

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 550

INTRODUCER: Banking and Insurance Committee and Senator Simpson

SUBJECT: Worthless Checks, Drafts, or Orders of Payment

DATE: April 3, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Fav/CS
2.			CM	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 550 expands civil actions to collect three times the face value of a refused check, draft, or order of payment, to include debit card orders and electronic funds transfers (“payment instrument”). As under current law, the payee must mail written notice to the maker of the payment instrument and provide the maker 30-days to cure the payment instrument by paying:

- The face value of the payment instrument; and
- A service fee based on the face value of the payment instrument.

The bill also creates an alternative to a civil action that authorizes the payee to collect from the maker of a payment instrument that has been refused the following:

- The face value of the payment instrument;
- A service fee based on the face value of the payment instrument; and
- Bank fees incurred by the payee in the course of tendering payment.

This bill substantially amends the following section of the Florida Statutes: 68.065

II. Present Situation:

Civil Actions to Collect Worthless Checks, Drafts, or Orders of Payment

Section 68.065, F.S., governs civil actions brought for the purpose of collecting a check, draft, or order of payment (hereinafter “bad check”) refused due to a lack of funds, credit, or an account, or where the maker of the check stops payment with intent to defraud. The statute details a two-stage process for civil recovery. In step one, the payee sends a written demand notice¹ to the maker of the bad check detailing that the bad check has been dishonored, the statutory service fee² also must be tendered to the payee, and that if the face amount of the check plus the statutory service fee is not paid within 30 days the maker of the bad check is subject to a civil action for three times the value of the check. The matter is resolved and the payee does not have a civil cause of action under the statute if the maker of the bad check tenders within 30 days of receiving the written notice:

- The face amount of the bad check; and
- The statutory service fee, which is the greater of:
 - 5 percent the amount of the bad check; or
 - \$25 if the bad check amount is \$50 or less.
 - \$30 if the bad check amount is greater than \$50 but less than or equal to \$300.
 - \$40 if the bad check amount is greater than \$300.³

Step two of the civil recovery process is available if the maker of the bad check fails to pay the face value of the check and the service fee within 30 days of receiving the written demand letter. The payee may now file a civil action seeking recovery of three times the face value of the check plus court costs, reasonable attorney fees, and any bank fees incurred by the payee. Once the action commences, the maker of the bad check may cure prior to the hearing by paying the face value of the check and statutory service charge, plus the payee’s court costs, attorney’s fees, and incurred bank fees. The court or jury may waive all or part of the statutory damages if the maker failed to satisfy the dishonored check due to economic hardship.

III. Effect of Proposed Changes:

Section 1 amends s. 68.065, F.S., which authorizes civil actions to collect three times the face value of a refused check, draft, or order of payment, to include debit card orders and electronic funds transfers. These various forms of payment are defined by the bill as a “payment instrument.” As under current law, the payee must mail written notice of the payee’s potential liability, detail the amount owed, and provide the maker 30-days to cure the bad check by paying:

- The face value of the payment instrument; and
- A service fee based on the face value of the payment instrument.

¹ The written demand must be in a form contained in s. 68.065(3), F.S., and 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.

² The payee service charge is limited by s. 68.065(2), F.S., to the greater of a range between \$25 to \$40, based on the face value of the bad check, or 5 percent of the bad check’s face value.

³ The service fee of 5 percent will exceed the \$40 service fee when the amount of the bad check exceeds \$800.

- 5 percent the amount of the payment instrument; or
- \$25 if the payment instrument amount is \$50 or less.
- \$30 if the payment instrument amount is greater than \$50 but less than or equal to \$300.
- \$40 if the payment instrument amount is greater than \$300.

The CS also creates an alternative to a civil action that authorizes the payee to collect from the maker of a payment instrument that has been refused the following:

- The face value of the payment instrument;
- A service fee which is the greater of:
 - 5 percent the amount of the payment instrument; or
 - \$25 if the payment amount is \$50 or less.
 - \$30 if the payment instrument amount is greater than \$50 but less than or equal to \$300.
 - \$40 if the payment instrument amount is greater than \$300.; and
- Bank fees incurred by the payee in the course of tendering payment.

The alternative collection process created by the bill does not prevent the payee from bringing a civil action to collect three times the face value of the payment instrument. To do, however, the payee will still need to provide written notice to the maker of the denied payment instrument and allow the maker 30 days to cure by paying the face value of the payment instrument and a statutorily defined service fee.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The makers of payment instruments that are denied will be subject to collection activity that seeks the payment of bank fees incurred by the payee, plus the face value of the

instrument and a service fee defined by statute. Under current law, the maker of a denied bad check may avoid liability for bank fees by tendering the face value of the check and the statutorily defined service fee within 30 days of receiving written notice.

Payees will incur fewer costs and likely obtain greater recovery in collection activity under s. 68.065, F.S. Payees will have statutory authorization to engage in collection activity without having to make a written demand via return-receipt mail or by executing an affidavit of service. Payees will also receive the bank fees they incur in addition to a service charge. Bank fees charged to a payee who attempts to present a payment instrument .

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

The statute may allow payees to continue collection activities to collect bank fees even if the maker of a denied payment instrument tenders the face value of the instrument and the statutory service fee as required by statute within 30 days of receiving written notice. Though tendering those monies prevents the payee to bring a civil action to collect on the denied payment instrument, subsection (2) of the CS says the payee has the right to collect bank fees without bringing a civil action. Thus, the payee could continue to attempt to collect those bank fees, but would be unable to bring a civil action to enforce collection.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 2, 2013:

The CS strikes the entirety of the bill as filed, which authorized notice to bring a civil action to collect three times the face value of a bad check by posting a notice of potential liability at the point of sale or printing it on an invoice sent before payment for goods or services. Instead, the CS expands civil actions to collect three times the face value of a refused check, draft, or order of payment, to include debit card orders and electronic funds transfers (“payment instrument”). The CS also creates an alternative to a civil action that authorizes the payee to collect from the maker of a payment instrument that has been refused the face value of the payment instrument, a service fee based on the face value of the payment instrument, and Bank fees incurred by the payee in the course of tendering payment.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
