‘necessarily included’ in the offense charged when it would be impossible, in the context of the case, to convict of the charged offense without also convicting of the lesser.”⁹

⁶ *Washington v. State ex rel Bowen v. Kruegel*, 409 P.2d 458 (Wash. 1965).

⁷ *Kentucky Registry of Election Finance v. Bevins*, 57 SW3d 289, 292 (Ky. 2001)

⁸ *Henglein v. Colt Industries*, 260 F.3d 201 (2001).

⁹ *Willet v. State*, 836 P.2d 955, 958 (Alaska App. 1992), internal citations omitted.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 26, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1603\A, SB 299, incorporating the attached two amendments. The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

#1 - PASSED
Amendment to SB 299 ("17th version")
by Brunberg

page 1 line 9 delete "beginning" and insert "commencing"

page 1 line 10 delete "begins" and insert "commences"

SB 299

conceptual A # 2 - PASSED

by Rep. Gruenberg

P.1, L.11

After "plus" Insert "a"

After "\$30" Insert "fee"

Conceptual SB 299
Amendment #3*
by Rep. ~~Anthony~~ Gara - FAILED

P.I. L. ~~Quinn~~

~~After "plus", Insert "a"~~

After "\$30", Insert "~~fee~~, but the plaintiff
may waive collection of ^{the \$30} ~~any~~ fee"

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

MEMO

March 25, 2004

To: Representative Lesil McGuire

Subject: HB 516

The House State Affairs Committee amended HB 516 in one important respect. The Committee added language allowing a party that received an insufficient fund check to waive the \$30 fee imposed by HB 516. The committee was concerned that a small business not believe that it was legally "required" to assess a fee or else be in violation of law. The Committee believed that if a plaintiff wanted to, they could waive the fee. The way the bill reads as it was introduced did not allow that waiver. I have seen letters that discuss intent of the bill without the amendment but clear language in a bill is always preferable.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Weyhrauch".

Bruce Weyhrauch

Cc: Rep. Holm
Rep. Samuels
Rep. Gara
Rep. Anderson
Rep. Ogg
Rep. Gruenberg

Alaska State Legislature

Senator Con Bunde
District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee
Member: Legislative Budget & Audit Committee

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-4843

During Interim:
716 W. Fourth Avenue
Anchorage, AK 99501-2133
(907) 269-0181

MEMORANDUM

DATE: Tuesday, March 16, 2004
TO: Rep. Lesil McGuire, Chair, House Judiciary Committee
FROM: Senator Con Bunde *CBunde*
RE: Hearing Request for SB 299 Bad Check Penalty

I respectfully request a hearing of SB 299 before the House Judiciary Committee.

SB 299 seeks to clarify AS 09.68.115, the statute that pertains to "bounced checks" and to clarify current law that leaves businesses vulnerable to litigation that questions their costs for collecting on insufficient-funds checks.

This bill proposes to impose a flat fee of \$30 for a bounced check, which more accurately reflects the cost of collecting on these bad checks and frees the creditor from the burden of having to document "costs incurred" on each bounced check. Currently this fee can be up to, but no greater than \$25.

Passage of SB 299 will make it less likely for the statute to be challenged and will put Alaska on par with other states that specify a statutory penalty fee for bad checks and lessens the burden currently placed on businesses as they attempt to collect payment for goods they have already provided to their customers.

It is my understanding that you have been provided copies of SB 299, the sponsor statement, fiscal note and letters of support in advance of this request. If you need any additional documents, please don't hesitate to call my staff, Jane Alberts, at 465-3844 and she can assist you.

Senate Bill 299

The purpose of Senate Bill 299 is to clarify AS 09.68.115, Alaska's "bounced check" statute, in response to recent litigation which seeks to have creditors maintain an account and defend their costs of collecting for bad checks.

The potential problem with AS 09.68.115 is that it does not allow aggrieved creditors, or their agents, to assess a fixed surcharge on bounced checks. Rather, the statute provides, as a prerequisite to suing for statutory penalties, a plaintiff must first give the maker of a bounced check the opportunity to satisfy the obligation by paying the face amount of the check plus "costs incurred by the plaintiff up to a maximum of \$25.00." This is problematic, as the creditor must, in addition to bearing the burden of recovering the bounced check, now maintain an accounting ledger to defend their "costs" in collecting the check.

