

ALASKA LEGISLATURE

2725

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

Fastfax

From ACA's Fax on Demand Service
Last Updated on December 1, 2003

Page 1 of 33
Document



STATE SERVICE FEE STATUTES

The following is a compendium of all of the states' service fee statutes in their entirety. These statutes will contain information on the amount of service fee allowable by state, what transactions allow for a service fee, and whether or not the state requires a notice of the service fee to be posted at the point of sale.

ALABAMA

§ 8-8-15. Bad check charge; deemed not finance charge.

(a) Any lender of money, extender of other credit, or merchant making a sale of merchandise, goods, or services, or the assignee of the lender, extender of credit, or merchant who receives a check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution given by any person in full or partial repayment of a loan, other extension of credit, or a sale of merchandise, goods, or services may, if the instrument is not paid or is dishonored by the institution, charge and collect, through regular billing procedure or otherwise, from the borrower, person to whom the credit was extended, or from whom the instrument was received, a bad check charge of not more than the greater of either twenty-five dollars (\$25) or an amount equal to the actual charge by the depository institution for the return of unpaid or dishonored instruments.

(b) Commencing January 1, 1999, the bad check charge in subsection (a) shall increase by one dollar (\$1) per year through January 1, 2003, at which time the maximum bad check charge shall be thirty dollars (\$30).

Charges imposed in connection with the dishonor of a negotiable instrument shall not be deemed interest finance or other charge made as an incident to or as a condition to the grant of the loan or other extension of credit and shall not be included in determining the limit on charges which may be made in connection with the loan or extension of credit as provided in this section or in any other law of this state.

ALASKA

§ 09.68.115 Bad check civil penalties.

(a) In an action against a person who issues a check that is dishonored, the plaintiff may recover damages in an amount equal to \$100 or triple the amount of the check, whichever is greater, except that damages recovered under this section may not exceed the amount of the check by more than \$1,000 and may be awarded only if

- (1) the plaintiff makes a written demand for payment of the check at least 15 days before beginning the action; and
- (2) the defendant fails to tender, before the action begins, an amount equal to at least the amount of the check plus costs incurred by the plaintiff up to a maximum of \$25.

(b) An action under this section may be brought as a small claims action if the amount claimed does not exceed the jurisdictional limits for small claims actions, or may be brought in any other court that has jurisdiction.

(c) After the beginning of an action under this section but before the case is tried, the defendant may satisfy the claim by tendering an amount of money equal to the amount of the check plus court, legal, and service costs incurred by the plaintiff up to a maximum of \$150.

(d) In this section

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

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

(A) lack of funds;

(B) closure or nonexistence of an account; or

(C) a stop payment order issued without cause;

(3) "written demand" means a written notice to the issuer of a check personally delivered or sent by first class mail to the address shown on the dishonored check, advising the issuer that the check has been dishonored and explaining the civil penalties set out in this section.

ARIZONA

§ 44-6852. Dishonored checks; service fee

Notwithstanding any other law, the holder, payee or assignee of the holder or payee of a dishonored check, draft, order or note may charge and collect from the maker or drawer a service fee of not more than twenty-five dollars 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.

ARKANSAS

4-60-103 Liability for restitution.

(a) Any person who issues a check which is not paid because the check was written on an account with insufficient funds has fifteen (15) days following the date of a written demand mailed or delivered to the drawer of the check at the address shown on the check or his or her last known address to pay to the holder of the check or his or her agent the amount of the check and a collection fee not to exceed twenty-five dollars (\$25.00), plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check's not being honored.

(b)(1) Any person who fails to make restitution as set forth in subsection (a) of this section and who fails to pay the amount of the check and a collection fee not to exceed twenty-five dollars (\$25.00), plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check's not being honored, within thirty (30) days following the date of a written demand mailed to the drawer by certified mail, return receipt requested, to the address shown on the check or his or her last known address is liable to the holder of the check or his or her agent for:

(A) Twice the amount of the check, but in no case less than fifty dollars (\$50.00);

(B) A collection fee not to exceed twenty-five dollars (\$25.00), plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check's not being honored; and

(C) Any taxes which may be due pursuant to § 26-52-301(3)(E).

(2) The prevailing party may recover court costs and reasonable attorney's fees after suit has been filed.

(c)(1) Nothing in this section shall prevent the criminal prosecution of the person who issues the check.

(2) However, any payment made by the defendant to a victim pursuant to an order for restitution entered in a criminal prosecution shall be set off against any judgment in favor of the victim in a civil action brought under this section arising out of the same facts or event.

CALIFORNIA

→ § 1719. Dishonored checks; liability; demands for payment; stop payments; notice; penalties, damages and service charges; assignees

(a)(1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars (\$100) nor more than one thousand five hundred dollars (\$1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to "pass a check on insufficient funds" means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b) For purposes of this section, in the case of a stop payment, the existence of a "good faith dispute" shall be determined by the trier of fact. A "good faith dispute" is one in which the court finds that the drawer had a reasonable belief of his or her legal entitlement to withhold payment. Grounds for the entitlement include, but are not limited to, the following: services were not rendered, goods were not delivered, goods or services purchased are faulty, not as promised, or otherwise unsatisfactory, or there was an overcharge.

(c) In the case of a stop payment, the notice to the drawer required by this section shall be in substantially the following form:

NOTICE

To: _____
(name of drawer)

_____ is the payee of a check you wrote
(name of payee)

for \$ _____. The check was not paid because you
(amount)

stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the

check in cash, a service charge of an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

- (1) The amount of the check.
- (2) Damages of at least one hundred dollars (\$100) or, if higher, three times the amount of the check up to one thousand five hundred dollars (\$1,500).

If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing cost. If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee. You can contact the payee at:

(name of payee)

(street address)

(telephone number)

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

(name of sender of notice)

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand that, in that case, shall have been sent to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e) A cause of action under this section may be brought in small claims court by the original payee, if it does not exceed the jurisdiction of that court, or in any other appropriate court. The payee shall, in order to recover damages because the drawer instructed the drawee to stop payment, show to the satisfaction of the trier of fact that there was a reasonable effort on the part of the payee to reconcile and resolve the dispute prior to pursuing the dispute through the courts.

(f) A cause of action under this section may be brought by a holder of the check or an assignee of the payee. A proceeding under this section is a limited civil case. However, if the assignee is acting on behalf of the payee, for a flat fee or a percentage fee, the assignee may not charge the payee a greater flat fee or percentage fee for that portion of the amount collected that represents treble damages than is charged the payee for collecting the face amount of the check, draft, or order. This subdivision shall not apply to an action brought in small claims court.

(g) Notwithstanding subdivision (a), if the payee is the court, the written demand for payment described in subdivision (a) may be mailed to the drawer by the court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by the court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by the court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions. For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h) The requirements of this section in regard to remedies are mandatory upon a court.

(i) The assignee of the payee or a holder of the check may demand, recover, or enforce the service charge, damages, and costs specified in this section to the same extent as the original payee.

(j)(1) A drawer is liable for damages and costs only if all of the requirements of this section have been satisfied.

(2) The drawer shall in no event be liable more than once under this section on each check for a service charge, damages, or costs.

(k) Nothing in this section is intended to condition, curtail, or otherwise prejudice the rights, claims, remedies, and defenses under Division 3 (commencing with Section 3101) of the Commercial Code of a drawer, payee, assignee,

or holder, including a holder in due course as defined in Section 3302 of the Commercial Code, in connection with the enforcement of this section.

COLORADO

§ 13-21-109. Recovery of damages for checks, drafts, or orders not paid upon presentment

(1) Any person who obtains money, merchandise, property, or other thing of value, or who makes any payment of any obligation other than an obligation on a consumer credit transaction as defined in section 5-1-301, C.R.S., by means of making any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation which is not paid upon its presentment is liable to the holder of such check, draft, or order or any assignee for collection for one of the following amounts, at the option of the holder or such assignee:

(a) The face amount of the check, draft, or order plus actual damages determined in accordance with the provisions of the "Uniform Commercial Code", title 4, C.R.S.; or

(b) An amount equal to the face amount of the check, draft, or order and:

(I) The amount of any reasonable posted or contractual charge not exceeding twenty dollars; and

(II) If the check, draft, or order has been assigned for collection to a person licensed as a collection agency pursuant to article 14 of title 12, C.R.S., as costs of collection, twenty percent of the face amount of the check, draft, or order but not less than twenty dollars; or

(c) An amount as provided in subsection (2) of this section.

(2)(a) If notice of nonpayment on presentment of the check, draft, or order has been given in accordance with the provisions of subsections (3) and (4) of this section and the total amount due as set forth in the notice has not been paid within fifteen days after such notice is given, instead of the amounts set forth in paragraph (a) or (b) of subsection (1) of this section, the person shall be liable to the holder or any assignee for collection for three times the face amount of the check but not less than one hundred dollars.

(b) The person, also referred to in this section as the "maker", shall not be liable in accordance with the provisions of paragraph (a) of this subsection (2) if he establishes any one of the following:

(I) That the account contained sufficient funds or credit to cover the check, draft, or order at the time the check, draft, or order was made, plus all other checks, drafts, and orders on the account then outstanding and unpaid;

(II) That the check, draft, or order was not paid because a paycheck, deposited in the account in an amount sufficient to cover the check, draft, or order, was not paid upon presentment;

(III) That funds sufficient to cover the check, draft, or order were garnished, attached, or set off and the maker had no notice of such garnishment, attachment, or setoff at the time the check, draft, or order was made;

(IV) That the maker of the check, draft, or order was not competent or of full age to enter into a legal contractual obligation at the time the check, draft, or order was made;

(V) That the making of the check, draft, or order was induced by fraud or duress;

(VI) That the transaction which gave rise to the obligation for which the check, draft, or order was given lacked consideration or was illegal.

(3) Notice that a check, draft, or order has not been paid upon presentment shall be in writing and given in person and receipted for, or by personal service, or by depositing the notice by certified mail, return receipt requested and postage prepaid, or by regular mail supported by an affidavit of mailing sworn and retained by the sender, in the United States mail and addressed to the recipient's most recent address known to the sender. If the notice is mailed and not returned as undeliverable by the United States postal service, notice shall be conclusively presumed to have been given on the date of mailing. For the purpose of this subsection (3), "undeliverable" does not include unclaimed or refused.

(4) The notice given pursuant to subsection (3) of this section shall include the following information regarding the unpaid check, draft, or order:

(a) The date the check, draft, or order was issued;

(b) The name of the bank, depository, person, firm, or corporation on which it was drawn;

(c) The name of the payee;

(d) The face amount;

(e) A statement of the total amount due, which shall be itemized and shall not exceed the amount permitted under paragraph (a) or (b) of subsection (1) of this section;

(f) A statement that the maker has fifteen days from the date notice was given to make payment in full of the total amount due; and

(g) A statement that, if the total amount due is not paid within fifteen days after the date notice was given, the maker may be liable in a civil action for three times the face amount of the check but not less than one hundred dollars and that, in such civil action, the court may award court costs and reasonable attorney fees to the prevailing party.

(5) No holder or assignee for collection shall assert that any maker has liability for any amount set forth under subsection (2) of this section unless such liability has been determined by entry of a final judgment by a court of competent jurisdiction.

(6) In any civil action brought under this section, the prevailing party may recover court costs and reasonable attorney fees. In addition, in an action brought under paragraph (b) of subsection (1) of this section, if the holder or assignee for collection prevails, actual costs of collection may be recovered by the holder or assignee for collection if such actual costs of collection are greater than the costs of collection provided under such paragraph (b).

(7) Nothing in this section shall be deemed to apply to any check, draft, or order on which payment has been stopped by the maker by reason of a dispute relating to the money, merchandise, property, or other thing of value obtained by the maker.

(8) Nothing in this section applies to any criminal case or affects eligibility or terms of probation.

(9) Any limitation on a cause of action under this section, except a cause of action under subsection (2) of this section, shall be governed by the provisions of section 13-80-103.5. Any limitation on a cause of action under subsection (2) of this section shall be governed by the provisions of section 13-80-102.

CONNECTICUT

§ 52-565a. Liability of drawer for dishonored check. Service charge on drawer for dishonored check

(a) A drawer negotiating a check who knows or should know that payment of such check will be refused by the drawee bank either because the drawer has no account with such bank or because the drawer has insufficient funds on deposit with such bank shall be liable to the payee for damages, in addition to the face amount of the check, provided the payee has presented such check for payment, the check is dishonored and the drawer fails to pay the face amount of such check within thirty days following the date of mailing by the payee of the written demand for payment as provided in subsection (f) of this section.

(b) In the case of a drawer negotiating a check who knows or should know that payment of such check will be refused by the drawee bank because the drawer has no account with such bank, such damages shall be in an amount to be determined by the court in light of the circumstances, but in no event shall such amount be greater than the face amount of the check or seven hundred fifty dollars, whichever is less.

