



580832

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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	.	

The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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

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



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13 (2) In lieu of a service charge authorized under subsection
14 (3), s. 832.062(4)(a), or s. 832.07, the payee of a payment
15 instrument, the payment of which is refused by the drawee
16 because of lack of funds, lack of credit, or lack of an account,
17 or where the maker or drawer stops payment on the instrument
18 with intent to defraud, may lawfully collect bank fees actually
19 incurred by the payee in the course of tendering the payment,
20 plus a service charge of \$25 if the face value does not exceed
21 \$50; \$30 if the face value exceeds \$50 but does not exceed \$300;
22 \$40 if the face value exceeds \$300; or 5 percent of the face
23 value of the payment instrument, whichever is greater. The right
24 to damages under this subsection may be claimed without the
25 filing of a civil action.

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



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42 ~~(b)(2)~~ The payee may also charge the maker or drawer of the
43 ~~check, draft, or order of~~ payment instrument a service charge
44 not to exceed the service fees authorized under s. 832.08(5) or
45 5 percent of the face amount of the instrument, whichever is
46 greater, when making written demand for payment. In the event
47 that a judgment or decree is rendered, interest at the rate and
48 in the manner described in s. 55.03 may be added toward the
49 total amount due. Any bank fees incurred by the payee may be
50 charged to the maker or drawer of the ~~check, draft, or order of~~
51 payment instrument.

52 ~~(4)(3)~~ Before recovery under subsection (3) ~~this section~~
53 may be claimed, a written demand must be delivered by certified
54 or registered mail, evidenced by return receipt, or by first-
55 class mail, evidenced by an affidavit of service of mail, to the
56 maker or drawer of the ~~check, draft, or order of~~ payment
57 instrument to the address on the ~~check or other~~ instrument, to
58 the address given by the drawer at the time the instrument was
59 issued, or to the drawer's last known address. The form of such
60 notice shall be substantially as follows:

61 "You are hereby notified that a check, draft, order of
62 payment, debit card order, or electronic funds transfer numbered
63 in the face amount of \$.... issued by you on ...(date)...,
64 drawn upon ...(name of bank)..., and payable to, has been
65 dishonored. Pursuant to Florida law, you have 30 days from
66 receipt of this notice to tender payment in cash of the full
67 amount of the dishonored payment instrument, ~~check~~ plus a
68 service charge of \$25~~7~~ if the face value does not exceed \$50,
69 \$30~~7~~ if the face value exceeds \$50 but does not exceed \$300,
70 \$40~~7~~ if the face value exceeds \$300, or 5 percent of the face



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71 amount of the dishonored instrument ~~check~~, whichever is greater,
72 the total amount due being \$.... and cents. Unless this
73 amount is paid in full within the 30-day period, the holder of
74 the dishonored payment ~~check~~ or instrument may file a civil
75 action against you for three times the amount of the dishonored
76 instrument ~~check~~, but in no case less than \$50, in addition to
77 the payment of the dishonored instrument ~~check~~ plus any court
78 costs, reasonable attorney fees, and any bank fees incurred by
79 the payee in taking the action."

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

92 (6) ~~(5)~~ After ~~Subsequent to the~~ commencement of the action
93 but before ~~prior to~~ the hearing, the maker or drawer may tender
94 to the payee, as satisfaction of the claim, an amount of money
95 equal to the sum of the payment instrument ~~check~~, the service
96 charge, court costs, and incurred bank fees. Other provisions
97 notwithstanding, the maker or drawer is liable to the payee for
98 all attorney fees and collection costs incurred by payee as a
99 result of the payee's claim.



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100 (7)~~(6)~~ If the court or jury determines that the failure of
101 the maker or drawer to satisfy the dishonored payment instrument
102 ~~check~~ was due to economic hardship, the court or jury has the
103 discretion to waive all or part of the statutory damages.

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

105
106 ===== T I T L E A M E N D M E N T =====

107 And the title is amended as follows:

108 Delete everything before the enacting clause
109 and insert:

110 A bill to be entitled

111 An act relating to the collection of worthless payment
112 instruments; amending s. 68.065, F.S.; defining the
113 term "payment instrument"; applying certain provisions
114 relating to civil actions brought to collect
115 dishonored checks, drafts, and orders of payment to
116 specified types of payment instruments to permit the
117 award of triple damages, court costs, and reasonable
118 attorney fees, the imposition of service charges, and
119 requirements for written demands for payment that must
120 be delivered before commencement of collection
121 actions; authorizing the payee of a dishonored payment
122 instrument to recover bank fees and a service charge
123 without filing a civil action; conforming provisions
124 to changes made by the act; providing an effective
125 date.