Many states have enacted bounced check statutes, which explicitly allow creditors to assess a statutory penalty for each bounced check. For example, in California, the payee of a bounced check may add a "service charge" of up to \$25.00; in Oregon, a "reasonable fee representing the cost of handling and collection" up to \$25.00 may be collected; in Washington, a "reasonable handling fee," which is not capped by statute may be collected; and in Wyoming, the "collection fee" can be up to \$30.00.

The Alaska Statute should not be tied to expenses incurred and should be raised to \$30.00 to accurately reflect the cost of collecting bounced checks. Banks are charging creditors up to \$25.00 just to process the bad check on their account. These are direct, out of pocket expenses, and do not include the time required to draft and mail a letter, make phone calls, etc. The creditor should not have an additional burden placed upon it by having to document "costs incurred" on each bounced check.

This change will make it less likely for the statute to be challenged and will put Alaska's statute in the mainstream of other state statutes specifying penalty fees for bad checks. It will also lessen a potential new burden on businesses as they attempt to collect money due for goods and services they have provided to customers.

**BANKSTON, GRONNING, O'HARA,
SEDROR, MILLS, GIVENS & HEAPHEY**


A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 W. 5TH AVENUE, SUITE 900
ANCHORAGE, ALASKA 99501
(907) 276-1711
FACSIMILE (907) 279-5358
WWW.BANKSTON.TO

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MEMORANDUM

TO: Will Fancher, Manager
Cornerstone Credit Services, LLC

FROM: Chris D. Gronning 

DATE: March 9, 2004

FILE NO: C-3570-9999

RE: Amendments to AS 09.68.115

I have reviewed Alaska's "bad check" statute, AS 09.68.115, as well as the proposed amendments to it contained in SB 299 and HB 516. Generally, AS 09.68.115 is intended to provide an efficient collection procedure for creditors holding dishonored checks, while also allowing check writers an opportunity to avoid the statutory penalties if they act promptly to make good the checks upon receiving notice from the check holder or the check holder's designee.

In most circumstances the statute works as intended. The defendant is given notice of the dishonored check and of the statutory penalties if the deficiency is not cured, and is given the opportunity to cure by paying the check and the costs, which are capped at \$25. The \$25 cap understates the costs usually incurred in handling and processing dishonored checks, and in sending out the statutorily required notice and demand for payment. However, problems arise when a defendant, after notice, fails to cure, and the plaintiff must file an action to collect the debt. Because a plaintiff is allowed to recover costs up to \$25, courts recognize that if costs are less than \$25, only the lesser amount may be recovered. Defendants may use the Alaska Civil Rules' discovery process to demand that plaintiffs show the exact costs incurred in handling their specific check. Although the

costs, without exception, exceed \$25, much of the additional litigation costs incurred in this process is unrecoverable, which defeats the efficient collection purpose of the statute. Replacing the cost language with a flat \$30 amount will eliminate these problems, and restore the efficient collection of these checks.

SB 299, which passed the Senate on a 17-0 vote on March 4, 2004, amends AS 09.68.115(a)(2) by deleting the phrase, "at least," and the phrase, "costs incurred by the plaintiff up to a maximum of \$25." It replaces the latter phrase with, "\$30." These amendments solve the problem discussed above. HB 516 as originally presented to the House State Affairs Committee, was identical to SB 299. However, the House State Affairs Committee, although accepting the changes described above, added the phrase, "but the plaintiff may waive collection of any fee" at the end of the sentence. I understand Committee members wanted to clarify that the plaintiff had the power to waive the \$30. For the reasons explained below, I believe the additional language will be problematic.