(c) In the case of a drawer negotiating a check who knows or should know that payment of such check will be refused by the drawee bank because the drawer has insufficient funds on deposit with such bank, such damages

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

delivered; and (7) an explanation of the damages which may be imposed pursuant to this section in the event the drawer fails to pay the face amount of the dishonored check.

(h) The penalties provided for in this section shall not apply to any check for which payment has been stopped by the drawer or to any check where the drawer has raised a reasonable defense with respect to the validity of the underlying debt.

(i) Notwithstanding the provisions of this section, in the case of a drawer who negotiates a check which is dishonored, the payee or its assignee may impose on the drawer a service charge of up to twenty dollars, provided, no such service charge may be imposed if (1) the drawer has stopped payment on the check, (2) the check was stolen, or (3) the drawer has raised a reasonable defense with respect to the validity of the underlying debt. The drawer shall not be liable under this subsection for more than one such service charge for each dishonored check.

DELAWARE

Undetermined.

DISTRICT OF COLUMBIA

§ 1-333.11. Imposition of fee for delivery of bad check in payment of obligation due District of Columbia; amount of fee; manner of collection; exception.

(a) The Mayor of the District of Columbia shall prescribe and impose, in addition to any other penalties provided by law, a fee to be paid by each person who gives or causes to be given, in payment of any tax, assessment, fee, charge, or other obligation due the government of the District of Columbia, a check which is subsequently dishonored or not duly paid. The amount of the fee shall be prescribed from time to time by the Mayor and shall be based on the approximate cost to the District of Columbia of handling dishonored or unpaid checks and collecting the amounts they represent. The fee shall be collected in the same manner as the original obligation. Any receipt previously given in reliance upon such check shall be void, and no other receipt shall be given for the payment of the original amount due until the fee has also been paid. This section shall not apply to a check which is not paid because of the death of its drawer. The Mayor may issue rules and regulations necessary to carry out this section.

(b) Until such fee is prescribed by the Mayor pursuant to subsection (a) of this section, a fee in the amount of \$15 shall be imposed by the Mayor upon each person who gives or causes to be given, in payment of any tax, assessment, fee, charge, or other obligation due the government of the District of Columbia, a check which is subsequently dishonored or not duly paid.

(c) In addition to any other penalties prescribed by law, the Mayor may contract for the collection of the amount represented by any dishonored or unpaid check that is given, or caused to be given, to the Mayor in payment of any liability or obligation owed to the District of Columbia government.

(d) In addition to the dishonored check fee provided for in subsection (b) of this section when collection of a dishonored or unpaid check is made pursuant to a contract authorized by subsection (c) of this section, the Mayor shall collect any costs or expenses incurred to recover and collect the amount represented by a dishonored or unpaid check from any such person who gives, or causes to be given, in payment of any obligation or liability due the District of Columbia government a check which is subsequently dishonored or not duly paid. In cases where collection is made by action at law or suit in equity, such costs and expenses shall include litigation expenses and attorneys fees.

(e) The Corporation Counsel is authorized to institute actions at law or in equity for the recovery of all amounts owed to the District as set forth in subsection (d) of this section, including the Corporation Counsel's own litigation expenses and attorneys fees. In the event the Corporation Counsel elects not to exercise his or her authority under this subsection, any person who, or entity that, renders the collection services provided for in subsection (c) of this section shall have the authority to institute actions at law or suits in equity for the recovery of the amounts represented by any dishonored or unpaid check, in addition to any amounts charged by the collector for collecting a dishonored or unpaid check and any litigation expenses and attorneys fees incurred by the collector for such collection.

(f) Notwithstanding the Mayor entering into a collection contract pursuant to subsection (c) of this section, the Mayor retains exclusive authority with respect to all District obligations and liabilities, including, but not limited

to, the authority to resolve a dispute, comprise a claim, end collection activity, or establish a schedule of fees and expenses.

FLORIDA

68.065. Actions to collect worthless checks, drafts, or orders of payment; attorney's fees and collection costs

(1) In any civil action brought for the purpose of collecting a check, draft, or order of payment, the payment of which was refused by the drawee because of the lack of funds, credit, or an account, or where the maker or drawer stops payment on the check, draft, or order of payment with intent to defraud, and where the maker or drawer fails to pay the amount owing, in cash, to the payee within 30 days following a written demand therefor, as provided in subsection (3), the maker or drawer shall be liable to the payee, in addition to the amount owing upon such check, draft, or order, for damages of triple the amount so owing. However, in no case shall the liability for damages be less than \$50. The maker or drawer shall also be liable for any court costs and reasonable attorney fees incurred by the payee in taking the action. Criminal sanctions, as provided in s. 832.07, may be applicable.

(2) The payee may also charge the maker or drawer of the check, draft, or order of payment a service charge not to exceed the service fees authorized under s. 832.08(5) or 5 percent of the face amount of the instrument, whichever is greater, when making written demand for payment. In the event that a judgment or decree is rendered, interest at the rate and in the manner described in s. 55.03 may be added toward the total amount due. Any bank fees incurred by the payee may be charged to the maker or drawer of the check, draft, or order of payment.

(3) Before recovery under this section may be claimed, a written demand must be delivered by certified or registered mail, evidenced by return receipt, or by first-class mail, evidenced by an affidavit of service of mail, to the maker or drawer of the check, draft, or order of payment to the address on the check or other instrument, to the address given by the drawer at the time the instrument was issued, or to the drawer's last known address. The form of such notice shall be substantially as follows:

"You are hereby notified that a check numbered in the face amount of \$.... issued by you on ...(date)..., drawn upon ...(name of bank)..., and payable to, has been dishonored. Pursuant to Florida law, you have 30 days from receipt of this notice to tender payment in cash of the full amount of the check plus a service charge of \$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 percent of the face amount of the check, whichever is greater, the total amount due being \$.... and cents. Unless this amount is paid in full within the 30-day period, the holder of the check or instrument may file a civil action against you for three times the amount of the check, but in no case less than \$50, in addition to the payment of the check plus any court costs, reasonable attorney fees, and any bank fees incurred by the payee in taking the action."

(4) A subsequent person receiving a check, draft, or order, from the original payee or a successor endorsee has the same rights that the original payee has against the maker of the instrument, provided such subsequent person gives notice in a substantially similar form to that provided above. A subsequent person providing such notice shall be immune from civil liability for the giving of such notice and for proceeding under the forms of such notice, so long as the maker of the instrument has the same defenses against the subsequent person as against the original payee. However, the remedies available under this section may be exercised only by one party in interest.

(5) Subsequent to the commencement of the action but prior to the hearing, the maker or drawer may tender to the payee, as satisfaction of the claim, an amount of money equal to the sum of the check, the service charge, court costs, and incurred bank fees. Other provisions notwithstanding, the maker or drawer is liable to the payee for all attorney fees and collection costs incurred by payee as a result of the payee's claim.

(6) If the court or jury determines that the failure of the maker or drawer to satisfy the dishonored check was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages.

GEORGIA

§ 13-6-15. Damages for the writing of bad checks

(a) Notwithstanding any criminal sanctions which may apply, any person who makes, utters, draws, or delivers any check, draft, or order upon any bank, depository, person, firm, or corporation for the payment of money, which drawee refuses to honor the instrument for lack of funds or credit in the account from which to pay the instrument or because the maker has no account with the drawee, and who fails to pay the same amount in cash to the payee named in the instrument within ten days after a written demand therefor, as provided in subsection (c) of this Code

section, has been delivered to the maker by certified mail, or statutory overnight delivery shall be liable to the payee, in addition to the amount owing upon such check, draft, or order, for damages of double the amount so owing, but in no case more than \$500.00, and any court costs incurred by the payee in taking the action. In addition to delivery of notice as provided for herein, notice may be given by first-class mail to the address printed on the check given by the maker at the time of issuance or, in the case of a draft or order, to the last known address. If the question of sufficiency of notice becomes an issue, when notice is by first-class mail, the sender of the purported notice shall give an affidavit, under oath, that notice was made as provided for herein and there shall be a rebuttable presumption that proper notice was given.

(b) The payee may charge the maker of the check, draft, or order a service charge not to exceed \$30.00 or 5 percent of the face amount of the instrument, whichever is greater, 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, when making written demand for payment.

(c) Before any recovery under subsection (a) of this Code section may be claimed, a written demand in substantially the form which follows shall be sent by certified mail, statutory overnight delivery, or first-class mail supported by an affidavit of service to the address printed or written on the check given by the maker at the time of issuance of the check or, in the case of a draft or order, to the last known address, the notice to be deemed conclusive ten days following the date the affidavit is executed, to the maker of the instrument at the address shown on the instrument:

"You are hereby notified that a check or instrument numbered _____, issued by you on _____ (date), drawn upon _____ (name of bank), and payable to _____, has been dishonored. Pursuant to Georgia law, you have ten days from receipt of this notice to tender payment of the full amount of the check or instrument plus a service charge of \$30.00 or 5 percent of the face amount of the check or instrument, whichever is greater, 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, the total amount due being \$ _____. Unless this amount is paid in full within the ten-day period, the holder of the check or instrument may file a civil suit against you for two times the amount of the check or instrument, but in no case more than \$500.00, in addition to the payment of the check or instrument plus any court costs incurred by the payee in taking the action."

(d) For purposes of this Code section, the holder of the dishonored check, draft, or order shall file the action in the county where the defendant resides.

(e) It shall be an affirmative defense, in addition to other defenses, to an action under this Code section if it is found that:

(1) Full satisfaction of the amount of the check or instrument plus the applicable service charge and any fees charged to the holder of the instrument by a bank or financial institution as a result of the instrument not being honored was made prior to the commencement of the action;

(2) The bank or depository erred in dishonoring the check or instrument; or

(3) The acceptor of the check or instrument knew at the time of acceptance that there were insufficient funds on deposit in the bank or depository with which to cause the check or instrument to be honored.

(f) In an action under this Code section, the court or jury may, however, waive all or part of the double damages upon finding that the defendant's failure to satisfy the dishonored check or instrument was due to the defendant receiving a dishonored check or instrument written to the defendant by another party.

(g) Subsequent to the commencement of the civil action under this Code section, 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 dishonored check, service charges on the check, any fees charged to the holder of the instrument by a bank or financial institution as a result of the instrument not being honored, and any court costs incurred by the plaintiff in taking the action.

(h) In an action under this Code section, if the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury has the discretion to waive all or part of the double damages. However, if the court or jury waives all or part of the double damages, the court or jury shall

render judgment against the defendant in the amount of the dishonored check plus service charges on the check plus any fees charged to the holder of the instrument by a bank or financial institution as a result of the instrument not being honored and any court costs incurred by the plaintiff in taking the action.

HAWAII

§ 490:3-506.5. Charges for dishonored checks.

The payee or a holder in due course of any check, draft, or order for the payment of money that has been dishonored for lack of funds or credit to pay the check, draft, or order or because the maker has no account with the drawee shall be allowed to assess the maker a reasonable service charge of not more than \$20.

IDAHO

28-22-105 Checks dishonored by nonacceptance or nonpayment -- Liability for interest -- Collection costs and attorney's fees.

Whenever a check, as defined in section 28-3-104, Idaho Code, has been dishonored by nonacceptance or nonpayment and has not been paid within fifteen (15) days and after the holder of such check sends such notice of dishonor as provided in section 28-22-106, Idaho Code, to the drawer, then if the check does not provide for the payment of interest, or collection costs and attorney's fees, the drawer of such check shall also be liable for payment of interest at the rate of twelve percent (12%) per annum from the date of dishonor and cost of collection not to exceed twenty dollars (\$20.00) or the face amount of the check, whichever is the lesser; provided however, that if the holder of the dishonored check has the right to collect a set fee under a written agreement or has notified the drawer by a posted notice at the point of sale that the drawer will be required to pay a set collection fee if the check is dishonored, the holder is not required to give the notice of dishonor as provided in section 28-22-106, Idaho Code, and may assess a collection cost of the notice amount regardless of the size of the check, but the set fee may not exceed twenty dollars (\$20.00). In addition, in the event of court action on the check, the court, after such notice and the expiration of said fifteen (15) days, shall award reasonable attorney's fees as part of the damages payable to the holder of the check. No attorney's fees may be awarded to a collection agency in a proceeding pursuant to section 1-2301A, Idaho Code. The provisions of this section shall not apply to any check which has been dishonored by reason of any justifiable stop payment order.

ILLINOIS

5/3-806. Checks or drafts not honored upon presentment--Liability of drawer

§ 3-806. Any person who issues a check or other draft that is not honored upon presentment because the drawer does not have an account with the drawee, or because the drawer does not have sufficient funds in his account, or because the drawer does not have sufficient credit with the drawee, shall be liable in the amount of \$25, or for all costs and expenses, including reasonable attorney's fees, incurred by any person in connection with the collection of the amount for which the check or other draft was written, whichever is greater, and shall be liable for interest upon the amount of the check or other draft at the rate provided in subsection (1) of Section 4 of the Interest Act. [FN1] Costs and expenses shall include reasonable costs and expenses incurred in the nonlitigated collection of the check or other draft.

