

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 457 Collection of Worthless Payment Instruments

SPONSOR(S): Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Magar

TIED BILLS: None **IDEN./SIM. BILLS:** SB 550

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Civil Justice Subcommittee | 10 Y, 2 N, As CS | Cary | Bond |
| 2) Business & Professional Regulation Subcommittee | 11 Y, 0 N, As CS | Collins | Luczynski |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Before the recipient of a worthless check, draft or order of payment may sue the maker, the recipient must send a demand letter giving the maker 30 days to pay the check plus the statutory fee. If unpaid after 30 days, the recipient may sue for 3 times the amount of the check plus fees, costs and attorney fees.

This bill provides the payee with the alternative to collect the bad check plus the statutory fee and the bank fees incurred without sending a demand letter. The demand letter would still be required before filing suit. The bill also updates the statute to incorporate debit card transactions and electronic fund transfers.

This bill does not appear to have a fiscal impact on state or local governments.

This bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

While the Florida Rules of Civil Procedure, as promulgated by the Florida Supreme Court, generally dictate the steps that litigants must follow in civil and criminal actions, the Legislature may pass substantive laws that a litigant must follow before getting into court. One such law requires a recipient (payee) of a check, draft, or order to send a demand letter and wait 30 days before filing suit against the maker of an instrument that is either refused by the drawee for lack of funds, credit or account, or which was made with the intent to defraud (hereinafter “bad check”).

The payee may also assess a service charge to the maker or drawer of the bad check.¹ The service charge is the greater of 5% of the face value of the bad check or \$25 for a bad check with a face value of \$50 or less, \$30 for a bad check with a face value greater than \$50 but not exceeding \$300, or \$40 for a bad check with a face value exceeding \$300.² The maker or drawer is also liable for interest and bank fees.³

Prior to filing a lawsuit, current law requires the payee to provide the maker or drawer an opportunity to cure. The payee must send the maker or drawer a demand of payment (hereinafter “demand letter”) by certified or registered mail or by first-class mail if the payee provides an affidavit of service. In order to avoid the suit, upon receipt of the demand letter the maker or drawer must, within 30 days, pay to the payee the full amount of the bad check and the service charge described above.⁴

If the maker or drawer does not tender the face value of the bad check plus the service charge to the payee within 30 days, the payee may file suit. The maker or drawer has another opportunity to avoid a judgment by tendering payment to the payee prior to the court hearing equal to the sum of the face value of the bad check plus the service charge described above, court costs, incurred bank fees, attorney fees and collection costs.⁵ If the suit goes to judgment, the court may award that sum plus 3 times the face value of the bad check.⁶

Effect of the Bill

The bill amends s. 68.065, F.S., to provide an alternative to allow recovery without the filing of a civil action. If payment is refused by the drawee or if the maker or drawer stops payment on the check with the intent to defraud, the payee may collect bank fees actually incurred in the transaction by the payee in addition to a service charge that is the greater of 5% of the face value of the bad check or \$25 for a bad check with a face value of \$50 or less, \$30 for a bad check with a face value greater than \$50 but not exceeding \$300, or \$40 for a bad check with a face value exceeding \$300.

The bill does not change the requirement in current law to send a demand letter in order to recover treble damages plus the service charge described above, court costs, incurred bank fees, attorney fees and collection costs.

The bill also updates the civil laws on bad checks by creating the definition of “payment instrument” and including in the definition a debit card order or electronic funds transfer.

¹ Section 68.065(2), F.S.

² Section 832.08(5), F.S.

³ Section 68.065(2), F.S.

⁴ Section 68.065(3), F.S.

⁵ Section 68.065(5), F.S.

⁶ Section 68.065(1), F.S.

B. SECTION DIRECTORY:

Section 1: amends s. 68.065, F.S., relating to actions to collect worthless checks, drafts, or orders of payment.

Section 2: provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a requirement to post conspicuous notice in lieu of mailed notice;
- Added a debit card order or electronic funds transfer to the list of financial instruments to which the civil bad check law applies; and
- Specified that the service charge for a bad check may be billed and collected without notice.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

At the March 20, 2013 meeting of the Business & Professional Regulation Subcommittee, one amendment was proposed and adopted. The bill was reported favorably as a Committee Substitute.

The amendment:

- Clarifies that a demand letter is required in order to bring a civil action; and
- Clarifies that a demand letter is not required when pursuing any out-of-court remedies.

The analysis is drafted to the Committee Substitute.