As an initial matter, the plaintiff already has, and always will have, the power to waive any cost or charge. There is a legal maxim stating: "The greater encompasses the lesser." This principle simply means that one who has the power to impose a particular penalty, fee, or charge, always has the power to impose a lesser penalty, fee, or charge, or to impose none at all, *i.e.*, to completely forego or waive any charge. This principle applies to the "bad check" statute. The current language allows a plaintiff to recover certain costs, and does not expressly state the plaintiff may waive those costs. But the plaintiff still has the power to collect less than the costs incurred, or nothing at all. I understand in your own business, you have often waived costs under the current statute. You would have this same ability under the language of SB 299. The plaintiff would always be able to ask for less than \$30, or for nothing, in the demand for payment. Inserting the phrase, "but the plaintiff may waive collection of any fee" adds no rights or powers which the plaintiff does not already have.

However, this language does raise the prospect of new problems that could undermine the efficiency goal of the statute in the same way that the current language does. A defendant or attorney will look for a way to turn the statutory language to their advantage. They may argue to the court that a plaintiff is not "being fair" in refusing to waive the fee. The defendant may invoke the litigation discovery process to inquire about a plaintiff's prior waivers; the circumstances in which waivers are made or are not made; whether plaintiff has given "appropriate" or "reasonable" consideration to making a waiver; whether plaintiff has considered any "evidence" a defendant has proffered as justifying a waiver (and will this mean a plaintiff must grant some type of hearing to a defendant to present evidence before the plaintiff can decide not to waive a fee?); whether plaintiff has adopted a written policy or developed an internal "practice" governing when waivers are or are not to be given (and perhaps failed to apply it to the defendant in "this" case); whether a plaintiff is showing inappropriate favoritism in

granting waivers to a particular group, class, or category of defendants; or whether the plaintiff is otherwise "misusing the power to grant a waiver."

None of these factors may actually exist, or even be relevant; the statute's efficiency is undermined or completely defeated where a creditor is forced to spend time and money responding to a discovery request detailing its "history of prior waivers," or its "waiver policy." A defendant may argue endlessly about why the Legislature chose to recognize, in this solitary instance, a plaintiff's power of waiver; whether this implies some Legislative intent or policy that plaintiffs "should", or "must", consider granting waivers; or must expressly state they are not waiving the fee; or must state why they are not waiving the fee.

The point is not that a defendant would ever be able to successfully force a plaintiff to waive the fee; the point is that plaintiffs could face the same, or even greater, litigation burdens under the waiver language than they currently face. This language adds nothing to the rights of a plaintiff or a defendant, but raises the potential for question, argument, and expense that would undercut the purpose of the statute. I believe the efficiency goals of the statute would be better served by omitting the proposed language regarding waiver.

RECEIVED
SEP 9 2003

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

CORNERSTONE CREDIT)
SERVICES, LLC,)
)
Plaintiff(s),)
)
vs.)
)
SHELISSA F. REED d/b/a)
JACK AND JILL CHRISTIAN)
NURSERY SCHOOL d/b/a)
CALEB'S CHRISTIAN SCHOOL,)
)
Defendant(s).)
_____)

Case No. 4FA-03-502 CI

ORDER GRANTING IN PART AND
DENYING IN PART
PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

Cornerstone Credit Services moves for summary judgment on a number of counterclaims asserted by Ms. Reed. Based on the briefing of the parties, the court grants some and denies others.

The court denies the motion as to the \$25 surcharge. The court finds that "costs incurred by the plaintiff up to a maximum of 25" requires actual costs. AS 09.68.115(a)(2).

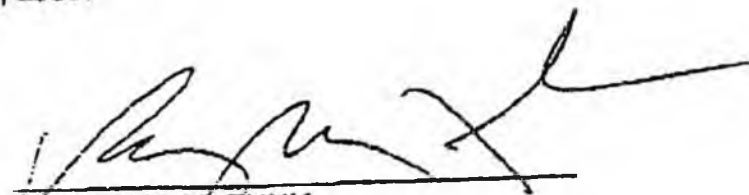
The court grants the motion that claims of FDCPA violations are barred as relating to any communications prior to one year before the filing of the counterclaims filed on March 24, 2003.

The court grants summary judgment as to thirty-day notice requirement in FDCPA.