A person who undertakes a nonlitigated collection against the person who issued a check or other draft that is not honored upon presentment shall make a written demand by certified mail, return receipt requested, delivered to the last known address of that person in order to become eligible for any costs and expenses in excess of \$25. The written demand shall demand payment within 30 days of the mailing of the demand and shall include notice of liability for the costs and expenses.

A fee or charge not to exceed \$4.50 may be assessed to any person or owner of a commercial checking account or other similar commercial account where a check or other draft that is deposited into the account is dishonored upon presentment because of insufficient funds or because the drawer does not have an account with the drawee; provided, however, that, the limitation on the fee or charge specified in this paragraph does not apply to any fee or charge assessed to any bank or other depository institution or to any non-commercial checking account or other similar non-commercial account.

INDIANA

26-1-3.1-502.5 Surcharge after dishonor

A person to whom a check, a draft, an order, or like instrument is tendered may, if the instrument is dishonored or returned unpaid for any reason, charge and collect from the maker or drawer, or the person for whose benefit the instrument was given, an amount not to exceed twenty dollars (\$20) plus an amount equal to the actual charge by

the depository institution for each returned or dishonored instrument. The charge shall not be considered an interest charge, a finance charge, a time price differential, or any charge of a similar nature.

IOWA

554.3512. Holder's recourse for dishonor

1. The holder of a dishonored check, draft, or order may assess against the maker of that check, draft, or order a surcharge not to exceed thirty dollars.

2. The surcharge authorized by this section shall not be assessed unless the holder clearly and conspicuously posts a notice at the usual place of payment, or in the billing statement of the holder, stating that a surcharge will be assessed and the amount of the surcharge. However, the surcharge shall not be assessed against the maker if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403.

KANSAS

60-2610. Civil liability for worthless check.

(a) If a person gives a worthless check, the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the incurred service charge, interest at the statutory rate and the costs of collection including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following:

(1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than \$500; or

(2) \$100.

The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(b) The amounts specified by subsection (a) shall be recoverable in a civil action brought by or on behalf of the holder of the check only if: (1) Not less than 14 days before filing the civil action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check, the incurred service charge and accrued interest; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded.

The written demand shall be sent by first class mail, to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer. The written demand shall include notice that, if the money is not paid within 14 days, triple damages in addition to an amount of money equal to the sum of the amount of the check, the incurred service charge, court costs, accrued interest, the costs of collection, including but not limited to, reasonable attorney fees unless the court otherwise orders, may be incurred by the maker or drawer of the check.

Notice required by subsection (b)(1) shall state the exact amount and date due, as well as an estimate of the amount that may be incurred if the amount demanded is not paid by the specified date.

(c) Subsequent to the filing of an action under this section but prior to the commencement of a dispositional hearing by the court, 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, the incurred service charge, accrued interest, the costs of collection including, but not limited to, reasonable attorney fees and court costs. The plaintiff shall include in the petition a statement alleging that the defendant may tender such amount as satisfaction of the claim as provided in this subsection. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the commencement of the dispositional hearing by the court, the case shall be dismissed by the plaintiff. For purposes of this subsection only, the amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100 as provided in subsections (a)(1) and (2). For purposes of this subsection, a dispositional hearing means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment against the defendant. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In

the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(d) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(e) Any amount previously paid as restitution or reparations to the holder of the check by or on behalf of its maker or drawer shall be credited against the amount for which the maker or drawer is liable under subsection (a).

(f) Conviction of giving a worthless check or habitually giving a worthless check, as defined by K.S.A. 21-3707, and amendments thereto, shall not be a prerequisite or bar to recovery pursuant to this section.

(g) The service charge on a check which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of each check, order or draft in full upon its presentation, shall not exceed \$30.

(h) As used in this section, "giving a worthless check" means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent:

(1) With intent to defraud or in payment for a preexisting debt; or

(2) Which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation; and

(3) for which the maker or drawer has not tendered to the holder's agent the amount of money demanded and within the time allowed by the demand required in subsection (b).

KENTUCKY

514.040 Theft by deception

(1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:

(a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;

(b) Prevents another from acquiring information which would affect judgment of a transaction;

(c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;

(d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or

(e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

(2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlibely to deceive ordinary persons in the group addressed.

(3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

(4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:

(a) The maker had no account with the drawee at the time the check or order was issued; or

(b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any merchant's posted reasonable bad check handling fee not to exceed twenty-five dollars (\$25) and any fee imposed pursuant to subsection (5) of this section.

(5) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of twenty-five dollars (\$25), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.

(6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.

(7) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.

(8) Theft by deception is a Class A misdemeanor unless the value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is three hundred dollars (\$300) or more, in which case it is a Class D felony.

LOUISIANA

§ 2782. Nonsufficient fund checks; damages, attorney fees

A. Whenever any drawer of a check dishonored for nonsufficient funds fails to pay the obligation created by the check within fifteen working days after receipt of written demand for payment thereof delivered by certified or registered mail, the drawer shall be liable to the payee or a person subrogated to the rights of the payee for damages of twice the amount so owing, but in no case less than one hundred dollars plus attorney fees and court costs.

B. The payee, his agent or assignee, or a holder may charge the drawer of the check a service charge not to exceed twenty-five dollars or five percent of the face amount of the check, whichever is greater, when making written demand for payment. The payee shall post a notice indicating the amount to be charged a drawer of a check if the check is returned for nonsufficient funds. Such notice shall be posted on the payee's business premises in a convenient and conspicuous place where persons entering the location will see it.

C. (1) Before any recovery under Subsection A of this Section may be claimed, a written demand in substantially the form which follows shall be sent by certified or registered mail to the drawer of the check at the address shown on the instrument:

"You are hereby notified that a check numbered _____, issued by you on _____ (date), drawn upon _____, (name of bank), and payable to _____, has been dishonored. Pursuant to Louisiana law, you have fifteen working days from receipt of this notice to tender payment in full of the amount of the check plus a service charge of twenty-five dollars or five percent of the face amount of the check, whichever is greater, the total amount due being _____. Unless this amount is paid in full within the fifteen-working-day period, the holder of the check may file a civil action against you for two times the amount of the check or one hundred dollars, whichever is greater, plus any court costs and reasonable attorney fees incurred by the payee in taking the action."

(2) Notice mailed by certified or registered mail evidenced by return receipt to the address printed on the check or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received by the person making the check.

(3) It shall be prima facie evidence that the drawer knew that the instrument would not be honored if notice mailed by certified or registered mail is returned to the sender when such notice is mailed within a reasonable time of dishonor to the address printed on the instrument or given by the drawer at the time of issuance of the check.

MAINE

Undetermined.

MARYLAND

§ 15-802. Nonacceptance or nonpayment

(a) When a check or other instrument has been dishonored by nonacceptance or nonpayment and has not been paid within 10 days, the holder to whom the check or other instrument was issued or negotiated may send a notice of dishonor to the maker or drawer as provided under this section.

(b) If a check or other instrument has not been paid within 30 days after the holder has sent a notice of dishonor to the maker or drawer, the maker or drawer of a check or other instrument that has been dishonored shall be liable for:

- (1) The amount of the check or instrument;
- (2) A collection fee of up to \$35; and
- (3) An amount up to 2 times the amount of the check, but not more than \$1,000.

(c)(1)(i) The holder of a check or other instrument that has been dishonored may seek the damages provided under this section in the District Court of Maryland 30 days after a notice of dishonor has been sent by mail to the last known address of the maker or drawer.

(ii) For each notice sent by the holder under subparagraph (i) of this paragraph, the holder shall:

1. Obtain a certificate of mailing from the U.S. Postal Service; or
2. Execute an affidavit that attests to the mailing of the notice in compliance with subparagraph (i) of this paragraph.

(2) A notice of dishonor sent by a holder under this section to a maker or drawer of a dishonored check or other instrument shall substantially comply with the form prescribed in § 15-803 of this subtitle.

(d) A holder may not recover any damages under subsection (b)(3) of this section if:

(1) The holder has demanded of, and received from, the maker or drawer:

- (i) Collection costs in excess of the collection fee provided under subsection (b)(2) of this section; or
- (ii) Collection costs within 30 days after the mailing of the notice of dishonor, under subsection (c) of this section; or

(2) The dishonored check or other instrument provides for the payment of collection costs in the event of dishonor.

(e)(1) It shall be a complete defense to any action brought under this section by any holder of a dishonored check or other instrument that, within 30 days from the mailing of the notice of dishonor, the maker or drawer has paid to the holder the full amount of the check or other instrument and collection costs of not more than \$35.

(2) It shall be a complete defense to any action brought under this section by a holder to whom a dishonored

(a) The full amount of the check, draft, or order.

(b) Civil damages of 2 times the amount of the dishonored check, draft, or order or \$100.00, whichever is greater.

(c) Costs of \$250.00.

(5) Subsection (4) does not apply if, before the trial of an action brought pursuant to this section, the maker pays to the payee or a designated agent of the payee, in cash, the total of the amounts described in subsection (3)(b), plus reasonable costs, not exceeding \$250.00, as agreed to by the parties.

(6) An action under this section may be brought in the small claims division of the district court, if it does not exceed the jurisdiction of the small claims division, or in any other appropriate court. If the amount of the check exceeds the jurisdiction of the small claims division, the action may still be brought in the small claims division, but the amount of damages awarded shall not exceed the jurisdiction of the small claims division.

MINNESOTA

604.113. Issuance of worthless check

Subdivision 1. Definitions. (a) The definitions provided in this subdivision apply to this section.

(b) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(c) "Credit" means an arrangement or understanding with the drawee for the payment of the check.

(d) "Dishonor" has the meaning given in section 336.3-502, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.

(e) "Payee" or "holder" includes an agent of the payee or holder.

Subd. 2. Acts constituting. Whoever issues any check that is dishonored is liable for the following penalties:

(a) A service charge, not to exceed \$30, may be imposed immediately on any dishonored check by the payee or holder of the check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. Only one service charge may be imposed under this paragraph for each dishonored check. The displayed notice must also include a provision notifying the issuer of the check that civil penalties may be imposed for nonpayment.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the check and the reason for nonpayment. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for nonpayment after 30 days;

(2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and

(3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the

charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

Subd. 3. Notice of dishonor required. Notice of nonpayment or dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check.

The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4. Proof of identity. The check is prima facie evidence of the identity of the issuer if the person receiving the check:

(a) records the following information about the issuer on the check, unless it is printed on the face of the check:

(1) name;

(2) home or work address;

(3) home or work telephone number; and

(4) identification number issued pursuant to section 171.07;

(b) compares the issuer's physical appearance, signature, and the personal information recorded on the check with the issuer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

Subd. 5. Defenses. Any defense otherwise available to the issuer also applies to liability under this section.

MISSISSIPPI

§ 97-19-57. Presumption of fraudulent intent; notice

(1) As against the maker or drawer thereof, the making, drawing, issuing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence and create a presumption of intent to defraud and of knowledge of insufficient funds in, or on deposit with, such bank, corporation, firm or person, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with a service charge of Thirty Dollars (\$30.00), within fifteen (15) days after receiving notice that such check, draft or order has not been paid by the drawee.

(2) For purposes of Section 11-7-12, the form of the notice provided for in subsection (1) of this section shall be sent by regular mail and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft or order numbered _____, apparently issued by you on _____ (date), drawn upon _____ (name of bank), and payable to _____, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, plus a service charge of Thirty Dollars (\$30.00), the total amount due being \$_____. Failure to pay this amount in full within the time specified

above shall be prima facie evidence of and create a presumption of both the intent to defraud and the knowledge of insufficient funds in, or on deposit with, such bank in violation of Section 97-19-55."

(3) For purposes of Section 97-19-67, the form of the notice provided for in subsection (1) of this section shall be sent by regular mail, supported by an affidavit of service by mailing, and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft or order numbered _____, apparently issued by you on _____ (date), drawn upon _____ (name of bank), and payable to _____, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, plus a service charge of Thirty Dollars (\$30.00), the total amount due being \$ _____. Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument and all other available information relating to this incident to the proper authorities for criminal prosecution."

(4) If any notice is returned undelivered to the sender after such notice was mailed to the address printed on the check, draft or order, or to the address given by the accused at the time of issuance of the instrument, such return shall be prima facie evidence of the maker's or drawer's intent to defraud.

(5) Affidavit of service by mail shall be adequate if made in substantially the following form:

"STATE OF

COUNTY OF

_____, being first duly sworn on oath, deposes and states that he/she is at least eighteen (18) years of age and that on (date) _____, 2____, he/she served the attached Notice of Dishonor by placing a true and correct copy thereof securely enclosed in an envelope addressed as follows:

and deposited the same, postage prepaid, in the United States mail at

(signature)

Subscribed to and sworn before me, this the _____ day of _____, 2____.

