

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: November 24, 1997 Revised: _____

Subject: Violations Involving Checks

	<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>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

SB 212 would change the fee collection schedule for service fees imposed by the governing bodies of municipalities for dishonored checks.

SB 212 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 intent to defraud and who fails to pay the amount of the check upon written demand of the payee.

SB 212 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:

Section 68.065(1), F.S., provides that in a civil action to collect a check, draft, or order of payment, the payment of which 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, 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 fees incurred by the payee in the civil action.

Section 166.251, F.S., 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. The fee is \$20 or 5 percent of the face amount of the dishonored check, draft, or other order, whichever amount is greater. 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.

Chapter 832, Florida Statutes, contains various provisions relating to worthless checks. For example, s. 832.041, F.S., makes it unlawful to issue a check with the intent to defraud and stop payment in furtherance of such intent to defraud. Section 832.05, F.S., 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, F.S.

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.

Section 832.07(1), F.S., 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), F.S., 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 draw upon the named account. 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, s. 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 of birth, height, and **race**, s. 832.07(2)(b)2., F.S.

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

Section 832.08(5), F.S., provides that, for the purpose of funding a bad check diversion program set up by a state attorney, the state attorney may collect a fee on each dishonored check that is

collected through the state attorney's office, whether it is collected through prosecution or through the diversion program. The amount of the fee for each check shall not exceed: \$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.

III. Effect of Proposed Changes:

SB 212 would amend s. 68.065(1), F.S., to extend the current scope of the civil action authorized under this subsection, so that a payee may 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.

SB 212 would 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 would 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.

SB 212 would amend s. 832.07(2), F.S., to delete race from the list of identifying information required to establish prima facie evidence of identity in a worthless check prosecution. The state would have to establish prima facie evidence of identity with other identifying information as specified in s. 832.07(2)(b), F.S.

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 would 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 the check, draft, or order has a face value of less than \$801.

B. Private Sector Impact:

The only discernable private sector impact would be on a bad check writer who may be subject to a greater service fee imposed by the governing body of a municipality on the writer's dishonored check, and who 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.