The court grants summary judgment as to all usury counterclaims except those as to AS 45.45.040.

All other parts of the motion are denied.

Dated this 22nd day of December, 2003.


RAYMOND M. FUNK
District Court Judge

Fetz
 Ballou-SP
mt 12-23-03

Service Fees for Returned Checks

Revised for November 2003

INTERNET & CHECK SERVICES PROGRAM ACA International

Alabama\$30 <i>Ala. Code § 8-8-15 (2002).</i>	Idaho\$20 or the face amount of the check, whichever is the lesser, plus 12% interest per annum from the date of dishonor <i>Idaho Code § 28-22-105 (2002).</i>
Alaska\$25 <i>Alaska Stat. § 09.68.115 (2002).</i>	Illinois\$25 or all costs and expenses including reasonable attorney's fees incurred in collection of check, whichever is greater <i>810 Ill. Comp. Stat. 5/3-806 (2002).</i>
Arizona\$25, plus any actual charges assessed by the financial institution of the holder, payee or assignee of the holder or payee as a result of the dishonored instrument <i>Ariz. Rev. Stat. § 44-6852 (2003).</i>	IndianaAn amount not to exceed \$20, plus an amount equal to the actual charge by the depository institution for each returned or dishonored instrument. <i>Ind. Code § 26-1-3.1-502.5 (2002).</i>
Arkansas\$25, plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check not being honored <i>Ark. Code Ann. § 4-60-103 (2002).</i>	Iowa\$30 <i>Iowa Code § 554.3512 (2003).</i>
California\$25 for the first check and a service fee of up to \$35 for each subsequent check to that same payee <i>Cal. Civ. Code § 1719 (2003).</i>	Kansas Not to exceed \$30 <i>Kan. Civ. Proc. Code Ann. § 60-2610 (2002).</i>
Colorado\$20 posted at point-of-sale and, if the NSF check has been assigned to a licensed collection agency for collection, 20% of the face amount of the check, but not less than \$20 <i>Colo. Rev. Stat. § 13-21-109 (2002).</i>	Kentucky\$25 posted at point-of-sale <i>Ky. Rev. Stat. Ann. § 514.040 (2002).</i>
Connecticut\$20 <i>Conn. Gen. Stat. § 52-565a (2003).</i>	Louisiana\$25 or 5% of face amount, whichever is greater, posted at the point-of-sale <i>La. Rev. Stat. Ann. § 9:2782 (2002).</i>
DelawareUndetermined *	MaineUndetermined *
District of Columbia ...\$15 or fee prescribed by Mayor, but only for dishonored checks in payment of any tax assessment or fees due to the government of the District of Columbia <i>D.C. Code Ann. § 1-333.11 (2002).</i>	Maryland Up to \$35. <i>Md. Code Ann., Com. Law § 15-802 (2002).</i>
Florida\$25, if the face value does not exceed \$50, \$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or 5% of the face amount of the check, whichever is greater <i>Fla. Stat. ch. 68.065 (2002).</i>	MassachusettsUndetermined *
Georgia \$30 or 5 percent of the instrument, plus the amount of any fees charged to the holder of the instrument by a bank or financial institution as a result of the instrument not being honored. <i>Ga. Code Ann. § 13-6-15 (2002).</i>	Michigan\$25 to be paid within 7 days, excluding weekends & holidays, after notice was mailed. If not paid as requested above, but within 30 days after notice was mailed, the service fee is \$35. <i>Mich. Comp. Laws § 600.2952 (2002).</i>
Hawaii\$20. <i>Haw. Rev. Stat. § 490:3-506.5 (2002).</i>	MinnesotaNot to exceed \$30; posted conspicuously at point-of-sale <i>Minn. Stat. § 604.113 (2002). Renumbered from the former 332.50.</i>
	Mississippi\$30 <i>Miss. Code Ann. § 97-19-57 (2002).</i>

THIS INFORMATION IS NOT INTENDED AS LEGAL ADVICE AND MAY NOT BE USED AS LEGAL ADVICE. ANY INFORMATION CONTAINED IN THIS MATERIAL IS SUBJECT TO CHANGE AND INTERPRETATIONS OF THE STATUTES MAY VARY. THIS INFORMATION SHOULD NOT BE USED TO REPLACE THE ADVICE OF YOUR OWN LEGAL COUNSEL. THE ABOVE INFORMATION IS A SUMMARY OF THE APPLICABLE STATUTES. THE STATUTES SHOULD BE REVIEWED IN THEIR ENTIRETY FOR A COMPLETE UNDERSTANDING OF THE LAW REGARDING SERVICE FEES.