(Notary Public)

My commission expires:

(SEAL)"

(6) Without in any way limiting the provisions of this section, this section shall apply to a draft for the payment of money given for a motor vehicle even if such payment is conditioned upon delivery of documents necessary for transfer of a valid title to the purchaser.

MISSOURI

570.120 Crime of passing bad checks, penalty--actual notice given, when-- administrative handling costs, amount, deposit in fund--use of fund--payroll action, when--collection of service charge--return of bad check to depositor by financial institution must be on condition that issuer is identifiable

1. A person commits the crime of passing a bad check when:

(1) With purpose to defraud, the person makes, issues or passes a check or other similar sight order for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee; or

(2) The person makes, issues, or passes a check or other similar sight order for the payment of money, knowing that there are insufficient funds in that account or that there is no such account or no drawee and fails to pay the check or sight order within ten days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

2. As used in subdivision (2) of subsection 1 of this section, "actual notice in writing" means notice of the nonpayment which is actually received by the defendant. Such notice may include the service of summons or warrant upon the defendant for the initiation of the prosecution of the check or checks which are the subject matter of the prosecution if the summons or warrant contains information of the ten-day period during which the instrument may be paid and that payment of the instrument within such ten-day period will result in dismissal of the charges. The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept.

3. The face amounts of any bad checks passed pursuant to one course of conduct within any ten-day period may be aggregated in determining the grade of the offense.

4. Passing bad checks is a class A misdemeanor, unless:

(1) The face amount of the check or sight order or the aggregated amounts is five hundred dollars or more; or

(2) The issuer had no account with the drawee or if there was no such drawee at the time the check or order was issued, in which cases passing bad checks is a class D felony.

5. (1) In addition to all other costs and fees allowed by law, each prosecuting attorney or circuit attorney who takes any action pursuant to the provisions of this section shall collect from the issuer in such action an administrative handling cost. The cost shall be five dollars for checks of less than ten dollars, ten dollars for checks of ten dollars but less than one hundred dollars, and twenty-five dollars for checks of one hundred dollars or more. For checks of one hundred dollars or more an additional fee of ten percent of the face amount shall be assessed, with a maximum fee for administrative handling costs not to exceed fifty dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, RSMo, the costs provided for in this subsection shall be deposited by the county treasurer into a separate interest-bearing fund to be expended by the prosecuting attorney or circuit attorney. The funds shall be expended, upon warrants issued by the prosecuting attorney or circuit attorney directing the treasurer to issue checks thereon, only for purposes related to that previously authorized in this section. Any revenues that are not required for the purposes of this section may be placed in the general revenue fund of the county or city not within a county. Notwithstanding any law to the contrary, in addition to the administrative handling cost, the prosecuting attorney or circuit attorney shall collect an additional cost of one dollar per check for deposit to the Missouri office of prosecution services fund established in subsection 2 of section 56.765, RSMo. All moneys collected pursuant to this section which are payable to the Missouri office of prosecution services fund shall be transmitted at least monthly by the county treasurer to the director of revenue who shall deposit the amount collected pursuant to the credit of the Missouri office of prosecution services fund under the procedure established pursuant to subsection 2 of section 56.765, RSMo.

(2) The moneys deposited in the fund may be used by the prosecuting or circuit attorney for office supplies, postage, books, training, office equipment, capital outlay, expenses of trial and witness preparation, additional employees for the staff of the prosecuting or circuit attorney and employees' salaries.

(3) This fund may be audited by the state auditor's office or the appropriate auditing agency.

(4) If the moneys collected and deposited into this fund are not totally expended annually, then the unexpended

balance shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year.

6. Notwithstanding any other provision of law to the contrary:

(1) In addition to the administrative handling costs provided for in subsection 5 of this section, the prosecuting attorney or circuit attorney may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, which along with the face amount of the check, shall be turned over to the party to whom the bad check was issued;

(2) If a check that is dishonored or returned unpaid by a financial institution is not referred to the prosecuting attorney or circuit attorney for any action pursuant to the provisions of this section, the party to whom the check was issued, or his or her agent or assignee, or a holder, may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, not to exceed twenty-five dollars, plus an amount equal to the actual charge by the depository institution for the return of each unpaid or dishonored instrument.

7. In all cases where a prosecutor receives notice from the original holder that a person has violated this section with respect to a payroll check or order, the prosecutor, if he determines there is a violation of this section, shall file an information or seek an indictment within sixty days of such notice and may file an information or seek an indictment thereafter if the prosecutor has failed through neglect or mistake to do so within sixty days of such notice and if he determines there is sufficient evidence shall further prosecute such cases.

8. When any financial institution returns a dishonored check to the person who deposited such check, it shall be in substantially the same physical condition as when deposited, or in such condition as to provide the person who deposited the check the information required to identify the person who wrote the check.

MONTANA

27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or stopping payment – civil liability

(1) A person who issues a check, draft, converted check, electronic funds transfer, or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, converted check, electronic funds transfer, or order is issued, or the payee's assignee, if the check, draft, converted check, electronic funds transfer, or order is:

(a) dishonored for lack of funds or credit or because the issuer does not have an account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than \$30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, converted check, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of \$100 or three times the amount for which the check, draft, converted check, electronic funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted check, electronic funds transfer, or order by more than \$500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

(7) This section applies to all checks, drafts, converted checks, electronic funds transfers, and orders, including those electronically presented for payment.

(8) Making partial payments of amounts owed under this section or entering into an agreement for paying in whole or in part amounts owed under this section does not waive any right that the payee or the payee's assignee may have under this section. Once a demand required under this section is made, the demand is not required to be repeated upon partial payment of amounts owed under this section.

NEVADA

597.960. Collection of fee for dishonored check accepted as payment for goods or services

1. A seller, or his agent, may collect a fee of not more than \$25 for each check which was accepted by the seller as payment for goods or services and, upon presentment to the drawee, was not honored because the drawer stopped payment on the check, the drawer does not have an account with the drawee or the drawer does not have sufficient funds in his account or credit with the drawee to cover the amount of the check.

2. As used in this section:

(a) "Check" includes a draft or other negotiable order for the payment of money on demand which is drawn on a bank or other financial institution.

(b) "Drawee" means the person ordered in the check to make payment.

(c) "Drawer" means the person who signs or is identified in the check as the person ordering payment.

NEW HAMPSHIRE

358-C:5 Check Collection Charges.

I. A creditor involved in a consumer credit transaction or a debt collector designated to collect on a check, negotiable order of withdrawal, share draft, or other negotiable instrument may charge and receive a check collection charge of not more than \$25, unless otherwise expressly authorized by written agreement with the consumer.

II. In the case of a consumer credit transaction, disclosure of a check collection charge made pursuant to paragraph I of this section shall be made in the promissory note or sales finance contract. In the case of debt collectors, notification of imposition of a check collection charge pursuant to paragraph I of this section shall be done by telephone or written notice sent by regular mail to the debtor at the debtor's last known telephone number or address or at the address shown on the check or other instrument. The notice shall state the amount of the check collection charge that has been or will be imposed, and shall state that the debtor is responsible for paying the check collection charge as well as the value of the check or other instrument.

NEW JERSEY

Undetermined.

NEW MEXICO

Undetermined.

NEW YORK

§ 5-328. Processing fee by holder of dishonored check

1. As used in this section the following terms shall have the following meanings:

(a) "Holder of a check" means the holder or its assignee, representative or any other person retained by the holder to seek collection of the face value of a dishonored check.

(b) "Dishonored check" means a check, draft or like instrument drawn on a bank or depository institution as full or partial payment for an unpaid balance on an account, or for other extensions of credit or payments of money in connection with a consumer transaction, which is not paid or is dishonored or is returned by such institution due to insufficient funds or other cause not attributable to the holder.

(c) "Consumer transaction" means a transaction in which a natural person is extended credit for, or purchases or leases, personal property, money or services primarily for personal, family or household purposes.

(d) "Account" means a loan account, a retail credit account or an obligation under a retail lease agreement, retail instalment contract or retail instalment obligation or a retail instalment credit agreement, as defined in sections three hundred one, three hundred thirty-one and four hundred one of the personal property law.

2. Notwithstanding the provisions of any law:

(a) The holder of a dishonored check given in payment for a consumer transaction or an account may collect from, charge, or add to the outstanding balance of the account of, the person from whom such check was received or to whom such credit was extended, a dishonored check charge of not more than the lesser of the amount agreed upon, if contracted for, or twenty dollars.

(b) A dishonored check charge shall not be deemed a credit service charge, interest or an incident to or a condition to the extension of credit, for any purpose of law.

3. Notwithstanding any other provision of law, any person to whom a check, draft or like instrument, other than a money order, bank cashier's check or certified check, is tendered for any transaction, other than a consumer transaction, may, if such instrument is dishonored charge or collect from the maker or drawer the amount of twenty dollars for the return of such unpaid or dishonored instrument.

NORTH CAROLINA

§ 25-3-506. Collection of processing fee for returned checks

A person who accepts a check in payment for goods or services or his assignee may charge and collect a processing fee, not to exceed twenty-five dollars (\$25.00), for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank.

(1) to (4) Deleted by S.L. 2000-118, § 1, eff. Oct. 1, 2000.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee.

NORTH DAKOTA

6-08-16.2 Issuing check without account – Financial liability – Penalty – Exceptions.

1. As used in this section:

a. "Account" means any account at a bank or depository from which an instrument could legally be paid.

b. "Dishonor" is synonymous with "nonpayment".

c. "Instrument" means any check, draft, electronic funds transfer authorization, or order for the payment of money.

d. "Issues" means draws, utters, electronically authorizes, or delivers.

2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1, and at the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn.

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least five hundred dollars or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred dollars, and at the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn.

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of twenty-five dollars per instrument, which are recoverable by the holder of the instrument, or the holder's agent or representative. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of two hundred dollars or three times the amount of the instrument.

5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 6. A criminal complaint for violating this section must be executed within ninety days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed-account instrument.

6. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law notified that an instrument dated _____, _____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because (of no sufficient funds)(the drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to _____

(Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of twenty-five dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

OHIO

1319.16 Check collection charges

(A) If a collection agency has been designated to collect on a check, negotiable order of withdrawal, share draft, or other negotiable instrument that has been returned or dishonored for any reason, the collection agency may charge

and receive check collection charges of not more than thirty dollars or ten per cent of the face amount of the instrument, whichever is greater, and may charge and receive any charge imposed by a financial institution upon the holder of the check, negotiable order of withdrawal, share draft, or other negotiable instrument that has been returned or dishonored for any reason.

(B) A collection agency that imposes a check collection charge pursuant to division (A) of this section shall send written notice by regular mail to the debtor at the debtor's last known address or at the address shown on the check or other instrument. The notice shall provide the amount of the check collection charge that has been imposed, and shall state that the debtor is responsible for paying the check collection charge as well as the value of the check or other instrument.

OKLAHOMA

Undetermined.

OREGON

30.701. Dishonored checks, actions against maker; statutory damages and attorney fees; handling fee

(1) In any action against a maker of a dishonored check, a payee may recover from the maker statutory damages in an amount equal to \$100 or triple the amount for which the check is drawn, whichever is greater. Statutory damages awarded under this subsection are in addition to the amount for which the check was drawn and may not exceed by more than \$500 the amount for which the check was drawn. The court shall allow reasonable attorney fees at trial and on appeal to the prevailing party in an action on a dishonored check and in any action on a check that is not paid because payment has been stopped.

(2) Statutory damages and attorney fees under subsection (1) of this section may be awarded only if the payee made written demand of the maker of the check not less than 30 days before commencing the action and the maker failed to tender to the payee before the commencement of the action an amount of money not less than the amount for which the check was drawn, all interest that has accrued on the check under ORS 82.010 as of the date of demand and any charges imposed under subsection (5) of this section.

(3) Statutory damages under subsection (1) of this section shall not be awarded by the court if after the commencement of the action but before trial the defendant tenders to the plaintiff an amount of money equal to the amount for which the check was drawn, all interest that has accrued on the check under ORS 82.010 as of the date of payment, any charges imposed under subsection (5) of this section, costs and disbursements and the plaintiff's reasonable attorney fees incurred as of the date of the tender.

(4) If the court or jury determines that the failure of the defendant to satisfy the dishonored check at the time demand was made under subsection (2) of this section was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages provided for in subsection (1) of this section. If all or part of the statutory damages are waived under this subsection, judgment shall be entered in favor of the plaintiff for the amount of the dishonored check, all interest that has accrued on the check under ORS 82.010, any charges imposed under subsection (5) of this section, the plaintiff's reasonable attorney fees and costs and disbursements.

