1989

Session Law 89-303

Florida Senate & House of Representatives

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H 483  GENERAL BILL/2ND ENG by Cosgrove; Valdes (Compare H 390, S 783, S 863, CS/1ST ENG/S 1033)

Worthless Checks/Theft/Penalties: provides for minimum damages recovery for persons injured by specified theft offenses; provides procedure for written demand & written release; increases service charge re worthless checks & uttering worthless checks & provides for rights of subsequent parties in interest; increases service fee re dishonored checks issued to counties & municipalities; provides applicability, etc. Amends 772.11, 88.065, 832.07, 125.0105, 166.251; creates 832.05(9). Effective Date: 07/05/89 except as otherwise provided.

03/02/89  HOUSE  Prefiled
03/09/89  HOUSE  Referred to Commerce; Appropriations
03/16/89  HOUSE  Subreferred to Subcommittee on Banking and Commerce
04/04/89  HOUSE  Introduced, referred to Commerce; Appropriations
          -HJ 52; Subreferred to Subcommittee on Banking and Commerce; On subcommittee agenda—Commerce, 04/05/89, 10:15 am, 24-HOB
04/05/89  HOUSE  Subcommittee Recommendation: Favorable
04/10/89  HOUSE  On Committee agenda—Commerce, 04/12/89, 3:30 pm, 21-HOB
04/12/89  HOUSE  Preliminary Committee Action by Commerce: Favorable
04/13/89  HOUSE  Comm. Report: Favorable by Commerce—HJ 225; Now in
          Appropriations—HJ 225
04/24/89  HOUSE  Subreferred to Subcommittee on Criminal Justice
05/06/89  HOUSE  On Committee agenda—Approprations, 05/10/89, 8:00
          am, 21-HOB
05/10/89  HOUSE  Preliminary Committee Action by Appropriations: Favorable
05/11/89  HOUSE  Comm. Report: Favorable by Appropriations, placed on
          Calendar—HJ 490
05/18/89  HOUSE  Read second time; Amendments adopted —HJ 593
05/23/89  HOUSE  Read third time; Passed as amended; YEAS 111 NAYS 4
          —HJ 604
05/24/89  SENATE  In Messages
06/25/89  SENATE  Received —SJ 459; Substituted for SB 783; Passed;
          YEAS 28 NAYS 3—SJ 468; Motion to reconsider over under
          Rule—SJ 467; Reconsidered; Passed as amended; YEAS 34
          NAYS 5—SJ 469
06/25/89  HOUSE  In Messages
06/29/89  HOUSE  Amendment to Senate amendment adopted; Concurred in
          Senate amendment as amended; Passed as further amended;
          YEAS 113 NAYS 0 —HJ 789
05/29/89  SENATE  In Messages
06/30/89  SENATE  Concurred; Passed as amended; YEAS 35 NAYS 0 —SJ 570
06/30/89  HOUSE  Ordered engrossed, then enrolled
07/05/89  House  Signed by Officers and presented to Governor
07/05/89  SENATE  Approved by Governor; Chapter No. 99-303

NOTES: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
I. SUMMARY:

House Bill 483 increases from $10 to $15 the service charge relating to the collection of worthless checks in criminal and civil proceedings as well as by counties and municipalities. The bill provides for the rights of subsequent holders in civil and criminal proceedings. Additionally, the bill provides for a person who is injured by a violation of ss.812.012 - 812.037, F.S., to have a cause of action for a minimum of $200 or three times the actual damages sustained.

A. PRESENT SITUATION:

Several sections of the Florida Statutes address the issue of worthless or dishonored check, drafts, and orders of payment.

Section 673.507(2), F.S., of the Uniform Commercial Code, provides that the holder of a dishonored check has an immediate right or recourse against the drawers and endorsers, subject to a notice of dishonor as described in s. 673.508, F.S.

Section 68.065, F.S., provides that in a civil action brought to collect payment of a worthless check, draft, or order of payment, the prevailing party may recover reasonable attorney fees and costs of collection from the nonprevailing party. The payee is given the right to charge the maker or drawer of the check, draft, or order of payment a service charge not to exceed $10 or 5 percent of the face amount of the instrument, whichever is greater.
Chapter 832, F.S., Issuing Worthless Checks and Drafts, primarily regulates criminal liability for the issuing of dishonored checks and drafts. Section 832.07, F.S., governs prima facie evidence of intent to defraud or knowledge of insufficient funds. It provides that failure to pay the holder of a worthless check the amount due, together with a service charge not to exceed $10 or 5 percent of the face amount of the check, whichever is greater, within 7 days after receiving written notice that such check, draft, or order has not been paid constitutes evidence of intent to defraud or knowledge of insufficient funds.

Section 125.0105, F.S., permits the governing body of a county to adopt a service fee of $10 or 5 percent of the face amount of the check, draft, or order, whichever is greater. The maximum amount which may be charged as a service fee is $25.

