

STORAGE NAME: h0767s1.cp
DATE: March 24, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 767
RELATING TO: Violations involving checks
SPONSOR(S): Committee on Crime and Punishment and Representative Hill
STATUTE(S) AFFECTED: Sections 68.065 and 832.07, F.S.
COMPANION BILL(S): SB 1192 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 8 NAYS 0
- (2) FINANCIAL SERVICES
- (3)
- (4)
- (5)

I. SUMMARY:

Committee Substitute Allows Triple Damages for Stop Payments:

Section 68.065, F.S., provides for triple damages in a civil action to collect on a worthless check. However it does not currently provide for triple damages in a case were a person stops payment on a check with the intent to defraud. The committee substitute amends section 68.065, F.S., to allow the recovery of triple damages in those cases were a person stops payment on a check with the intent to defraud. Section 68.065, F.S., provides for triple damages in a civil action to collect on a worthless check.

Committee Substitute Deletes Race in Establishing Prima Facie Evidence of Identity:

Chapter 832, Florida Statutes, contains various provisions relating to worthless checks. Section 832.07, F.S., provides criteria for establishing prima facie evidence of intent and identity for any prosecution under chapter 832. Prima facie evidence is evidence which creates a permissive inference sufficient by itself to prove an element of an offense. The jury is free to reject the inference and it does not shift the state's burden of proof. Section 832.07(2), provides that where certain identifying information is noted at the time a person issues a check, prima facie evidence of the person's *identity* is established. The information required to establish prima facie evidence of identity includes the following:

- ▶ The person's driver's license or state identification number written on the check; § 832.07(2)(b)1., F.S. **OR**
- ▶ The person accepting the check must write on the check: the presenter's full name, residence address, home phone number, business phone number, place of employment, sex, date or birth, height and **race**. § 832.07(2)(b)2., F.S.

The committee substitute deletes race from the list of identifying information required to establish prima facie evidence of identity in a worthless check prosecution. If the committee substitute becomes a law, a person accepting a check would not be required to note the race of the check issuer on the back of a check. The state would be able to establish prima

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facie evidence of identity with the other identifying information required by section 832.07(2)(b), F.S.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Worthless Checks - Civil Damages:

Section 68.065, F.S., provides for triple damages in a civil action to collect on a worthless check. The current version of section 68.065, F.S., provides for damages equal to triple the amount of a worthless check when a check is returned for insufficient funds and the check issuer does not pay within 30 days of a written demand to pay. The check issuer is also liable for any court cost and reasonable attorney fees.

Section 68.065, F.S., does not provide for triple damages in a case were a person stops payment on a check with the intent to defraud. Medina v. Lamonica, 492 So. 2d 809 (3d DCA 1986). Such an act is a criminal offense which is punishable as a third degree felony if the check was over \$150 and punishable as a second degree misdemeanor if under \$150. § 832.041(1), F.S.

2. Worthless Checks - Prosecutions:

Chapter 832, Florida Statutes, contains various provisions relating to worthless checks. For example, section 832.041, makes it unlawful to issue a check with the intent to defraud. Section 832.05, makes it unlawful to issue a check when the person knows he or she does not have the sufficient funds on deposit to pay the check amount. The penalty for these crimes varies depending on whether the amount of the check exceeds \$150. For checks in excess of \$150 the offense is punishable as a third degree felony; for a check below \$150 the offense is punishable as a misdemeanor.

Section 832.07, F.S., provides criteria for establishing prima facie evidence of intent and identity for any prosecution under chapter 832. Prima facie evidence is evidence which creates a permissive inference sufficient by itself to prove an element of an offense. The jury is free to reject the inference and it does not shift the state's burden of proof. State v. Rolle, 560 So. 2d 1154 (Fla. 1990). In practical terms, when the prosecution has established a prima facie showing on each element of an offense, the defense will not succeed on a motion to dismiss or on a motion for judgment of acquittal.

Section 832.07(1), provides that a person's failure to pay on a worthless check within 7 days after receiving notice that the check bounced, constitutes prima facie evidence of *intent* to defraud or knowledge of insufficient funds.

Section 832.07(2), provides that where certain identifying information is noted at the time a person issues a check, prima facie evidence of the person's *identity* is established. The information also establishes prima facie evidence that the person is authorized to issue the check. The information required to establish prima facie evidence of identity includes the following:

- ▶ The person's driver's license or state identification number written on the check; § 832.07(2)(b)1., F.S. **OR**

- ▶ The person accepting the check must write on the check: the presenter's full name, residence address, home phone number, business phone number, place of employment, sex, date or birth, height and **race**. § 832.07(2)(b)2., F.S.

Other provisions of section 832.07(2), provide for establishing prima facie evidence of identity in specialized cases such as checks delivered by mail. Only section 832.07(2)(b)2., contains a requirement that a person's race be noted on the check.

B. EFFECT OF PROPOSED CHANGES:

1. Worthless Checks - Civil Damages:

The committee substitute amends section 68.065, F.S., to allow the recovery of triple damages in those cases where a person stops payment on a check with the intent to defraud.

2. Worthless Checks - Prosecutions:

The committee substitute deletes race from the list of identifying information required to establish prima facie evidence of identity in a worthless check prosecution. If the committee substitute becomes a law, a person accepting a check would not be required to note the race of the check issuer on the back of a check. The state would be able to establish prima facie evidence of identity with the other identifying information required by section 832.07(2)(b), F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

1. Section One:

Amends section 68.065, F.S., to allow the recovery of triple damages in those cases where a person stops payment on a check with the intent to defraud.

2. Section Two:

Amends section 832.07, F.S., by deleting race from the list of identifying information required to establish prima facie evidence of identity in a worthless check prosecution.

3. Section Three:

Provides that this act shall take effect on October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute does not impose a mandate on local governments and thus the mandates provision is inapplicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

- ▶ The committee substitute deletes race from the list of identifying information required to establish prima facie evidence of identity in a worthless check prosecution. However, the committee substitute does not prohibit a merchant from noting a check issuer's race if the merchant chooses to do so.
- ▶ Last session, the House passed a bill identical to section two of the committee substitute (deletion of race from prima facie evidence of identity). However, that bill died in the Senate Criminal Justice Committee without getting a hearing.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in one way. The original bill contained only the deletion of race from the list of identifying information required to establish prima facie evidence of identity in a worthless check prosecution. The committee substitute amends section 68.065, F.S., to allow the recovery of triple damages in those cases where a person stops payment on a check with the intent to defraud.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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