

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Magar offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:
 6 Section 1. Section 68.065, Florida Statutes, is amended to
 7 read:

8 68.065 Actions to collect worthless checks, drafts, ~~or~~
 9 orders of payment, debit card orders, or electronic funds
 10 transfers; attorney ~~attorney's~~ fees and collection costs.-

11 (1) The payee of any check, draft, order of payment, debit
 12 card order, or electronic funds transfer of which was refused by
 13 the drawee because of the lack of funds, credit, or an account,
 14 or where the maker or drawer stops payment on the check, draft,
 15 order of payment, debit card order, or electronic funds transfer
 16 with intent to defraud, may lawfully collect bank fees actually
 17 incurred by the payee in the course of tendering the payment,
 18 plus a service charge of \$25, if the face value does not exceed
 19 \$50, \$30, if the face value exceeds \$50 but does not exceed
 20 \$300, \$40, if the face value exceeds \$300, or 5 percent of the

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21 face amount of the check, draft, order of payment, debit card
22 order, or electronic funds transfer, whichever is greater. The
23 right to damages under this subsection may be claimed without
24 the filing of a civil action. This service charge is not in
25 addition to any right to a service charge pursuant to subsection
26 (2), s. 832.062(4) (a), or s. 832.07.

27 (2)(1) In any civil action brought for the purpose of
28 collecting a check, draft, ~~or~~ order of payment, debit card
29 order, or electronic funds transfer, the payment of which was
30 refused by the drawee because of the lack of funds, credit, or
31 an account, or where the maker or drawer stops payment on the
32 check, draft, or order of payment with intent to defraud, and
33 where the maker or drawer fails to pay the amount owing, in
34 cash, to the payee within 30 days following a written demand
35 therefor, if required by ~~as provided in~~ subsection (4)(3), the
36 maker or drawer shall be liable to the payee, in addition to the
37 amount owing upon such check, draft, ~~or~~ of payment, debit
38 card order, or electronic funds transfer, for damages of triple
39 the amount so owing. However, in no case shall the liability for
40 damages be less than \$50. The maker or drawer shall also be
41 liable for any court costs and reasonable attorney fees incurred
42 by the payee in taking the action. Criminal sanctions, as
43 provided in s. 832.07, may be applicable.

44 (3)(2) The payee may also charge the maker or drawer of
45 the check, draft, or order of payment a service charge not to
46 exceed the service fees authorized under s. 832.08(5) or 5
47 percent of the face amount of the instrument, whichever is
48 greater, when making written demand for payment. In the event

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49 that a judgment or decree is rendered, interest at the rate and
50 in the manner described in s. 55.03 may be added toward the
51 total amount due. Any bank fees incurred by the payee may be
52 charged to the maker or drawer of the check, draft, ~~or~~ order of
53 payment, debit card order, or electronic funds transfer.

54 ~~(4)-(3)~~ Before recovery under this section may be claimed,
55 a written demand must be delivered by certified or registered
56 mail, evidenced by return receipt, or by first-class mail,
57 evidenced by an affidavit of service of mail, to the maker or
58 drawer of the check, draft, ~~or~~ order of payment, debit card
59 order, or electronic funds transfer to the address on the check
60 or other instrument, to the address given by the drawer at the
61 time the instrument was issued, or to the drawer's last known
62 address. The form of such notice shall be substantially as
63 follows:

64 "You are hereby notified that a check numbered in the
65 face amount of \$.... issued by you on ...(date)..., drawn upon
66 ...(name of bank)..., and payable to, has been dishonored.
67 Pursuant to Florida law, you have 30 days from receipt of this
68 notice to tender payment in cash of the full amount of the check
69 plus a service charge of \$25, if the face value does not exceed
70 \$50, \$30, if the face value exceeds \$50 but does not exceed
71 \$300, \$40, if the face value exceeds \$300, or 5 percent of the
72 face amount of the check, whichever is greater, the total amount
73 due being \$.... and cents. Unless this amount is paid in
74 full within the 30-day period, the holder of the check or
75 instrument may file a civil action against you for three times
76 the amount of the check, but in no case less than \$50, in

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77 addition to the payment of the check plus any court costs,
78 reasonable attorney fees, and any bank fees incurred by the
79 payee in taking the action."

80 ~~(5)~~⁽⁴⁾ A subsequent person receiving a check, draft, ~~or~~
81 order of payment, debit card order, or electronic funds
82 transfer, from the original payee or a successor endorsee has
83 the same rights that the original payee has against the maker of
84 the instrument, provided such subsequent person gives notice in
85 a substantially similar form to that provided above. A
86 subsequent person providing such notice shall be immune from
87 civil liability for the giving of such notice and for proceeding
88 under the forms of such notice, so long as the maker of the
89 instrument has the same defenses against the subsequent person
90 as against the original payee. However, the remedies available
91 under this section may be exercised only by one party in
92 interest.

93 ~~(6)~~⁽⁵⁾ Subsequent to the commencement of the action but
94 prior to the hearing, the maker or drawer may tender to the
95 payee, as satisfaction of the claim, an amount of money equal to
96 the sum of the check or other instrument, the service charge,
97 court costs, and incurred bank fees. Other provisions
98 notwithstanding, the maker or drawer is liable to the payee for
99 all attorney fees and collection costs incurred by payee as a
100 result of the payee's claim.

101 ~~(7)~~⁽⁶⁾ If the court or jury determines that the failure of
102 the maker or drawer to satisfy the dishonored check or other
103 instrument was due to economic hardship, the court or jury has
104 the discretion to waive all or part of the statutory damages.

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105 Section 2. This act shall take effect July 1, 2013.

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T I T L E A M E N D M E N T

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Remove everything before the enacting clause and insert:

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An act relating to worthless checks, drafts, orders of payment,

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debit card orders, or electronic funds transfers; amending s.

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68.065, F.S.; permitting recovery of bank fees and a service

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charge related to worthless checks, drafts, or orders of payment

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without the sending of a specified written demand or the filing

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of a civil action; providing an effective date.