- Missouri..... A reasonable service charge, not to exceed \$25, plus an amount equal to the actual charge by the depository institution for the return of each unpaid or dishonored instrument.
Mo. Rev. Stat. § 570.120 (2003).
- Montana.....Up to \$30
Mont. Code Ann. § 27-1-717 (2002).
- Nebraska.....Undetermined *, but for NSF checks written for the purchase of goods, Neb. Rev. Stat. § 2-710 (2002) provides a seller or a person in the position of the seller, one who has become responsible for the price of the goods on behalf of his principal, may assess a buyer for incidental damages incurred as a result of the buyer's breach. Such incidental damages may include any commercially reasonable charges.
See Freyermuth v. Credit Bureau Services, Inc., 248 F.3d 767 (8th Cir. 2001).
- Nevada.....Up to \$25
Nev. Rev. Stat. § 597.960 (2002).
- New Hampshire.....Not more than \$25 unless otherwise expressly authorized by written agreement with the consumer
N.H. Rev. Stat. Ann. § 358-C:5 (2002).
- New Jersey.....Undetermined *
- New Mexico.....Undetermined *
- New York.....The lesser of the amount agreed upon, if contracted for, or \$20
N.Y. Gen. Oblig. Law § 5-328 (2003).
- North Carolina.....\$25
N.C. Gen. Stat. § 25-3-506 (2003).
- North Dakota.....\$25
N.D. Cent. Code § 6-08-16.2 (2001).
- Ohio.....\$30 or 10% of the face amount of the instrument, whichever is greater, plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check not being honored
Ohio Rev. Code Ann. § 1319.16 (2003).
- Oklahoma.....Undetermined *
- Oregon.....\$25
Or. Rev. Stat. § 30.701 (2001).
- Pennsylvania.....Undetermined *
- Rhode Island..... \$25
R.I. Gen. Laws. § 6-42-3 (2002).
- South Carolina.....\$30
S. C. Code Ann. § 34-11-70 (2002).
- South Dakota..... \$30 plus any applicable sales tax, posted conspicuously at point-of-sale
S.D. Codified Laws § 57A-3-421 (2001).
- Tennessee.....An amount not to exceed \$20
Tenn. Code Ann. § 47-29-102 (2002).
- Texas.....\$30
Tex. Bus. & Com. Code Ann. § 3.506 (2001).
- Utah.....\$20
Utah Code Ann. § 7-15-1 (2002).
- Vermont.....Undetermined *
- Virginia.....\$35, plus legal interest from the date of the check and the bad check return fee charged to the holder by his bank
Va. Code Ann. § 8.01-27.1 (2003).
- Washington.....Reasonable handling fee; when not paid within 15 days, a collection cost not to exceed \$40 or face amount of check, whichever is less and interest at 12% per year from date of dishonor
Wash. Rev. Code § 62A.3-515 (2003).
- West Virginia.....\$25
W. Va. Code § 61-3-39e (2003).
- Wisconsin.....All reasonable costs and expenses in connection with the collection of the amount for which the check or draft was written
Wis. Stat. § 403.414 (2003).
- Wyoming.....\$30
Wyo. Stat. Ann. § 1-1-115 (2002).

*Undetermined means that a specific service charge has not been set by state statute. See the full state's statutes for remedies by civil action or criminal penalties which may allow a civil penalty assessment.

It is suggested that service fees be posted at the point-of-sale in all states. ACA cannot be responsible for recent changes in the law regarding service charges and civil penalties. Remember to check with your attorney before establishing any procedures based upon this information.

