

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 Commerce and Tourism

BILL: CS/SB 550

INTRODUCER: Banking and Insurance Committee and Senator Simpson

SUBJECT: Worthless Checks, Drafts, or Orders of Payment

DATE: April 12, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

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”).

Under current law, before filing a civil action, 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 creates an alternative to the current method to collect on payment instruments. The payee is authorized to collect the following 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.

This bill substantially amends s. 68.065, F.S.

II. Present Situation:

Civil Actions to Collect Worthless Check, 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 the initial stage, the payee must send a written demand notice¹ to the maker of the bad check advising that the bad check has been dishonored and requesting the face value of the check and the statutory service fee² that must be tendered to the payee. The notice must also state 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 may be subject to a civil action for three times the value of the check plus court costs, reasonable fees, and any bank fees incurred by the payee. The matter is deemed resolved and the payee does not have a civil cause of action, if the maker of the bad check pays:

- The face amount of the bad check; and
- The statutory service fee, which is the greater of:
 - 5 percent of 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

If the maker of the check fails to make payment as indicated above within 30 days of receiving the written demand letter, the payee may 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 second stage of 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 of the bill amends s. 68.065, F.S., to define the term “payment instruments” to include debit card transactions and electronic funds transfers.

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.

The bill also provides an alternative collection process that allows a payee⁴ to collect on payment instruments without having to file a civil action. Specifically, if the payment is refused or the maker has stopped payment on the payment instrument with intent to defraud, the payee may collect:

- Bank fees actually incurred by the payee in the course of tendering payment; and
- A service charge which is the greater of:
 - 5 percent of 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.

The alternative collection process does not prevent the payee from bringing a civil action to collect three times the face value of the payment instrument, plus costs, attorney fees, and bank fees. To do so, however, the payee will need to provide written notice to the maker of the payment instrument and allow the maker 30 days to cure by paying the face value of the payment instrument and the 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

⁴ Payee also includes state and local agencies permitted to prosecute worthless checks under ch. 832, F.S.

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, as provided under current law.

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 from bringing a civil action to collect on the denied payment instrument, s.68.065(2), F.S., created in the bill, states 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.

Section 68.065(2), created in the bill, does not specifically provide that the bank fees and services fees that the payee may collect is in addition to the amount owing upon the dishonored payment instrument.

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.
