



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 Motorcycle 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.

1 **AN ACT to create** 403.414 (7) of the statutes; **relating to:** liability for worthless
2 checks.

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