(5) If a check is dishonored, the payee may collect from the maker a reasonable fee representing the cost of handling and collecting on the check. The total fee for any single check may not exceed \$25. Any award of statutory damages under subsection (1) of this section must be reduced by the amount of any charges imposed under this subsection that have been paid by the maker or that are entered as part of the judgment.

(6) The provisions of this section apply only to a check that has been dishonored because of a lack of funds or credit to pay the check, because the maker has no account with the drawee or because the maker has stopped payment on the check without good cause. A plaintiff is entitled to the remedies provided by this section without regard to the reasons given by the drawee for dishonoring the check.

(7) For the purposes of this section:

(a) "Check" means a check, draft or order for the payment of money.

(b) "Drawee" has that meaning given in ORS 73.0103.

(c) "Payee" means a payee, holder or assignee of a check.

PENNSYLVANIA

Undetermined.

RHODE ISLAND

6-42-3 Cause of action – Damages.

(a) If a check, draft, or other instrument has not been paid within thirty (30) days after the holder has sent a notice of dishonor to the maker or drawer of a check, draft, or other instrument that has been dishonored, pursuant to §§ 6-42-1 and 6-42-2, the holder may seek the damages provided under this section in the district court and may at the holder's election be in accordance with the procedure for small claims set forth in chapter 16 of title 10.

(b) The maker or drawer of a dishonored check or other instrument who fails to pay the amount demanded within thirty (30) days of the mailing of the notice of dishonor shall be liable to the holder for:

(1) The amount of the check or other instrument;

(2) A collection fee of twenty-five dollars (\$25.00);

(3) An amount equal to three (3) times the amount of the check or instrument, but in no case less than two hundred dollars (\$200) and in no case more than one thousand dollars (\$1,000).

SOUTH CAROLINA

§ 34-11-70. Prima facie evidence of fraudulent intent in drawing check, draft or other written order, reasonable and probable cause for prosecution.

(a) When a check, a draft, or other written order is not paid by the drawee because the maker or drawer did not have an account with or sufficient funds on deposit with the bank or the person upon which it was drawn when presented or the draft, check, or other written order has an incorrect or insufficient signature on it, and the maker or drawer does not pay the amount due on it, together with a service charge of thirty dollars, within ten days after written notice has been sent by certified mail to the address printed on the check or given at the time it is tendered or provided on a check-cashing identification card stating that payment was refused upon the instrument, then it constitutes prima facie evidence of fraudulent intent against the maker. Service charges collected pursuant to this section must be paid to the payee of the instrument.

(1) For purposes of subsection (a), notice must be given by mailing the notice with postage prepaid addressed to the person at the address as printed or written on the instrument. The giving of notice by mail is complete upon the expiration of ten days after the deposit of the notice in the mail. A certificate by the payee that the notice has been sent as required by this section is presumptive proof that the requirements as to notice have been met, regardless of the fact that the notice actually might not have been received by the addressee. The form of notice must be substantially as follows:

"You are notified that a check or instrument, numbered ____, issued by you on ____ (date), drawn upon ____ (name of bank), and payable to ____, has been dishonored. Pursuant to South Carolina law, you have ten days from the date this notice was mailed to tender payment of the full amount of the check or instrument plus a service charge of thirty dollars, the total amount due being ____ dollars and ____ cents. Unless this amount is paid in full within the specified time above, the holder of the check or instrument may turn over the dishonored check or instrument and all other available information relating to this incident to the solicitor or other appropriate officer for criminal prosecution."

(2) When a person instituting prosecution gives notice in substantially similar form provided in item (1) to the person upon which the instrument was drawn and waits ten days from the date notice is mailed before instituting the criminal proceedings, there arises a presumption that the prosecution was instituted for reasonable and probable cause, and the person instituting prosecution is immune from civil liability for the giving of the notice.

(3) A service charge of not more than thirty dollars is payable by the drawer of a draft, a check, or other written order to the payee of the instrument when the draft, check, or other written order is presented for payment in whole or in part of a then existing debt including, but not limited to, consumer credit transactions, and is dishonored. This service charge is solely to compensate the payee of the instrument for incurred expenses in processing the

dishonored instrument and is not related to a presumption of fraud so that it is not necessary to issue the notice to the person at the address as printed on the instrument set forth in items (1) and (2).

(b) Any court, including magistrate's, may dismiss a case under the provisions of this chapter for want of prosecution. When any prosecutions are initiated under this chapter, the party applying for the warrant is held liable for all reasonable administrative costs accruing not to exceed forty-one dollars if the case is dismissed for want of prosecution. Unless waived by the court, the party applying for the warrant shall notify, orally or otherwise, the court not less than twenty-four hours before the date and time set for trial that full restitution has been made in connection with the warrant, and the notification relieves that party of the responsibility of prosecution.

(c) Any court, including magistrates, may dismiss any prosecution initiated pursuant to the provisions of this chapter on satisfactory proof of restitution and payment by the defendant of all administrative costs accruing not to exceed forty-one dollars submitted before the date set for trial after the issuance of a warrant.

(d) For purposes of this chapter, subsequent persons receiving a check, draft, or other written order by endorsement from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument, if the maker of the instrument has the same defenses against subsequent persons as he may have had against the original payee. However, the remedies available under this chapter may be exercised only by one party in interest.

SOUTH DAKOTA

57A-3-421 Collection costs and expenses -- Liability of issuer of dishonored check.

If a merchant or place of business conspicuously posts a notice on its premises or if a merchant or place of business regularly extends credit and prints a notice on its customer statements check size and location as to be conspicuous, stating that a fee will be assessed against returned checks, any person who issues a check or other draft to the merchant or place of business which is not honored for any of the following reasons upon presentment is liable for all reasonable costs and expenses of collection:

- (1) The drawer's account is closed;
- (2) The drawer's account does not have sufficient funds; or
- (3) The drawer does not have sufficient credit with the drawee.

The costs and expenses provided for in this section are reasonable if they do not exceed thirty dollars plus any applicable sales tax.

TENNESSEE

§ 47-29-102. Handling charge

When any check, draft, or order is not paid by the drawee because the maker or drawer did not have an account with or sufficient funds on deposit with the financial institution, or the draft, check, or order has an incorrect or insufficient signature thereon, the payee of such check, draft, or order is authorized to assess a handling charge against such maker or drawer in an amount not to exceed twenty dollars (\$20.00).

TEXAS

§ 3.506. Processing Fee by Holder of Dishonored Check

(a) On return of a check to the holder following dishonor of the check by a payor, the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the face value of the dishonored check may charge the drawer or endorser a reasonable processing fee of not more than \$30.

(b) A person may not charge a processing fee to a drawer or endorser under this section if the fee has been collected under Article 102.007(e) or 102.0071, Code of Criminal Procedure. If a processing fee has been collected under this section and the holder subsequently receives a fee collected under Article 102.007(e) or 102.0071, Code of Criminal Procedure, the holder shall immediately refund the fee previously collected from the drawer or endorser.

(c) Notwithstanding any other law, a loan agreement made under Chapter 342, Finance Code, may provide that on return of a dishonored check given in payment under the agreement, the holder may charge the obligor under the

agreement the processing fee authorized by this section, and the fee may be added to the unpaid balance owed under the agreement. Interest may not be charged on the fee during the term of the agreement.

(d) This section does not affect any right or remedy to which the holder of a check may be entitled under any rule, written contract, judicial decision, or other statute.

UTAH

7-15-1 Definitions --Civil liability of issuer --Notice of action -- Collection costs --Exemptions.

(1) As used in this chapter:

(a) "Check" means a payment instrument on a depository institution including a:

- (i) check;
- (ii) draft;
- (iii) order; or
- (iv) other instrument.

(b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:

- (i) obtaining from any person any money, merchandise, property, or other thing of value; or
- (ii) paying for any service, wages, salary, or rent.

(c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2) (a) An issuer of a check is liable to the holder of the check if:

(i) the check:

- (A) is not honored upon presentment; and
- (B) is marked "refer to maker";

(ii) the account upon which the check is made or drawn:

- (A) does not exist;
- (B) has been closed; or
- (C) does not have sufficient funds or sufficient credit for payment in full of the check; or

(iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding obligation; and

(B) the issuer stops payment on the check with the intent to:

- (I) fraudulently defeat a possessory lien; or
- (II) otherwise defraud the holder of the check.

(b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

- (i) the check amount; and
- (ii) a service charge of \$20.

(3) (a) The holder of a check that has been dishonored may:

- (i) give written or oral notice of dishonor to the issuer of the check; and
- (ii) waive all or part of the service charge imposed under Subsection (2)(b).

(b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:

- (i) the holder redeposits the check; and
- (ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

- (a) the amount owed under Subsection (2)(b); and
- (b) collection costs not to exceed \$20.

(5) (a) A holder shall provide written notice to an issuer before:

(i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b);
or

- (ii) filing an action based upon this section.

(b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:

(i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:

- (A) the amount owed under Subsection (2)(b); and
- (B) collection costs under Subsection (4); and

(ii) the holder may file civil action if the issuer does not pay to the holder the amount owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

(6) (a) If the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not file civil action under this section if the issuer pays the holder:

- (i) the amount owed under Subsection (2)(b);
- (ii) the collection costs under Subsection (4);
- (iii) an amount that:
 - (A) is equal to the greater of:
 - (I) \$50; or
 - (II) triple the check amount; and
 - (B) does not exceed the check amount plus \$250; and

(iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed \$50.

(b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).

(7) (a) A civil action may not be filed under this section unless the issuer fails to pay the amounts owed:

(i) under Subsection (4); and

(ii) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.

(b) Subject to Subsection (7)(c) and (d), in a civil action the issuer of the check is liable to the holder for:

(i) the amount owed under Subsection (2)(b);

(ii) the collection costs under Subsection (4);

(iii) interest;

(iv) court costs;

(v) reasonable attorneys' fees; and

(vi) damages:

(A) equal to the greater of:

(I) \$100; or

(II) triple the check amount; and

(B) not to exceed the check amount plus \$500.

(c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a finding of good cause.

(d) If a holder of a check violates this section by filing a civil action under this section before 31 calendar days from the day on which the notice required by Subsection (5) is mailed, an issuer may not be held liable for an amount in excess of the check amount.

(e) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(vi).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(vi).

(8) This section may not be construed to prohibit the holder of the check from seeking relief under any other applicable statute or cause of action.

(9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if:

(i) the holder:

(A) is a depository institution; or

(B) a person that receives a payment on behalf of a depository institution;

(ii) the check is a payment on a loan that originated at the depository institution that:

(A) is the holder; or

(B) on behalf of which the holder received the payment; and

(iii) the loan contract states a specific service charge for dishonor.

(b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

VERMONT

Undetermined.

VIRGINIA

§ 8.01-27.1. Additional recovery in certain civil actions concerning checks

A. In any civil claim or action made or brought against the drawer of a check, draft or order, payment of which has been refused by the drawee depository because of lack of funds in or credit with such drawee depository, the holder or his agent shall be entitled to claim, in addition to the face amount of the check (i) legal interest from the date of the check, (ii) the protest or bad check return fee, if any, charged to the holder by his bank or other depository, (iii) a processing charge of \$35, and (iv) reasonable attorney's fees if awarded by the court.

B. Any holder of a check, draft or order, payment of which has been refused by the drawee for insufficient funds or credit, who charges the drawer amounts in excess of those authorized in subsection A on account of payment being so refused shall, upon demand, be liable to the drawer for the lesser of (i) \$35 plus the excess of the authorized amount or (ii) twice the amount charged in excess of the authorized amount.

WASHINGTON

62A.3-515. Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim

(a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or person entitled to enforce the check under RCW 62A.3-301 may collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the person entitled to enforce the check or the person's agent sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer at the drawer's last known address, and if the instrument does not provide for the payment of interest or collection costs and attorneys' fees, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is less, payable to the person entitled to enforce the check. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the person enforcing the check. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

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

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

WEST VIRGINIA

§ 61-3-39e. Notice of dishonor by payee; service charge

The payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may send notice thereof to the drawer of the check, draft or order. The payee or holder of any dishonored check may impose a fee of up to twenty-five dollars a worthless check. This fee may not be imposed or collected after a complaint for warrant has been delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit shall incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of the notice shall be substantially as follows:

"You are hereby notified that a check, number, issued by you on (date of check), drawn upon (name of bank), and payable to %Y(17) 27, has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of the check plus a fee of \$..... (not to exceed twenty-five dollars a worthless check) to the undersigned at You are further notified that in the event the above amount is timely paid in full you will not be subject to legal proceedings, civil or criminal.

Dated, 20.....

.....
(Signed)."

The provisions of this section do not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of the dishonored check, draft or order.

The holder or payee of any check, draft or order shall relinquish the check, draft or order to the maker upon tender of the full amount due at any time before a complaint for warrant has been presented to magistrate court. In the event complaint for warrant has been presented to magistrate court, payment may be made only through the court and any holder or payee unlawfully accepting payment after that time shall be liable for all costs which may be imposed by the magistrate court in the matter, including all costs which may have accrued by the time the magistrate court is notified of the payment.

