

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1509 w/CS Worthless Checks

**SPONSOR(S):** Rep. Hogan

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 738

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 0 N w/CS	Havlicak	Havlicak
2) Commerce	15 Y, 1 N	Cutchins	Whitfield
3) Appropriations			
4)			
5)			

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### SUMMARY ANALYSIS

Florida law provides a mechanism for collecting on bad checks. Currently, written notice, in the form of a demand letter, must be sent to the maker of the check by means of certified or registered mail evidenced by a return receipt. After notice is sent, the maker is given 30 days from receipt of the notice to pay the amount owed on the check and certain service charges. This notice and 30 day time period is required before a payee can bring a civil action to collect on the worthless check.

This bill allows for the written demand notice to be made by first class mail, evidenced by an affidavit of service by mail. The bill also clarifies that all service done by mail (certified, registered or first class mail) may be made to the address on the check or the address given by the maker at the time the instrument was issued, or to the maker's last known address.

This bill does not appear to have any fiscal impact on state or local governments.

The bill has an effective date of July 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1509c.com.doc

**DATE:** April 7, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Civil Actions to Collect on Worthless Checks

Section 68.065, F.S., establishes procedures one must follow in order to collect on worthless checks, drafts, or orders of payment. If a check is returned for insufficient funds, the payee may bring a civil action against the maker of the check. However, s. 68.065, F.S., requires the payee to make a written demand on the maker prior to such action. The demand must be sent by certified or registered mail, evidenced by a return receipt.<sup>1</sup> The current United States Postal Service rates for certified and registered mail are \$2.30 and \$7.50 respectively, and an additional \$1.75 for the return receipt fee.<sup>2</sup> If the maker of the check fails to pay the amount owing on the worthless check within 30 days of receiving the notice, the payee may then file a lawsuit.<sup>3</sup>

If the payee prevails in the lawsuit, in addition to the amount of the check, the payee may also recover damages three times the value of the worthless check (but in no case less than \$50), attorney's fees, and costs. However, a court or jury may waive all or part of the statutory costs if they find the maker's failure to pay the amount owing on the worthless check was due to economic hardship.<sup>4</sup>

##### Criminal Actions for Worthless Checks

Florida law also permits state attorneys to prosecute individuals for passing worthless checks.<sup>5</sup> Before a holder of a worthless check may turn the matter over to a state attorney for prosecution, the holder must serve written notice demanding payment and service charge to the maker of the check by way of certified or registered mail, evidenced by a return receipt.<sup>6</sup> The notice is deemed sufficient regardless of whether the notice is returned undeliverable or not.<sup>7</sup>

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<sup>1</sup> A Florida court has interpreted this notice provision in s. 68.065, F.S., to not require the payee to have a signed postal receipt from the maker to constitute valid notice under this statute. See *L&F Partners, LTD., v. Miceli*, 561 So.2d 1227, 1229 (Fla. 2<sup>d</sup> DCA 1990) ("It is an unreasonable interpretation of the statute to prevent a person from prevailing on a claim brought pursuant to section 68.065 because of the other person's refusal to claim the notice.")

<sup>2</sup> For United States Postal Service rates, see their website at <http://www.usps.com/ratecase/special.htm>.

<sup>3</sup> Section 772.11, F.S., provides for a civil action to collect on criminal offenses of theft and dealing in stolen property. Before a civil lawsuit can be brought in that type of case, the person claiming injury must make a written demand for \$200 or the treble damage amount of the person liable for the damages. However, the statute contains no specific requirements on how the written demand must be made.

<sup>4</sup> See s. 68.065, F.S.

<sup>5</sup> See *generally* ch. 832, F.S.

<sup>6</sup> See s. 832.07(1)(a), F.S.

<sup>7</sup> Under s. 832.07(1)(b), F.S., intent to defraud is presumed and written notice is not required in a case where a check is drawn on a bank in which the maker has no account or a closed account.

**Proposed Changes:** This bill changes the notification requirements placed on a payee who is attempting to collect on a worthless check before filing a civil action to collect. Specifically, the manner by which a payee may serve notice of written demand is expanded to include service through the first class mail, evidenced by an affidavit of service by mail.

The bill clarifies that the notice requirements of s. 68.065, F.S., may be mailed to either:

- the address on the check;
- the address given by the maker at the time the instrument was issued; or
- the maker's last known address.

C. SECTION DIRECTORY:

Section 1 amends s. 68.065, F.S., relating to actions to collect worthless checks, drafts, or orders of payment.

Section 2 provides an effective date of July 1, 2003.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce the cost on the private sector of meeting the presuit notice requirement of s. 68.065(3), F.S. Currently, each written demand letter under this statute costs a minimum of \$4.05. By permitting notice to be done through first class mail, that expense would be reduced to \$0.37.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring expenditure of funds.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

This bill, as drafted, may be ambiguous as to when the 30 day notice period begins to run. Currently, it appears from the form notice in s. 68.065(3), F.S., that the 30 day period does not begin to run until the maker of the worthless check receives the notice. This bill indicates that notice is conclusive 3 days after the affidavit of service of mailing is executed. If the notice gets to the maker on the third day after the payee executed the affidavit, there would be no ambiguity, and the 30 day period would begin at that time. However, should the regular mail take more or less than 3 days to get the written demand letter to the maker, there could be some uncertainty as to when the 30 day period begins.

This concern was addressed with amendment 2 adopted in Judiciary Committee on March 26, 2003, by removing the language that makes notice conclusive 3 days after the affidavit is executed.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Two amendments were adopted in the House Judiciary Committee on March 26, 2003, after which the bill, as amended, was reported favorably. The amendments made the following changes:

- Amendment 1: removed the reference to “regular mail” and replaced it with “first class mail” and change “affidavit of service of mailing” to “affidavit of service by mail.”
- Amendment 2: removed “notice is conclusive 3 days after the affidavit is executed.”