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For more information on each state's check laws, including criminal penalties, contact ACA Member Services for purchase and update information on the *ICSP Statutory Penalties Guide*.

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Letters of Support for SB 299



ALASKA

National Federation of Independent Business

Statement of Support for SB 299

Bad Check Fee

February 16, 2004

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

NFIB supports SB299 to remove language from the current law that has been interpreted to require a business to document the costs of collecting bad checks. The proposed legislation simply states that the amount of the check plus \$30 can be collected for bad checks. The language referring to "costs incurred" has been removed.

Bad checks are a real problem for many businesses and they should not be burdened with additional paperwork in order to charge a fee for these checks. We encourage your quick action in passing this legislation.

Vote YES on SB 299

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

Randy L. Weaver, CPA
Controller
Phone: (907) 474-7711
Fax: (907) 474-5921
randy.weaver@alaska.edu

209 Butrovich Building
910 Yukon Drive, Suite 209
PO Box 755120
Fairbanks, AK 99775-5120



UNIVERSITY
of ALASKA
Many Traditions One Alaska

February 17, 2004

RE: Senate Bill 299

Senator Con Bunde, Chairman
Senate Labor and Commerce Committee
Alaska State Capitol, Rm. 506
Juneau, AK 99801

Dear Senator Bunde:

I am writing on behalf of the University of Alaska to request your support for the passage of Senate Bill 299. The current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting a bad check. This creates an accounting burden on businesses to track and record costs of collection, instead of assigning a fixed penalty to the person writing the bad check. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge.

Please help Alaska businesses by eliminating the requirement to document the costs of collecting bad checks. Many other states have removed this administrative burden by simply assigning a fixed penalty.

On behalf of university business officers, I strongly urge you to support SB299 to make this simple change.

Sincerely,

A handwritten signature in cursive script that reads "Randy L. Weaver".

Randy L. Weaver, CPA
Controller

Sent via fax (907-465-3871)

02/18/04

17:22

9072619141

SBS CREDIT DEPT

0001

FAXED
02/18/04

February 16, 2004

Senator Con Bunde
Alaska State Capitol Room 508
Juneau, AK 99801
VIA FACSIMILE: 907-465-3871

RE: Senate Bill 299

Senator Bunde,

I would like to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25.00 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred while trying to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Respectfully Submitted,

Spensard Builders Supply, Inc.

Jill Jaeckel
Legal Assistant
907-261-9165
FAX 907-261-9141

e-mail: jjaeckel@sbsalaska.com

FROM : D OF AKINC

FAX NO. : 9073382690

Feb. 16 2004 04:21PM P3

D.of Alaska Inc

1345 RUDAKOF CIRCLE SUITE 102 ANCHORAGE, ALASKA 99508
PHONE: 333-6776 FAX: 338-2690

February 16, 2004

Senator Con Bunde
Alaska State Capitol, Rm 506
Juneau, AK 99801

RE: Senate Bill 299

Senator Bunde:

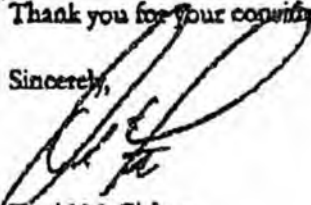
As the owner of Denny's Restaurant in the State of Alaska, I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Thank you for your consideration in this matter.

Sincerely,



David M. Fiches,
President

cc: Shelly Ryan
Corner Stone Credit Services



*Copy to: Shelly Ryan
Comptroller Credit & Sec*

February 16, 2004

Senator Con Bunde
Alaska State Capitol, Room 506
Juneau, AK 99801

RE: SENATE BILL 299

Dear Senator Bunde:

I want to go on record as supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs incurred instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Very truly yours,

Ada P. Bower
Comptroller



**WILLIAMS EXPRESS INC.**

February 12, 2004

Senator Con Bunde
Alaska State Capitol, Rm 506
Juneau, Ak 99801

Re: Senate Bill 299

Dear Senator Bunde,

It is time for us to make a change in the way our statutes address handling fees for bad checks. Alaska statute allows businesses to charge up to \$25.00 to cover "costs incurred" vs. other states assigning a reasonable handling fee that is not up to challenge. Our system creates the unnecessary accounting burden of tracking, recording and documenting costs incurred in order to collect on bad checks.