WISCONSIN

403.414. Obligation of drawer

(1) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(2) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft according to its terms at the time that it was issued or, if not issued, at the time that it first came into possession of a holder, or if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in ss. 403.115 and 403.407. The obligation is owed to a person entitled to enforce the draft or to an endorser who paid the draft under s. 403.415.

(3) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an endorser under s. 403.415(1) and (3).

(5) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under sub. (2) to pay the draft if the draft is not a check. A disclaimer of the liability stated in sub. (2) is not effective if the draft is a check.

(6) If a check is not presented for payment or given to a depository bank for collection within 30 days after its date, the drawee suspends payments after expiration of the 30-day period without paying the check, and because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the

check, the drawer, to the extent deprived of funds, may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

(7) A person who issues a check or other draft that is not honored upon presentment, because the drawer does not have an account with the drawee or because the drawer does not have sufficient funds in his or her account or sufficient credit with the drawee, is liable for all reasonable costs and expenses in connection with the collection of the amount for which the check or draft was written, except recovery is not permitted under this section if a person licensed under s. 138.09 or any other person collected or could have collected a charge for that check or other draft under s. 422.202 (1) (d) or (2m).

WYOMING

§ 1-1-115 Civil liability for unpaid checks.

(a) Any person who issues a check which is not paid because the check has been dishonored for any reason has thirty (30) days following the date of a written demand mailed to the drawer of the check by United States postal service certificate of mailing at the address shown on the check or his last known address or personally served pursuant to the Wyoming Rules of Civil Procedure, to pay to the holder of the check the amount of the check and a collection fee not to exceed thirty dollars (\$30.00). The demand shall state that the drawer is required to pay the value of the check and the collection fee demanded and shall state the collection fee provided for in this section.

(b) Any person who fails to pay the amount of the check and the collection fee as set forth in subsection (a) of this section within thirty (30) days following the date of a written demand, mailed to or served on the drawer in accordance with subsection (a) of this section, is liable to the holder of the check for three (3) times the amount of the check, but in no case less than one hundred dollars (\$100.00), a collection fee of thirty dollars (\$30.00), and court costs.

(c) In extraordinary cases, including cases in which the court determines that the party who wrote the check has raised dilatory or bad faith defenses, the court may award the prevailing party reasonable attorney fees.

(d) Nothing in this section shall prevent the criminal prosecution of the person who issues the check. However, any payment made by the defendant to a victim pursuant to an order for restitution entered in a criminal case pursuant to W.S. 7-9-101 through 7-9-112 or 6-3-704(b), shall be set off against any judgment in favor of the victim in a civil action brought under this section arising out of the same facts or event.

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

(f) As used in this section, "check," "drawee," "drawer" and "issue" have the same meaning as defined in W.S. 6-3-701.

4040 WEST 70TH STREET, MINNEAPOLIS, MN 55435
TEL +1 (952) 926-6547 FAX +1 (952) 926-1624 E-MAIL ACA@ACAINTERNATIONAL.ORG
WWW.ACAINTERNATIONAL.ORG

© 2003 ACA International. All Rights Reserved.

This information is for the use of members of ACA International (ACA) only. Any distribution, reproduction, copying or sale of this material or the contents hereof without the consent of ACA is expressly prohibited.

THIS INFORMATION IS NOT TO BE CONSTRUED AS LEGAL ADVICE. LEGAL ADVICE MUST BE TAILORED TO THE SPECIFIC CIRCUMSTANCES OF EACH CASE. EVERY EFFORT HAS BEEN MADE TO ASSURE THAT THIS INFORMATION IS UP-TO-DATE AS OF THE DATE OF PUBLICATION. IT IS NOT INTENDED TO BE A FULL AND EXHAUSTIVE EXPLANATION OF THE LAW IN ANY AREA. THIS INFORMATION IS NOT INTENDED AS LEGAL ADVICE AND MAY NOT BE USED AS LEGAL ADVICE. IT SHOULD NOT BE USED TO REPLACE THE ADVICE OF YOUR OWN LEGAL COUNSEL.

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.

Provided by Senator Bunde

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 § 61-3-39a (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.

© 2003 ACA International. All rights reserved.
No reprinting.

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*.

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.

RECEIVED
SEP 29 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).

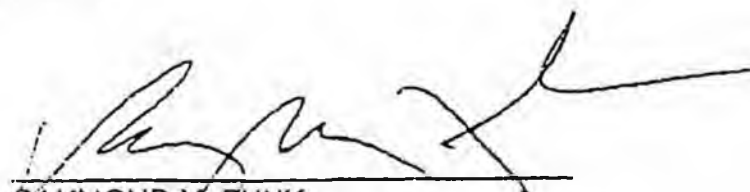
The court grants the motion that claims of FDCPA violations are barred as relating to any communications prior to one year before the filing of the counterclaims filed on March 24, 2003.

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

Eetz
 Ballou
MT 12-23-03



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.



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,

A handwritten signature in cursive script that reads "Ted M. Wells".

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 Con Bunde
Alaska State Capitol, Rm. 506
Juneau, AK 99801
Fax: 907-465-3871

Re: Senate Bill 299

Dear Senator Bunde:

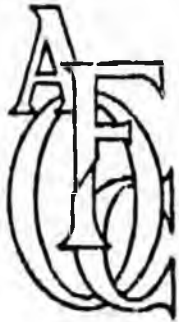
I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning 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,

Scott Peters
Consumer Accounting Manager
Golden Valley Electric Association



**Anchorage
Fracture &
Orthopedic
Clinic**

3260 PROVIDENCE DR., SUITE 200
ANCHORAGE, ALASKA 99508
(907) 563-3145 • FAX 561-3967

- DECLAN R. NOLAN, M.D.
- RICHARD W. GARNER, M.D.
- THOMAS P. VASILEFF, M.D.
- RICHARD D. MCEVOY, 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.
- UPSHUR M. SPENCER, M.D.

- Diplomate American Board of Orthopaedic Surgery
- Fellows 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. Balen, FACMPE
Administrator
907-261-7135



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".

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



February 13, 2004

Senator Con Bunde
Alaska State Capitol, Room 506
Juneau, AK 99801
VIA Fax: 907-465-3871

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

Senator Bunde:

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.

A handwritten signature in cursive script that reads "Christine A. Sasse".

Christine A. Sasse
Finance Director

cc: Dave Dengel, City Manager



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 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 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

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:

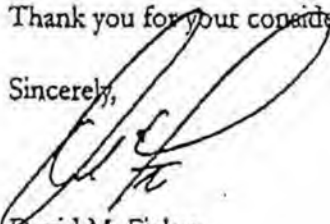
As the owner of Denny's Restaurant in the State of Alaska, I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for 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. Fickes,
President

cc: Shelly Ryan
Corner Stone Credit Services



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,

A handwritten signature in cursive script that reads "Ada P. Bower".

Ada P. Bower
Controller



Frontier Flying Service, Inc. • 5245 Airport Industrial Road • Fairbanks, Alaska 99709 • (907)450-7250

fax (907)450-7238 www.frontierflying.com

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

Randy L. Weaver, CPA
Controller

Sent via fax (907-465-3871)



THE ALASKA CLUB

February 12, 2004

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

Re: Senate Bill 299

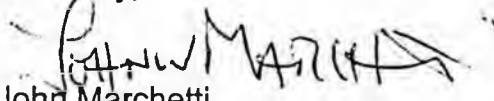
Dear Senator Bunde:

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

central
 peninsula
general hospital

250 Hospital Place, Soldotna, AK 99669
(907) 262-4404 • www.cpgh.org

February 17, 2004

Senator Con Bunde, FAX: 907-465-3871
Alaska State Capital, Rm 506
Juneau, AK 99801

RE: Senate Bill 299

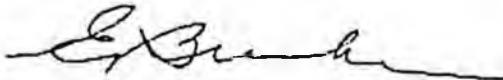
Dear Senator Bunde:

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 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.

Respectfully,



Edward C. Burke
Vice President, CFO

ALASKA'S TIRE SOURCE

JOHNSON'S TIRE SERVICE, INC.

"We Care"

February 16, 2004

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

RE: Senate Bill 299

Dear Senator Bunde:

Johnson's Tire Service 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 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 than 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,

Rick Gilmore, Operations Manager
Johnson's Tire Service

3330 Denali Street
Anchorage, AK 99509
907-581-1414

1107 E. Diamond Blvd.
Anchorage, AK 99515
907-349-8000

2835 Minnesota Drive
Anchorage, AK 99603
907-278-6600

16515 Artillery Road
Eagle River, AK 99577
907-684-6055

751 B. Palmer Wasilla Hwy.
Wasilla, AK 99654
907-379-8040

44371 Sterling Hwy.
Soldotna, AK 99860
907-288-2900

J.M.J. Distributors, Inc.

300 CALAIS DRIVE
ANCHORAGE, ALASKA 99503
907-562-4580

February 16, 2004

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

RE: Senate Bill 299

Dear Senator Bunde:

JMJ Distributors, Inc. 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 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 than 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,

Rick Gilmore, Operations Manager
JMJ Distributors, Inc.



RED ROBIN ALASKA, INC.
4450 Cordova Street, Suite 200
Anchorage, AK 99503
907.563.7777
907.561.2525 FAX

February 19, 2004

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

Re: Senate Bill 299

Dear Senator Bunde,

I support the passage of SB 299.

Alaska companies incur substantial costs in the management of their business and should have any extra hardship when it comes to the accounting burden placed on them with the current statute covering 'bad check' fees related to "costs incurred".

SB 299 would provide for a fair and reasonable approach to both the person writing the 'bad check' and the business that accepted it in good faith. It is not fair or equitable to require a business to 'track and record all costs' instead of assigning a fixed amount.

I respectfully request you to support SB 299.

Thank you.

Sincerely,

Fred Rosenberg

NORTHWAY RED ROBIN
3401 Penland Parkway
Anchorage, AK 99508
907.276.7788
907.276.4057 FAX

DIMOND RED ROBIN
401 East Dimond Boulevard
Anchorage, AK 99515
907.522.4321
907.522.4324 FAX

RED ROBIN ALASKA, INC is an independently owned and operated franchise in the Red Robin System.

redrobin.com



Dear Legislator
20 February 2004

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allow 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. Speeding tickets have a set fine for breaking that law. Writing a bad check should have a set fine or fee as well. 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.

I strongly urge you to support SB299 to make this simple change.

A handwritten signature in black ink, appearing to read 'Van Bakel'.

Van Bakel
Jiffy Lube Alaska



February 20, 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 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,

Dan Owen
Chief Financial Officer

**FISHER'S FUEL, INC.**

M.P. 51.5 PARKS HWY

P.O. BOX 520209 BIG LAKE, AK 99652

(907)892-6359 FAX: (907)892-6703

February 20, 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 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 to collect their bad checks.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Fisher", written over a horizontal line.

Brad Fisher
President



Tanana Valley Clinic

Family Medical Care
Since 1989

OBSTETRICS & GYNECOLOGY
Richard C. Hays, M.D.
Timothy Hadden, M.D.
Anne McCarty, RN
Peggy McSey, ANP

SURGERY
Jon DeBruin, M.D.

INTERNAL MEDICINE
Michael Santovito, M.D.

PEDIATRICS
Miss Antwan, M.D.
Cornelia Anderson, M.D.
Mark C. Burgess, M.D.
J. Timothy Fyfe, M.D.
Melinda Hays, M.D.
Marlene S. Wainwright, M.D.
Judy Hadden, ANP
Jennifer Dwyer, CRNP

FAMILY PRACTICE
Vance Bentley, D.D.
Doreen Lee, M.D.
Homer J. Hays, M.D.
Catherine Lathrop, M.D.
Charles Stahler, M.D.
Clay Truitt, D.D.
Joni HVE, Truitt, M.D.
Phil Dwyer, PA-C
Scott Curran, PA-C
Eric Smith, PA-C
Dawn Rogers, PA-C

ORTHOPEDICS
Richard H. Galloway, M.D.
Ann Tamm, M.D.
David Roberts, M.D.
William Hatcher, PA-C

PODIATRY
Wendy Dwyer, D.P.M.

ADMINISTRATION
Dana Stovin, Administrator
Melissa G. Washburn, M.D., Medical Director
Linda Van Nieu, Controller

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

February 26, 2004

Re: Senate Bill 299

Dear Senator Bunde:

Our clinic is supporting the passage of Senate Bill 299. Our current 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 physicians should not have the additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We urge you to support SB 299.

