

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 5, 1998 Revised: \_\_\_\_\_

Subject: Bad Check Charges

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Harkins</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill would change the fee collection schedule for service fees imposed by the governing bodies of municipalities for dishonored checks.

The bill would provide for damages of triple the amount owed, court costs, and attorney fees in a civil action to collect payment from a check writer who stops payment on a check with the intent to defraud and who fails to pay the amount of the check upon written demand of the payee.

The bill deletes race as a factor to establish prima facie evidence of identity for purposes of a worthless check prosecution.

This bill amends the following sections of the Florida Statutes: 68.065, 166.251, and 832.07.

**II. Present Situation:**

**A. Civil Action for Collection**

Presently, a civil action may be brought to collect a check, draft, or order of payment when payment was refused by the drawee because of lack of funds, credit, or an account, and where the maker or drawer fails to pay the amount owing, in cash, to the payee within 30 days following a written demand from the payee. s. 68.065(1), F.S. In such an action, should the payee prevail, the maker or drawer shall be liable to the payee, in addition to the amount owing on the check, draft, or order, for damages triple the amount owing, court costs, and reasonable attorney's fees incurred by the payee in the civil action. *Id.*

## **B. Municipality Fee for Collection**

Florida law also authorizes the governing body of a municipality to adopt a service fee for the collection of a dishonored check, draft, or other order for the payment of money to a municipal official or agency. s. 166.251, F.S. The fee is \$20 or 5 percent of the face amount of the dishonored check, draft, or other order, whichever amount is greater. *Id.* This fee is in addition to all other penalties imposed by law. The proceeds from this fee, if collected, shall be retained by the collector of the fee. *Id.*

## **C. Criminal Prosecution for Worthless Checks**

Under current Florida law, criminal prosecution for worthless checks is governed under ch. 832, F.S. It is unlawful to issue a check with the intent to defraud and stop payment in furtherance of such intent to defraud. s. 832.041, F.S. Further, it is unlawful to issue a check when the person knows he or she does not have sufficient funds on deposit to pay the check amount. s. 832.05, F.S. A person's failure to pay on a worthless check within 7 days after receiving written notice that the check bounced, constitutes prima facie evidence of *intent* to defraud or knowledge of insufficient funds. s. 832.07(1), F.S.

The penalty for these crimes varies depending on whether the amount of the check exceeds \$150. For checks in excess of \$150, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 774.084, F.S. For a check below \$150, the offender is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Current law provides that if certain identifying information is noted on the check at the time a person issues it, prima facie evidence of the person's identity is established. s. 832.07(2), F.S. 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; 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 of birth, height, and *race*.
- s. 832.07(2)(b), F.S.

The information also establishes prima facie evidence that the person is authorized to draw upon the named account. s. 832.07(2), F.S. Current law also provides for establishing prima facie evidence of identity in specialized cases such as checks delivered by mail. *Id.*

The Supreme Court of Florida has interpreted the words "shall be prima facie evidence" as creating a permissive inference, not an unconstitutional presumption. *State v. Rolle*, 560 So.2d 1154, 1157 (Fla. 1990). In an earlier opinion, the Court explained that the purpose of laws using such language is not to relieve the state of the burden of proof, but to allow the establishment of a prima facie case. *State v. Kahler*, 232 So.2d 166, 168 (Fla. 1970). A "prima facie case" consists of sufficient evidence to get the case to the jury.

### **III. Effect of Proposed Changes:**

#### **A. Civil Action for Collection**

The bill will amend s. 68.065(1), F.S., by extending the current scope of the civil action authorized under this subsection. Specifically, a payee will be allowed to institute a civil action to collect the amount of a check, draft, or order of payment, from a maker or drawer who stops payment on a check, draft, or order to the payee, with intent to defraud the payee, and who fails to pay the amount owed the payee, in cash, within 30 days following a written demand from the payee. Additionally, the maker or drawer shall be liable to the payee for damages of triple the amount owed, court costs, and reasonable attorney fees incurred by the payee in the civil action.

#### **B. Municipality Fee for Collection**

The bill will amend s. 166.251, F.S., which currently authorizes the governing body of a municipality to adopt a service fee for the collection of a dishonored check, draft, or order of payment to a municipal official or agency. Currently, the fee authorized by law is \$20 or 5 percent of the face amount of the dishonored check, draft, or order, whichever is greater.

The bill will impose a different fee schedule. The service fee could not exceed the service fees authorized under s. 832.085(5), F.S., (relating to fees collected by a state attorney for dishonored checks, draft, or orders of payment, for the purpose of funding a bad check diversion program), or 5 percent of the face amount of the dishonored check, draft, or order, whichever is greater. The fee schedule specified in s. 832.08(5), F.S., is: \$25, if the face value does not exceed \$50; \$30, if the face value is more than \$50, but does not exceed \$300; \$40, if the face value is more than \$300.

#### **C. Criminal Prosecution for Worthless Checks**

The bill will amend s. 832.07(2), F.S., to delete race from the list of identifying information which a person accepting a check must require from a person presenting a check in order for the check to constitute prima facie evidence of the identity of person presenting the check. A person accepting a check must still obtain the presenter's full name, residence address, home phone number, business phone number, place of employment, sex, date of birth and height.

The bill takes effect October 1, 1998.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

Under the bill, the governing body of a municipality could potentially collect a greater amount from a service fee imposed on a dishonored check, draft, or order of payment, than the body would collect under current law. If 5 percent of the value of the check, draft, or order is more than the amount the governing body would receive under s. 832.08, F.S., the governing body receives more money. Under s. 832.08, F.S., a governing body may receive \$25 for checks of \$50 or less, \$30 for checks greater than \$50, but less than \$300, and \$40 for checks greater than \$300. Therefore, if a check is worth \$801, the governing body receives slightly more than the \$40 provided under s. 832.08., F.S. If the check were worth \$1,600, the governing body would receive \$80, e.g., \$40 more than it could have obtained under s. 832.08, F.S.

**B. Private Sector Impact:**

Persons and entities in the private sector who write bad checks to the governing bodies of municipalities are potentially subject to a higher service fee for dishonored checks.

Persons and entities may be subject to a civil action for the amount owing on the dishonored check, damages triple to the amount owing, court costs, and reasonable attorney fees, if the check writer stopped payment on the check with intent to defraud and failed to repay the amount owing on the check after written demand from the payee.

**C. Government Sector Impact:**

See Tax/Fee Issues.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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