Section 166.251, F.S., authorizes the governing body of a municipality to charge a service fee of $10 or 5 percent of the face amount of the check, draft, or order, whichever is greater. The municipality may not charge more than $25 as a service fee on a dishonored check, draft or other order.

Florida law presently provides a civil remedy for any person who has been injured as a result of violation of ss. 812-812.037, F.S., (the Florida Anti-Fencing Act) or s. 812.081, F.A. (theft of trade secrets). Section 772.11, Florida Statutes, 1988 Supplement, the civil theft statute, gives rise to a cause of action for three times the actual damages and the plaintiff is entitled to attorneys' fees and costs. Civil remedies for the theft of trade secrets are also provided in the Uniform Trade Secrets Act enacted last session, ch. 88-254, Laws of Florida, codified in chapter 688, Florida Statutes, 1988 Supplement.

B. EFFECT OF PROPOSED CHANGES:

House Bill 483 amends subsection (1) of s. 68.065, F.S., to increase the service fee that may be charged by the payee to the maker or drawer of the instrument from $10 to $20 or 5 percent of the face amount of the instrument, whichever is greater. Additionally, the form of the written demand which is required to be delivered to maker of the dishonored instrument when seeking recovery is amended to increase the amount of the service fee from $10 to $20.

A new subsection (4) is added to s. 68.065, F.S., to permit a subsequent person, such as a check collection service, receiving a check, draft, or order, from the original payee or a successor endorsee to utilize the rights that the original payee has against the drafter of the dishonored instrument. However, the subsequent person must provide the drafter of the dishonored instrument with a notice in substantially similar form as required by the original payee. Additionally, As long as the maker of the dishonored instrument has the same defenses against the subsequent person as against the original payee, the subsequent person is immune from civil liability. The remedies available under this section are limited to only one party in interest.
Section 832.07, F.S., is amended to increase the amount of the service fee which the holder of a dishonored check may charge the maker or drawer. The fee is increased from $10 to $20. Further, the bill amends the provision relating to the written notice of potential criminal liability, which is required to be sent to the maker of the dishonored instrument, to reflect the $10 increase in the service fee. Additionally, the $2,500 limit for damages within the written notice is removed.

Subsequent persons receiving a check, draft, or order, from the original payee or a successor endorsee are provided the same rights as in the civil proceedings as described above.

Section 125.0105, F.S., is amended to increase the amount of the service fee which the governing body of a county may charge for the collection of a dishonored check, draft, or other order. The fee is increased from $10 to $20. In addition, the maximum fee of $25 is removed.

Section 166.251, F.S., is amended to increase the amount of the service fee which the governing body of a municipality may charge for the collection of a dishonored check, draft, or other order. The fee is increased from $10 to $20. Additionally, the maximum fee of $25 is removed.

House Bill 483 also provides for a person who is injured by a violation of ss. 812.037, F.S., to have a cause of action for a minimum of $200 or three times the actual damages sustained. In any such action, the person claiming injury is required to make a written demand for $200 or the treble damage amount to the person liable for damages. The person making the demand must give a written release from further civil liability to the person liable for the damages, if the latter complies with the demand. Lastly, the bill provides that such damages may be recovered from the parents or legal guardian of any unemancipated minor who lives with his parents or his legal guardian and who is liable for damages.

Section 832.05, F. S., is created to provide that the state attorneys of Florida shall collectively promulgate a single form which shall be used in all judicial circuits for the purpose of reporting a violation of this chapter.

C. SECTION-BY-SECTION ANALYSIS:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None
2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

The governing bodies for counties and municipalities will be positively affected by this legislation. An increase in the amounts which may be charged for the collection of dishonored checks will provide needed funds associated with such collection. Moreover, the $25 limit which is presently in the statutes is removed permitting greater revenue to be received by the local governments for the writing of dishonored instruments.

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Individuals who write worthless checks, drafts, or other orders of payment will be adversely affected by the proposed legislation. However, the number of people who will be impacted is indeterminable.

2. Direct Private Sector Benefits:

Persons receiving dishonored instruments will be positively affected by HB 483 to the extent that it increases their potential recovery and discourages the passing of dishonored checks, drafts, and orders of payment.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None
D. FISCAL COMMENTS:

Local governments will be able to charge higher fees for collecting worthless checks. Since the deterrent effect of these increased sanctions is unknown, it is impossible to assess what the amount of additional revenue will be if any.

Persons who write bad checks will face higher fees.

Businesses will be able to charge higher fees to those who write worthless checks.

III. LONG RANGE CONSEQUENCES:

This bill helps to achieve the public safety goal of the State Comprehensive Plan, s. 187.201(7)(a), F.S., of discouraging and punishing criminal behavior, through the increase of the monetary penalties for the passing of dishonored checks. Additionally, more people are likely to sue for damages under the civil damage section. To the extent that this bill discourages retail or trade secrets theft, it is consistent with the State Comprehensive Plan economic goal of "promote [ing] a... climate which provides economic stability," (s 187.201(22)(a), F.S.