I want to go on record supporting the passage of Senate Bill 299 and I strongly urge you to support this change.

Respectfully

A handwritten signature in black ink, appearing to read "Ernest B. Madsen", written over a horizontal line.

Ernest B. Madsen
Director - Williams Express - Alaska
3201 C. Street, #700
Anchorage, Alaska 99503
(907) 273-3300

Feb 16 04 01:45p

Michael R. Davidson

907-561-6075

P. 1



Davidson Enterprises
P.O. Box 241528
Anchorage, Alaska 99524
907-561-8036
Fax 907-561-6075

Senator Burdick:

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely, Michael Davidson



L & J ENTERPRISES INC. dba/THREE BEARS
10575 Kenai Spur Hwy. Kenai, AK. 99611 Ph. (907) 283-6577 Fax (907) 283-6576

February 16, 2004

Senator Bonds:

I would like to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have the additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely,

David A Weisz
Senior VP



**Anchorage
Fracture &
Orthopedic
Clinic**

3260 PROVIDENCE DR., SUITE 200
ANCHORAGE, ALASKA 99508
(907) 562-3145 • FAX 561-3967

- DECLAN R. NOLAN, M.D.
- RICHARD W. GARNER, M.D.
- THOMAS R. VASILEFF, M.D.
- RICHARD D. MICEVOY, M.D.
- ADRIAN B. RYAN, M.D.
- DAVIS C. PETERSON, M.D.
- STEPHEN S. TOWER, M.D.
- LESLIE P. DEAN, M.D.
- GEORGE D. RHYNEER, M.D.
- URSULA M. SPENCER, M.D.

- Diplomate American Board of Orthopaedic Surgery
- Fellow American Academy of Orthopaedic Surgeons

February 12, 2004

Senator Con Bunde
Alaska State Capitol, Rm 506
Juneau, AK 99801

FAXED 907-465-3871

RE: Senate Bill 299

Dear Senator Bunde:

Our clinic would like to go on record in support of Senate Bill 299. Alaska's current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That is the way many other states deal with the same problem.

Due to regulatory and compliance issues medical offices have dramatically increasing costs that are combined with steadily diminishing reimbursements. It is growing more and more difficult to collect payment for our services, and we feel that we, as well as other Alaska businesses, should not have additional burdens placed upon us by having to document costs incurred to collect bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely,

Beth A. Balca, FACMPE
Administrator
907-261-7135

Attn: Shelley
Ryan



THE ALASKA CLUB

February 12, 2004

Senator Con Bunde
Alaska State Capitol, Room 506
Juneau, Alaska 99801

Re: Senate Bill 299

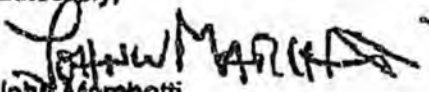
Dear Senator Bunde:

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25.00 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely,


John Marchetti
Vice President of Administration & Finance
The Alaska Club

North • 700 S. Bragaw Anchorage, AK 99508 • (907) 278-3621 South • 10931 O'Malley Centre Dr. Anchorage, AK 99515 • (907) 344-4547
East • 5201 E. Tudor Rd. Anchorage, AK 99507 • (907) 317-9550 West • 1400 W. Northern Lights Blvd. Anchorage, AK 99503 • (907) 264-2721
Midtown • 630 E. Tudor Rd. Anchorage, AK 99503 • (907) 582-2460 Dewatawa • 745 W. 4th Ave. Anchorage, AK 99501 • (907) 274-4232
Eagle River • 12001 Business Blvd. Eagle River, AK 99577 • (907) 694-6677 Valley • 1720 E. Parks Hwy, Wasilla, AK 99654 • (907) 376-3300
Fair Way • 1450 W. Northern Lights Blvd. Anchorage, AK 99503 • (907) 264-2700
www.thealaskaclub.com



February 12, 2004

Senator Con Bunde
Alaska State Capitol, Room 506
Juneau, AK 99801
Re: Senate Bill 299

Dear Senator Bundy,

We would like to go on record supporting the passage of Senate Bill 299.