Thank you,

Brian Slocum, FACMPE
Clinic Administrator

cc. Representative Nick Stepovich
Senator Gary Wilken

Bs
Rk

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/6/04

FURTHER: Finance

Date of 5-Day Notice: 2/12/04
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/17/04

Labor and Commerce Committee considered SENATE BILL NO. 299

SB 299 BAD CHECK CHARGE

"An Act relating to a charge for a bad check."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
|-------------|---------|--------|--------|------|-----|
| DOA/Various | 2/17/04 | | | ✓ | 1 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|------|--------|--------|------|-----|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

- APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|---------|-------------|--------|-------|
| French <i>[Signature]</i> | | | X | |
| Sevens <i>[Signature]</i> | ✓ | | | |
| ESKENS <i>[Signature]</i> | X | | | |
| | | | | |
| | | | | |
| Bunde CHAIR: <i>[Signature]</i> | ✓ | | | |

SENATE FINANCE COMMITTEE

SIGN-IN

SB 299-BAD CHECK CHARGE



NAME: Pam LaBolle Subject/Bill No: SB 299

Co./Dept./Title: AK State Chamber President Phone: 586-2010

Address: ~~217~~ 217 2nd St Juneau Zip: 99801

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SB

300

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 21, 2004

FURTHER REFERRALS:

Date of Committee Action: 4.27.04

The FINANCE Committee considered:

CSSB 300(FIN)

CS FOR SENATE BILL NO. 300(FIN)

ATTORNEY'S LIEN

"An Act relating to an attorney's lien, to court actions, and to other proceedings where attorneys are employed; and providing for an effective date."

Recommends it be replaced with HCS or CS for CSSB 300 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

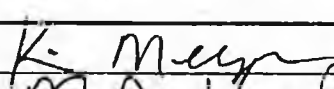
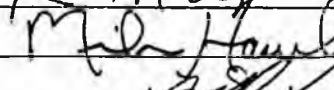
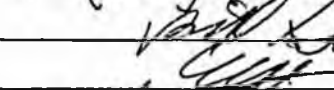
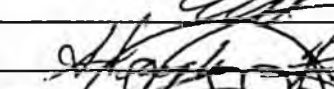

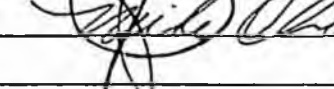
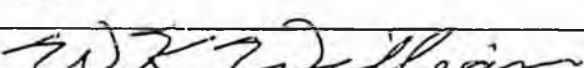
- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of
Abbrev
for
Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

| <u>NEW FISCAL NOTES</u> | | | | |
|-----------------------------------|------|--------|--------|------|
| *Assigned by Chief Clerk's Office | | | | |
| List by Dept(s): | *FN# | Fiscal | Indet. | Zero |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| <u>PREVIOUS FISCAL NOTES</u> | | | | |
|------------------------------|-----|--------|--------|------|
| List by Dept(s): | FN# | Fiscal | Indet. | Zero |
| DNR | 1 | | | ✓ |
| CRT | 2 | | | ✓ |
| LAW | 3 | | | ✓ |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| <u>Signing with recommendations</u> | Printed Last Name | DP | DNP | NR | AM |
|--|-------------------|----|-----|----|----|
|  | Meyer | X | | | |
|  | Hawken | X | | | |
|  | State Credit | ✓ | | ✓ | |
|  | Foster | ✓ | | | |
|  | Williams | X | | | |
|  | Chenault | X | | | |
| Chair: _____ | | | | | |
| Chair:  | Williams | X | | | |

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 300
 (S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: Attorney's Lien RDU: Resource Development
 Component: Recorder's Office
 Sponsor: Sen. Stedman
 Requester: Sen JUD Component No. 423

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to DNR associated with implementation of this legislation.

Prepared by: Vicky Backus Phone 907-269-8882
 Division: Recorder's Office Date/Time 2/19/04
 Approved by: Thomas Irwin, Commissioner Date 2/19/04
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 300
(S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Attorney's Liens BRU Alaska Court System
Sponsor Senator Stedman Component Trial Courts
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
The court system does not anticipate any fiscal impact from the passage of SB 300.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 2/19/04 8:23 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/19/2004
Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 300
(S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to an attorney's lien ... and to RDU CIVIL
other proceedings where attorneys are employed." Component Commercial & Fair Business
Sponsor Senator Stedman
Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type-Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends AS 34.35.430 by allowing an attorney's lien for fees and costs to supersede all other subsequent liens except tax liens.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division Administrative Services Date/Time 2/9/04 1:42 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/9/2004
Agency Department of Law

SENATOR BERT STEDMAN

Senate District A



State Capitol, Room 30, Juneau, Alaska 99801-1182 Phone (907) 465-3873 Fax (907) 465-3922

SPONSOR STATEMENT

SB 300

SB 300 eliminates an unfair and potentially disastrous federal income tax issue affecting Alaskan taxpayers and prevents the IRS from taxing two Alaskans on the same income. SB 300 corrects this unjust treatment of Alaskans under current 9th Circuit rulings.

Because of a peculiarity in Alaskan law, Alaskans who win in court may pay federal income tax on phantom income. When Alaskans file their federal tax return, they must report any litigation recovery allocated to attorney fees as gross income, even though they receive no economic benefit from those fees. The federal government taxes that portion of the prevailir. _ side's award twice; once as income to the client and again as income to the client's attorney. Incredibly, there is no federal tax deduction to offset this inequity. It's even possible for someone to win in court but come out with a net loss after paying legal bills and taxes.

Under current Alaska lien law <AS 34.35.430>, attorneys have a "subordinate lien" or ownership interest in the "cause of action". Other states, including Oregon, use different language to specify that as long as an attorney has filed an appropriate lien and is owed money by the winning client, all fee awards or payments made to the client belong exclusively to the attorney. In so vesting the attorney with the property interests of the award, those states avoid the unfair tax burden currently imposed on Alaskans. Instead, any portion of an award retained to pay attorney costs, is not income to the client.

SB 300 changes Alaskan law to prevent the IRS from taxing Alaskans on income they don't receive. This bill recognizes that court awarded fees which pass through to one's attorney is income to the attorney. And as such, the attorney is responsible for paying federal income tax on that portion of their income.

SENATOR BERT STEDMAN

Senate District A



State Capitol, Room 30, Juneau, Alaska 99801-1182 Phone (907) 465-3873 Fax (907) 465-3922

CSSB 300(FIN) SUMMARY FACT SHEET

Short Title: Attorney's Liens

Summary:

- Brings Alaska lien law into line with the Oregon law, which the 9th Circuit has held is effective in eliminating double taxation of attorney's fees.
- Vests a client's attorney with the property interests of court awarded fees so that the federal tax on that income becomes the responsibility of the attorney – not the prevailing client.
- The Senate Fin Comm CS added an immediate effective date to the original bill

Benefits:

- Prevents the IRS from taxing two Alaskans on the same income
- Ensures Alaskan taxpayers receive favorable federal tax treatment with regard to court awarded attorney's fees – until such time as the US Congress addresses the issue.
- Solves the tax injustice that currently exists in Alaska which discourages victims of discrimination from taking regress through the courts
- Recognizes that court awarded fees which pass through to one's attorney is income to the attorney. The attorney is therefore responsible for paying federal tax on that income.

Background:

SB 300 evolved not from the legal profession, but from the advocacy work of the accounting profession on behalf of Alaskan taxpayers. Certified Public Accountants recognized the injustice of the current law and sought a legislative solution. SB 300 has been favorably reviewed by a broad range of practicing Alaskan attorneys who represent all side of many kinds of disputes. However, SB 300 does not change the tax status of attorneys or gives them additional leverage over their clients.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Cook Schuhmann & Groseclose, Inc.

Attorneys at Law

E. "Skip" Cook
ra L. Schuhmann
Robert B. Groseclose
Jo A. Kuchle
Zane D. Wilson
Michael C. Kramer
Craig B. Partyka
Peter M. LeBlanc
Dayle L. Wallien
Mila A. Neubert

Telephone 907.452.1855 • Facimile 907.452.8154 • Toll Free 800.550.1855
714 Fourth Avenue, Suite 200 • Fairbanks, Alaska 99701-4470

February 5, 2004

VIA Facsimile 907-465-3922

Sen. Bert Stedman
State Capital Room 30
Juneau, AK 99801

Re: *Senate Bill 300: Attorney Lien Amendment*

Dear Senator Stedman:

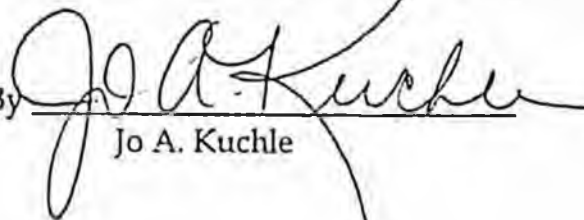
Thank you for introducing this important bill to eliminate the double taxation of fee awards on Alaskan taxpayers. The 9th Circuit Court of Appeals has held that on a recovery in a court proceeding, that portion subject to an attorneys fee award is taxable to the plaintiff/taxpayer. Then when the plaintiff pays the attorney, the income is taxed a second time. The 9th Circuit has recognized an exception in Oregon, where the attorney lien statute makes the portion owed to the attorney a superior lien. Based on that difference, Oregon taxpayers -- who are also in the 9th Circuit -- avoid the double taxation issue. The portion paying the attorney is taxed only to the attorney and not to the plaintiff/taxpayer.

Your legislation will help many Alaskan taxpayers avoid this often disastrous tax result. By amending Alaska's attorney lien statute to match Oregon's, this inequitable tax result should be avoided under the current 9th Circuit rulings. Thank you again.

Should there be any hearings before the Senate Judiciary Committee, please let me know the date and time as I would be willing to testify.

Sincerely,

COOK SCHUHMAN & GROSECLOSE, INC.

By 
Jo A. Kuchle

| | |
|--------------------------|------------|
| Senator Stedman | |
| Rec on: | 219 |
| Read, Copy | |
| Sender's e-mail address: | |
| SENATOR | |
| jkuchle@alaskajud.com | |
| MILES | |
| IAN | |
| DICK | |
| Note: | B, Fax 2/5 |



2/12/04

Tax Report

By Tom Herman

How You Can Lose By Winning a Suit

How much you owe Uncle Sam sometimes can depend on where you live. And sometimes you can get slapped with a hefty tax bill on money you didn't pocket. How so? The answer lies in a string of differing federal appeals-court decisions affecting people who have won awards or received settlements in cases involving charges of racial, sexual or age discrimination, wrongful job termination or other nonphysical personal-injury battles.

This long-simmering subject is back in the news again because of a recent ruling by the U.S. Appeals Court for the Second Circuit. The case involves David Raymond, a Vermont man who sued International Business Machines Corp. alleging wrongful termination. A jury awarded him nearly \$900,000 in the late 1990s. The law firm handling his case received about one-third as a contingency fee.

A federal district-court judge later said Mr. Raymond could exclude the contingency fee when calculating taxable income. But now the second circuit appeals court has overturned that decision. It said Mr. Raymond had to include the entire award in his taxable income — even the portion that went to his lawyers. James W. Runcie, a Vergennes, Vt., lawyer who handled the case, said he and his client "are likely to ask the Supreme Court to review the case."

Many people in such situations are out of luck because of the vagaries of the alternative minimum tax, which is hitting growing numbers of unsuspecting Americans. Under the AMT, certain miscellaneous itemized deductions such as legal fees aren't deductible. Another problem is known as the "2% haircut": You can only deduct the amount of certain miscellaneous deductions to the extent they exceed 2% of your adjusted gross income.

Numerous other federal appeals courts have issued similar rulings, forcing victims to pay large amounts of taxes on money they didn't actually get. But a few other federal appeals courts have decided that taxpayers can exclude those fees from gross income. Thus, your tax tab can depend on where you live.

It is even possible for someone to win a big court award and come out with a net loss after paying legal bills and taxes, says Nina Olson, the Internal Revenue Service National Taxpayer Advocate.

The Supreme Court hasn't weighed in, but there is a chance taxpayers could get some congressional relief.

Among lawmakers who favor speedy action is Senate Finance Committee Chairman Chuck Grassley, an Iowa Republican. "It remains a high priority for me that we end this terrible policy where individuals are subject basically to double taxation when they receive a settlement payment," Sen. Grassley said in an e-mail. "We passed legislation in the Senate last year to address this, and I hope we can get the bill to the president's desk this year."

The Raymond case and the split among appeals courts drew attention at a recent tax conference in Los Angeles. "This issue really struck me," says Ruth Madrigal, a lawyer at Irell & Manó LLP in Los Angeles. She points to "the complete lunacy of the vast difference in results depending on which state you reside in when the issue goes to court."

This issue has been discussed at length in tax publications such as Tax Notes, an influential weekly from Tax Analysts, based in Arlington, Va. The subject also was analyzed in the IRS National Taxpayer Advocate's report to Congress for fiscal 2002.

"Legislation is needed to resolve the split among the circuit courts of appeal regarding the taxation of attorney fees," the IRS National Taxpayer Advocate's report said. The report outlined several suggestions and recommended this one: include legal fees in your gross income but allow those fees to be deducted when calculating adjusted gross income, or AGI. That's known as an "above-the-line" deduction since it would appear on your return above the line for AGI.