IV. COMMENTS:

Stating that the issuance of bad checks has a detrimental effect on the economy and welfare of the state of Florida, the National Federation of Independent Businesses, the Florida Retail Federation and Checkcare Systems, Inc. have joined forces to promote an increase in service fees for dishonored checks. According to information supplied by Randy Morris of Checkcare Systems, Inc., the total processing cost for dishonored checks ranges between $8 and $22.

Many states impose civil penalties on persons who issue bad checks and require such persons to pay attendant costs. The average costs associated with returned checks was found to be $15 and damages of double the face amount owing on the check.

V. LEGISLATIVE HISTORY

ENACTED BILL:

House Bill 483 was prefiled by Representative Cosgrove on March 2, 1989 and referred to the Committees on Commerce and Appropriations. The Subcommittee on Banking and Commerce recommended the bill favorably on April 5, and the Full Commerce Committee reported the bill favorably on April 13. On May 10, the Appropriations Committee considered the bill and reported it favorably. The bill was placed on the Special Order Calendar and amendments were adopted on the Floor (HJ 00593). The next day, the bill passed as amended by a vote of 111-4 (HJ 00604). Upon receiving the bill in messages, the Senate substituted the House bill for SB 783, and the House bill passed by a vote of 28-3 (SJ 00466). However, bill was reconsidered and passed as amended by a vote of 34-3 (SJ 00469). On May 29, the House amended the Senate amendment and concurred in the Senate amendment as
amended by a vote of 113-0 (HJ 00769). The Senate concurred in the amendments and passed the bill by a vote of 35-0 (SJ 00570). The bill was ordered enrolled on May 30. On June 20, the bill was presented to the Governor and became law on July 5 (Ch. 89-303).

DISPOSITION OF COMPANION:

Senate Bill 783 was filed by Senator Souto and referred to the Committees on Commerce and Judiciary-Civil. On May 2, 1989, the Commerce Committee reported the bill favorably. The bill was withdrawn from the Committee on Judiciary-Civil and placed on the Special Order Calendar. On May 25, the similar House Bill was substituted for the SB 783 which was laid on the table (SJ 00466).

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Beryl D. Burke
Staff Director: William Leary

SECOND COMMITTEE OF REFERENCE:
Prepared by: [Signature]
Staff Director: [Signature]

APPROPRIATIONS:
Prepared by: [Signature]
Staff Director: [Signature]
I. SUMMARY:

A. Present Situation:

Several sections of the Florida Statutes address the issue of worthless or dishonored checks, drafts, and orders of payment.

Section 673.507(2), F.S., of the Uniform Commercial Code, provides that the holder of a dishonored check has an immediate right or recourse against the drawers and endorsers, subject to a notice of dishonor as described in s. 673.508, F.S.

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B. Effect of Proposed Changes:

Senate Bill 783 amends subsection (1) of s. 68.065, F.S., to increase the service fee that may be charged by the payee to the maker or drawer of the instrument from $10 to $20 or 5 percent of the face amount of the instrument, whichever is greater. Additionally, the form of the written demand which is required to be delivered to maker of the dishonored instrument when seeking recovery is amended to increase the amount of the service fee from $10 to $20.

A new subsection (4) is added to s. 68.065, F.S., to permit a subsequent person, such as a check collection service, receiving a check, draft, or order, from the original payee or a successor endorsee to utilize the same rights that the original payee has against the drafter of the dishonored instrument. However, the subsequent person must provide the drafter of the dishonored instrument with a notice in substantially similar form as required by the original payee. The subsequent person is immune from civil liability arising from providing such notice. Additionally, the maker of the dishonored instrument has the same defenses against the
subsequent person as against the original payee. Finally, the remedies available under this section are limited to only one party in interest.

Section 832.07, F.S., is amended to increase the amount of the service fee which the holder of a dishonored check may charge the maker or drawer. The fee is increased from $10 to $20. Further, the bill amends the provision relating to the written notice of potential criminal liability to reflect the $10 increase in the service fee.

Subsequent persons receiving a check, draft, or order, from the original payee or a successor endorsee are provided the same rights as in the civil proceedings described above.

The bill has an effective date of July 1, 1989, or upon becoming law, whichever occurs later.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Individuals who write worthless checks, drafts, or other orders of payment will be adversely affected by the proposed legislation. However, the number of people who will be impacted is indeterminable.

Persons receiving dishonored instruments will be positively affected by SB 783 to the extent that it increases their potential recovery and discourages the passing of dishonored checks, drafts, and orders of payment.

B. Government:

The economic impact upon the governmental sector is insignificant.

III. COMMENTS:

The National Federation of Independent Businesses, the Florida Retail Federation and Checkcare Systems, Inc. are all in support of SB 783.

Many states impose civil penalties on persons who issue bad checks and require such persons to pay attendant costs. The average costs associated with returned checks was found to be $15 and damages of double the face amount owing on the check.

IV. AMENDMENTS:

None.