

1 A bill to be entitled
 2 An act relating to the collection of worthless payment
 3 instruments; amending s. 68.065, F.S.; defining the
 4 term "payment instrument"; applying certain provisions
 5 relating to civil actions brought to collect
 6 dishonored checks, drafts, and orders of payment to
 7 specified types of payment instruments to permit the
 8 award of triple damages, court costs, and reasonable
 9 attorney fees, the imposition of service charges, and
 10 requirements for written demands for payment that must
 11 be delivered before commencement of collection
 12 actions; authorizing the payee of a dishonored payment
 13 instrument to recover bank fees and a service charge
 14 without filing a civil action; conforming provisions
 15 to changes made by the act; providing an effective
 16 date.

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 18 Be It Enacted by the Legislature of the State of Florida:

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 20 Section 1. Section 68.065, Florida Statutes, is amended to
 21 read:

22 68.065 Actions to collect worthless ~~checks, drafts, or~~
 23 ~~orders of payment~~ instruments; attorney ~~attorney's~~ fees and
 24 collection costs.—

25 (1) As used in this section, the term "payment instrument"
 26 or "instrument" means a check, draft, order of payment, debit
 27 card order, or electronic funds transfer.

28 (2) In lieu of a service charge authorized under

29 subsection (3), s. 832.062(4) (a), or s. 832.07, the payee of a
 30 payment instrument, the payment of which is refused by the
 31 drawee because of lack of funds, lack of credit, or lack of an
 32 account, or where the maker or drawer stops payment on the
 33 instrument with intent to defraud, may lawfully collect bank
 34 fees actually incurred by the payee in the course of tendering
 35 the payment, plus a service charge of \$25 if the face value does
 36 not exceed \$50; \$30 if the face value exceeds \$50 but does not
 37 exceed \$300; \$40 if the face value exceeds \$300; or 5 percent of
 38 the face value of the payment instrument, whichever is greater.
 39 The right to damages under this subsection may be claimed
 40 without the filing of a civil action.

41 (3) (a) ~~(1)~~ In any civil action brought for the purpose of
 42 collecting a ~~check, draft, or order of payment instrument~~, the
 43 payment of which is ~~was~~ refused by the drawee because of ~~the~~
 44 lack of funds, lack of credit, or lack of an account, or where
 45 the maker or drawer stops payment on the instrument ~~check,~~
 46 ~~draft, or order of payment~~ with intent to defraud, and where the
 47 maker or drawer fails to pay the amount owing, in cash, to the
 48 payee within 30 days after ~~following~~ a written demand therefor,
 49 if required by as provided in subsection (4) ~~(3)~~, the maker or
 50 drawer is ~~shall be~~ liable to the payee, in addition to the
 51 amount owing upon such payment instrument ~~check, draft, or~~
 52 ~~order~~, for damages of triple the amount so owing. However, in no
 53 case shall the liability for damages be less than \$50. The maker
 54 or drawer is ~~shall~~ also ~~be~~ liable for any court costs and
 55 reasonable attorney fees incurred by the payee in taking the
 56 action. Criminal sanctions, as provided in s. 832.07, may be

57 applicable.

58 (b)~~(2)~~ The payee may also charge the maker or drawer of
 59 the ~~check, draft, or order of~~ payment instrument a service
 60 charge not to exceed the service fees authorized under s.
 61 832.08(5) or 5 percent of the face amount of the instrument,
 62 whichever is greater, when making written demand for payment. In
 63 the event that a judgment or decree is rendered, interest at the
 64 rate and in the manner described in s. 55.03 may be added toward
 65 the total amount due. Any bank fees incurred by the payee may be
 66 charged to the maker or drawer of the ~~check, draft, or order of~~
 67 payment instrument.

68 (4)~~(3)~~ Before recovery under this section may be claimed,
 69 a written demand must be delivered by certified or registered
 70 mail, evidenced by return receipt, or by first-class mail,
 71 evidenced by an affidavit of service of mail, to the maker or
 72 drawer of the ~~check, draft, or order of~~ payment instrument to
 73 the address on the ~~check or other~~ instrument, to the address
 74 given by the drawer at the time the instrument was issued, or to
 75 the drawer's last known address. The form of such notice shall
 76 be substantially as follows:

77 "You are hereby notified that a check, draft, order of
 78 payment, debit card order, or electronic funds transfer numbered
 79 in the face amount of \$.... issued by you on ...(date)...,
 80 drawn upon ...(name of bank)..., and payable to, has been
 81 dishonored. Pursuant to Florida law, you have 30 days from
 82 receipt of this notice to tender payment in cash of the full
 83 amount of the dishonored payment instrument, ~~check~~ plus a
 84 service charge of \$25~~7~~ if the face value does not exceed \$50,

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85 | \$30~~7~~ if the face value exceeds \$50 but does not exceed \$300,
86 | \$40~~7~~ if the face value exceeds \$300, or 5 percent of the face
87 | amount of the dishonored instrument ~~check~~, whichever is greater,
88 | the total amount due being \$.... and cents. Unless this
89 | amount is paid in full within the 30-day period, the holder of
90 | the dishonored payment ~~check~~ or instrument may file a civil
91 | action against you for three times the amount of the dishonored
92 | instrument ~~check~~, but in no case less than \$50, in addition to
93 | the payment of the dishonored instrument ~~check~~ plus any court
94 | costs, reasonable attorney fees, and any bank fees incurred by
95 | the payee in taking the action."

96 | (5)(4) A subsequent person receiving a payment instrument
97 | ~~check, draft, or order~~, from the original payee or a successor
98 | endorsee has the same rights that the original payee has against
99 | the maker of the instrument, if provided such subsequent person
100 | gives notice in a substantially similar form to that provided in
101 | subsection (4) above. A subsequent person providing such notice
102 | is shall be immune from civil liability for the giving of such
103 | notice and for proceeding under the forms of such notice, so
104 | long as the maker of the instrument has the same defenses
105 | against the subsequent person as against the original payee.
106 | However, the remedies available under this section may be
107 | exercised only by one party in interest.

108 | (6)(5) After ~~Subsequent to the~~ commencement of the action
109 | but before ~~prior to~~ the hearing, the maker or drawer may tender
110 | to the payee, as satisfaction of the claim, an amount of money
111 | equal to the sum of the payment instrument ~~check~~, the service
112 | charge, court costs, and incurred bank fees. Other provisions

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113 notwithstanding, the maker or drawer is liable to the payee for
114 all attorney fees and collection costs incurred by payee as a
115 result of the payee's claim.

116 (7)~~(6)~~ If the court or jury determines that the failure of
117 the maker or drawer to satisfy the dishonored payment instrument
118 ~~check~~ was due to economic hardship, the court or jury has the
119 discretion to waive all or part of the statutory damages.

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