Such a change "would effect uniform treatment" for all people who receive these awards and settlements, "irrespective of their place of residence," Ms. Olson's report concluded.



April 8, 2004

The Honorable Lesil McGuire, Chair
House Judiciary Committee
Alaska Capitol, Room 118
Juneau, AK 99801-1182

RE: SB 300 (Stedman) - Support

Dear Chair McGuire:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Judiciary Committee to support SB 300, authored by Senator Bert Stedman. We believe SB 300 is a significant effort to help Alaska citizens who win civil damages in a court case.

Currently an individual who wins a civil suit and is awarded damages must pay taxes on the damages, before his/her attorney fees are paid. In effect, someone who "wins" a lawsuit suffers a tax liability for money that will go to his/her attorney, not to the individual.

Since some AARP members fall into this category, eg., individuals who might win a lawsuit and damages based on age discrimination in employment, AARP believes they should not be responsible for taxes on income that will be going to their legal counsel. The lawyers also have to pay taxes on the income and, as Senator Stedman correctly points out, it creates a system of inequitable double taxation.

AARP urges an "AYE" vote on SB 300.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
3009 Northwood Street
Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

CC: Vice-Chair Anderson
Representative Holm
Representative Ogg
Representative Samuels
Representative Gara
Representative Gruenberg
Senator Stedman
Marie Darlin
Patrick Luby

Walsh Kelliher & Sharp

A Professional
Corporation



Certified Public
Accountants

Advisors
to Business



Post Office Box 73530

330 Barnette Street

Suite 101

Fairbanks, Alaska

99707-3530

Phone

907-456-2229

800-478-0629

Fax

907-456-1375

February 6, 2004

Senator Bert Stedman
Senate Judiciary Committee
State Capitol
Room 30
Juneau, AK 99801

Re: SB 300; Attorney Lien Amendment

Via fax (original in mail): 907-465-3922

Dear Senator Stedman,

I would like to thank you for giving this legislation a hearing. It has the potential to fix what I consider to be grievous miscarriages of justice. Although the proposed legislation is quite simple, the story behind the need for this is a bit more complicated. If you have this information from other sources, please just consider this a message from a citizen speaking in favor of the bill.

If you need to know more about the issue I am happy to be of service. First I would like to give you some background on the Federal income tax consequences of an award to the plaintiff of attorney fees and litigation costs.

Both Alaska and Oregon lie under the jurisdiction of the Ninth Circuit Court of Appeals and the decisions of the Ninth Circuit control the decisions of the United States Tax Court for cases of taxpayers residing in the Alaska and Oregon. I realize you undoubtedly know this but it becomes very relevant to this legislation.

The Ninth Circuit in *Coady vs. Commissioner*, 85 AFTR 2d 2000-2049. (213 F.3d 1187), 06/14/2000 looked at a Federal income tax case, the result of which turned on Alaska law. Nona Coady was an employee of the Alaska Housing Finance Corporation. She lost her job and later prevailed in employment litigation and won an award for back wages and benefits lost as a result of wrongful termination. The issue with respect to their tax return for the year involved whether the Coadys needed to include in income the portion of the award that went to their attorneys. The Ninth Circuit indicated that the plaintiff must include the attorney fees in income.

| Senator Stedman | |
|-----------------|---------------|
| Rec on: | 2/11 |
| Read | Copy |
| SENATOR | |
| MILES | |
| IAN | |
| DICK | |
| Note: | By Fax 2/6/04 |



Businesses that receive damage awards or other lawsuit awards must also include the gross amount in income, but businesses are allowed to deduct all of their legal costs against the award so that they only pay tax on the net proceeds.

If tax law provided that damages in the employment context were taxed only to the extent of net proceeds we would not have a problem and the desperate need for your assistance. Unfortunately, the tax law does not tax the net proceeds of non-business cases, at least in Ninth Circuit cases dealing with Alaska, but rather taxes the entire award to the plaintiff. A limited deduction for attorney fees and litigation costs is allowed for regular tax purposes and no deduction at all is allowed for purposes of the alternative minimum tax. At least one taxpayer has tried to claim, under a reimbursement theory, a direct deduction of legal expenses against the gross award and been rejected by the Ninth Circuit. See *Biehl v. Com*, 92 AFTR 2d 2003-7280, (CA9)12/12/2003.

The alternative minimum tax is a tax computation which parallels the regular tax computation in many respects. All taxpayers are required to compute their tax liability under both systems and pay the government under the computation which produces the highest tax. The courts have repeatedly struck down arguments that the alternative minimum tax is unconstitutional or does not apply on other grounds. See *Banaitis v. Com*, 92 AFTR 2d 2003-5840, 340 F3d1081 (CA9, 8/27/2003)

One important area in which these two systems differ is in the treatment of miscellaneous itemized deductions related to employee business expenses. These deductions, authorized under Internal Revenue Code Section 67, are deductible to as itemized deductions to the extent they exceed 2% of adjusted gross income.

For alternative minimum taxes purposes however, Internal Revenue Code Section 56(b)(1)(A)(i) provides that "No deduction shall be allowed for any miscellaneous itemized deduction."

This means that the payment of attorney fees provides no benefit for purposes of the alternative minimum tax. This can create horrific consequences to a successful plaintiff. We have had situations in our practice where a successful plaintiff, after paying attorney fees and taxes, had paid out more in attorney fees and taxes than they received in gross proceeds.

In addition, we have seen cases where public interest litigants and the disadvantaged have successfully sued to stop illegal behavior. The award often times consists of 90-95% legal fees with a small amount of damages. In these instances the income tax liability greatly exceeds the damages. In some instances the inclusion in income, of money they did not get to keep, ended up causing problems with government programs and scholarships which look at gross income for eligibility. It ends up costing victims in this area more than just the tax bill when they win.

In a good example of this, which is public knowledge, in August 2002, the New York Times reported that a female police officer who was the victim of "reprehensible" sexual

harassment received an award of \$300,000 as well as legal fees of almost \$1 million. According to the story this victim will end up paying all of her \$300,000 award, as well as almost \$100,000 more, to settle income taxes due on the gross award. The defendant surely must have enjoyed reading how the winner in court lost it all plus thousands more to the IRS. See *Spina v. Forest Preserve District of Cook County*, 207 F. Supp. 2nd 764 (2002).

For a published case laying this out see *Alexander v. Com* 77 AFTR 2d 96-301 (72 F3d 938) (Ca1 1995) in which the successful (or more appropriately termed, unsuccessful) litigant received an award of approximately \$250,000 out of which \$245,000 was paid in legal costs. The First Circuit upheld the Tax Court and the Internal Revenue Service in finding that this "successful" plaintiff owed over \$57,000 in taxes on his net award of approximately \$5,000 due to the alternative minimum tax disallowing the entire amount of attorney fees as a deduction.

If the plaintiff in a Alaskan case were to succeed, the Internal Revenue Service would have the backing of the Tax Court and the Ninth Circuit Court of Appeals in finding that the plaintiff would be taxable on the entire gross award. A limited deduction for attorney's fees and litigation costs paid would be available for regular tax purposes and no portion of the attorney's fees or litigation costs would be deductible for alternative tax purposes.

Some other circuit courts of appeal have held for the taxpayer in these types of cases but the majority of circuit courts have held for the government.

In spite of a conflict between the Ninth Circuit opinion and those of other circuits (see *Cotnam and Clarks*), the United States Supreme Court denied a petition for certiorari on April 16, 2001. This means that we will not have a "once-and-for-all" decision settling the matter for the entire country.

The Ninth Circuit eliminated any doubt about the steadfastness with which they held their opinion when they subsequently decided the issue several more times in other cases. *Sinyard v. Com.* [88 AFTR 2d 2001-6037, 268 F3d 759 (CA9, 9/25/2001)] and *Benci-Woodward v. Com.*, [86 AFTR 2d, 2000-5404, 219 F3d 942 (CA9, 7/18/2000)]

Now, (Finally!, Thank you for your patience if you are still reading this at this point) we get to the possible solution to the problem.

The Ninth Circuit found that these cases turned on local (state) law. If state law provided that the debt (attorney's fees) was a valid debt of the plaintiff then a payment of this debt by the defendant would result in income to the plaintiff. The court stated their reasoning, perhaps most succinctly, in the *Sinyard* case when they stated that "If A owes B a debt, and C pays the debt on A's behalf, it is elementary that C's payment is income to A as well as to B."

The Ninth Circuit, in reviewing the laws of Alaska (Coady), Arizona (Sinyard) and California (Benci-Woodward) held that the laws of the state(s) made the successful plaintiffs the owners of the entire award. The attorneys with whom the plaintiffs had contingent fee agreements were considered debtors of the plaintiffs.

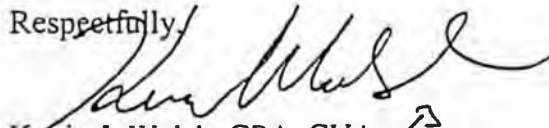
The importance of this distinction was borne out in *Banaitis v. Com.* 92 AFTR 2d 2003-5840, 340 F3d1081 (CA9, 8/27/2003) where the Ninth Circuit held that, under Oregon law, the attorneys in a successful plaintiff case were the lawful owners of their portion of the award. Therefore the payment of the plaintiff attorney by the defendant **did not** result in income to the plaintiff because the plaintiff did not owe the attorney a portion of the award. The plaintiff was considered to have dominion only over the gross award less the attorney fees and costs. The attorney, under Oregon law, had a sufficient bundle of rights to be deemed the owner of the attorney's portion of the award. Thus, the taxpayer in this Oregon case only paid tax on the net proceeds.

We know that much of Alaska law has been modeled on Oregon law. What we are proposing in this legislation is that Alaska law, in the area of attorney liens, be molded to match Oregon. We are not asking for any more than what Oregon law provides, in fact, we want exactly what Oregon has as law in this area. Since the Ninth Circuit has said that Oregon taxpayers are treated favorably because of the wording of their attorney lien law we hope that Alaskan taxpayers can also get favorable treatment if our law matches that of Oregon exactly.

Keep in mind that the attorney, in all cases, must also include the fees received in income. We are not proposing anything that would change the taxation of the attorney. We are trying to eliminate the double taxation of the same money.

I realize that the Supreme Court or Congress should settle this matter and that would really be my preference. Both the high court and Congress have been made aware of this issue and declined to deal with it. Therefore, I implore you to do for Alaskan taxpayers what the Federal government refuses to do for them. Please allow Alaskan taxpayers to pay income taxes only on what they get to keep and help eliminate the tax penalty for fixing injustices.

Respectfully,



Kevin J. Walsh, CPA, CVA ↗

SB

300

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAR 23 2004

SENATE FINANCE
COMMITTEE

DATE: 2/20/04

FURTHER:

DATE TURNED IN TO OFFICE: 23 March 2004

Finance Committee considered

SENATE BILL NO. 300

SB 300 ATTORNEY'S LIEN

"An Act relating to an attorney's lien, to court actions, and to other proceedings where attorneys are employed."

and recommends:

- be replaced with _____ CS SB 300 (FIN)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero. | FN# |
|------------|------|--------|--------|-------|-----|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|---------|--------|--------|------|-----|
| Law | 2/19/04 | | | ✓ | #3 |
| Court | 2/19/04 | | | ✓ | #2 |
| DNR | 2/19/04 | | | ✓ | #1 |
| | | | | | |
| | | | | | |

APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|---------|-------------|--------|-------|
| <i>Frank...</i> | ✓ | | | |
| <i>...</i> | ✓ | | | |
| <i>...</i> | | | ✓ | |
| <i>...</i> | ✓ | | | |
| <i>...</i> | ✓ | | | |
| COCHAIR: <i>...</i> | ✓ | | | |
| COCHAIR: <i>...</i> | ✓ | | | |

MAR 23 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 300
(S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to an attorney's lien ... and to RDU CIVIL
other proceedings where attorneys are employed." Component Commercial & Fair Business
Sponsor Senator Stedman
Requester Senale Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 34.35.430 by allowing an attorney's lien for fees and costs to supersede all other subsequent liens except tax liens.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division Administrative Services Date/Time 2/9/04 1:42 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/9/2004
Agency Department of Law

FISCAL NOTE

REPORTED OUT

MAR 23 2004

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 300
 (S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Attorney's Liens BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Stedman
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of SB 300.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/19/04 8:23 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/19/2004
 Agency Alaska Court System

MAR 23 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 300
(S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Attorney's Lien RDU: Resource Development
Component: Recorder's Office
Sponsor: Sen. Stedman
Requester: Sen JUD Component No. 423

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to DNR associated with implementation of this legislation.

Prepared by: Vicky Backus Phone 907-269-8882
Division: Recorder's Office Date/Time 2/19/04
Approved by: Thomas Irwin, Commissioner Date 2/19/04
Agency: Natural Resources