The current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting a bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. This is the same way that many other states deal with this problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely,

Ted M. Wells, Controller
Sagaya Corporation



GOLDEN VALLEY ELECTRIC ASSOCIATION INC. PO Box 71249 • Fairbanks, Alaska 99707-1249 • 907-452-1151 • www.gvea.com

February 12, 2004

Senator Gary Wilkin
Alaska State Capital
Juneau, AK 99801
Fax: 907-465-4714

Re: Senate Bill 299

Dear Senator Bunde:

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Golden Valley Electric Association has been in business in Alaska since 1947 and we don't feel the vast majority of our member's should have to shoulder the burden of costs incurred to collect on bad checks written by the very few.

We strongly urge you to support SB 299 to make the simple change.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Peters', written over a horizontal line.

Scott Peters
Consumer Accounting Manager
Golden Valley Electric Association



TESORO

Tesoro Northshore
P.O. Box 199970
Anchorage, Alaska 99519-3970
907 563 2711 Phone
907 261 7283 Fax

February 17, 2004

Senator Con Bunde
Alaska State Capitol, Rm 506
Juneau, AK 99801

Re: Senate Bill 299

Senator Bunde:

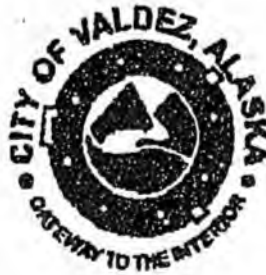
I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows our check processing contractor to collect up to \$25 to cover "costs incurred" for collecting a bad check. This creates an accounting burden for businesses to track and record all costs involved in check collection instead of assigning a fixed amount. The proposed change in the statute would set a reasonable handling fee, in the same manner in which many other states deal with the same situation.

Alaska's businesses should not have additional burdens placed upon them by having to document every cost incurred to collect bad checks, costs which we will have to pass along to the consumer.

I strongly urge you to support SB 299 to make this change.

Sincerely,

Richard T. Bucy
Regional Manager



February 13, 2004

Senator Gene Theriault
Alaska State Capitol
Juneau, AK 99801
VIA Fax: 907-465-3884

RE: Senate Bill 299: Relating to a charge for a bad check

Senator Theriault:

As Finance Director of the City of Valdez, I support the passage of Senate Bill 299. The current bad check statute requires that to collect up to \$25 to cover "costs incurred" for collecting bad checks, we must account for our time and expenses for every bad check. There is a considerable burden and expense just in the accounting for the costs of a bad check collection, much less the indirect costs of lost cash flow. For a municipality which is undergoing fiscal stress, this is a waste of taxpayers resources.

The proposed change in the statute would set a reasonable handling fee that is fixed, and requires a much simpler approach to the problem.

I urge you to support SB 299 to make this change.

Christine A. Sasse
Finance Director

cc: Dave Dengel, City Manager

Post-it® Fax Note	7671	Date	2/13/04
To	Shelly Ruan	From	Christine Sasse
Co	Prudstone	Co.	City of Valdez
Phone #		Phone #	
Fax #	907-770-8150	Fax #	

I sent an identical letter to Com Bundy



Go Home Happy

Border Entertainment, LLC
dba Blockbuster Video

206 E. Northern Lights Blvd.
Anchorage, Alaska 99503

Phone (907) 277-8525
Facsimile (907) 277-8532

February 12, 2004

Senator Johnny Ellis
Alaska State Capitol, Room 9
Juneau, Alaska 99801

Re: Senate Bill 299

Dear Senator Ellis:

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting bad checks. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Respectfully yours,

Craig Cobb
Vice President

Anchorage
Fairbanks
Juneau
Kenai
Wasilla
Soldotna
Eagle River
Kodiak
North Pole