

1997 ASSEMBLY BILL 265

April 11, 1997 - Introduced by Representatives Green, Murat, Hoven, Meyer, Klusman, La Fave and Schafer, cosponsored by Senators Shibilski, Plache, Huelsman, Welch and George, by request of Attorney General James E. Doyle, Wisconsin Merchants Federation, Midwest Hardware Association, Wisconsin Civil Recovery Council, Wisconsin Collector's Association, Wisconsin Independent Businesses, National Federation of Independent Business - Wisconsin, Wisconsin Restaurant Association, Wisconsin Association of Convenience Stores, Wisconsin Automobile and Truck Dealers Association, Petroleum Marketers Association of Wisconsin, Wisconsin Motocycle Dealers Association, Wisconsin Retail Lumbermen's Association, Wisconsin Automotive Parts Association, Wisconsin Liquid Waste Carriers Association, Midwest Equipment Dealers Association and Wisconsin Propane Gas Association. Referred to Committee on Financial Institutions.

AN ACT to create 403.414 (7) of the statutes; relating to: liability for worthless

2 checks.

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Analysis by the Legislative Reference Bureau

Current law contains 2 separate provisions authorizing recovery of damages caused by the issuance of a worthless check; these provisions differ slightly in the type of showing that must be made in order to recover damages and in the amount of damages that may be awarded. A plaintiff may seek recovery for damages under either provision, but not under both, for a single worthless check. The first provision requires a showing that, at the time that the person issued the check, the person intended that the check would not be paid. If the showing is made, the plaintiff may recover treble damages and all costs of investigation and litigation that were reasonably incurred. Under the 2nd provision, recovery is also permitted if the issuer of the worthless check should have known or recklessly disregarded the fact that the check was worthless. This 2nd provision permits recovery of all of the following: 1) the amount of the worthless check; 2) additional actual damages; 3) exemplary damages of not more than 3 times the amount of the worthless check and actual damages; and 4) actual costs of bringing the action, including reasonable attorney fees. The total amount awarded for exemplary damages and attorney fees may not exceed \$500. In addition to the statutory recovery provisions, it may be possible to recover damages caused by the issuance of a worthless check under common law.

Prior to 1995 Wisconsin Act 449, the state's Uniform Commercial Code (UCC) contained a 3rd provision providing civil liability for reasonable costs and expenses

ASSEMBLY BILL 265

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in connection with the collection of worthless checks. Under this 3rd provision, a person who issues a check or other draft that is not honored upon presentment, either because the person doesn't have an account with the institution on which the check is drawn or because the person doesn't have sufficient funds or credit in the account to pay the check, is generally liable for all reasonable costs and expenses in connection with the collection. This provision was a Wisconsin modification to the UCC chapter on negotiable instruments. In 1990, the National Conference of Commissioners on Uniform State Laws and the American Law Institute adopted a uniform act revising the UCC chapter on negotiable instruments. When 1995 Wisconsin Act 449 repealed and recreated Wisconsin's UCC negotiable instruments chapter to reflect these changes, this 3rd worthless check liability provision was not retained in Wisconsin's UCC.

This bill recreates in Wisconsin's UCC the worthless check liability provision that was repealed by 1995 Wisconsin Act 449.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. 403.414 (7) of the statutes is created to read:

403.414 (7) A person who issues a check or other draft that is not honored upon presentment, because the drawer does not have an account with the drawee or because the drawer does not have sufficient funds in his or her account or sufficient credit with the drawee, is liable for all reasonable costs and expenses in connection with the collection of the amount for which the check or draft was written, except recovery is not permitted under this section if a person licensed under s. 138.09 or any other person collected or could have collected a charge for that check or other draft under s. 422.202 (1) (d) or (2m).

SECTION 2. Initial applicability.

(1) This act first applies to checks or other drafts issued on the effective date of this subsection.

13 (END)