

**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: SB 550

INTRODUCER: Senator Simpson

SUBJECT: Worthless Checks, Drafts, or Orders of Payment

DATE: February 27, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Pre-meeting</b>
2.			CM	
3.			JU	
4.				
5.				
6.				

**I. Summary:**

SB 550 amends the means by which the payee of a check, draft, or order of payment that was refused (hereinafter “bad check”) may provide notice to the maker or drawer (hereinafter “maker”) of the bad check prior to bringing a civil action seeking damages of 3 times the face value of the bad check. The bill allows notice to be provided by the payee posting at the point of sale or printing on an invoice sent before payment for goods or services the following: “If your check or debit card transaction is returned by your bank for insufficient funds, you authorize the collection of the amount of the check, as well as a return fee provided in section 832.08(5), Florida Statutes.” The bill allows the payee to obtain the full recovery currently authorized under the statute – damages of three times the face value of the check, all bank fees incurred, court costs and attorney fees – without delivering the currently required written demand to the maker or drawer of the bad check and a 30-day period to cure by tendering the face value of the check plus the statutory service fee.

The effective date is July 1, 2013.

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 notice<sup>1</sup> to the maker of the bad check detailing that the bad check has been dishonored, the statutory service fee<sup>2</sup> 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. If the maker of the bad check tenders the face amount of the check and the statutory service fee within 30 days of receiving notice, the matter is resolved and the payee does not have a civil cause of action under the statute.

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., to allow the payee to bring a civil action seeking recovery of a bad check if the payee posts at the point of sale or prints on an invoice sent before payment for goods or services the following notice: "If your check or debit card transaction is returned by your bank for insufficient funds, you authorize the collection of the amount of the check, as well as a return fee provided in section 832.08(5), Florida Statutes." The bill allows the payee to obtain recovery of the amount owing without delivering a written demand to the maker or drawer of the bad check and allowing a 30 day period to cure by tendering the face value of the check plus the statutory 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.

<sup>1</sup> 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.

<sup>2</sup> 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.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Consumers who pass bad checks will be subject to full recovery under s. 68.065, F.S., damages of three times the face value of the check, all bank fees incurred, court costs and attorney fees – without being afforded a 30-day period to cure by tendering the face value of the check plus the statutory service fee. Payees will incur less costs and like obtain greater recovery in actions under s. 68.065, F.S., without having to make a written demand and providing the maker of the bad check an opportunity to cure.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill has a conflict, s. 68.065(3), F.S., as amended by the bill will allow “recovery under this section” if the payee posts a required notice at the point of sale or includes the required notice on an invoice instead of a written demand. However, subsection (1) states that recovery in a civil action under this section is three times the amount owed for the bad check if the maker does not pay the amount owing within 30 days of receiving a written demand letter.

**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.)

None.

**B. Amendments:**

None.