

By the Committee on Banking and Insurance; and Senator Simpson

597-03467-13

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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.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
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 subsection
29 (3), s. 832.062(4) (a), or s. 832.07, the payee of a payment

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30 instrument, the payment of which is refused by the drawee
31 because of lack of funds, lack of credit, or lack of an account,
32 or where the maker or drawer stops payment on the instrument
33 with intent to defraud, may lawfully collect bank fees actually
34 incurred by the payee in the course of tendering the payment,
35 plus a service charge of \$25 if the face value does not exceed
36 \$50; \$30 if the face value exceeds \$50 but does not exceed \$300;
37 \$40 if the face value exceeds \$300; or 5 percent of the face
38 value of the payment instrument, whichever is greater. The right
39 to damages under this subsection may be claimed without the
40 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 as provided in subsection (4) ~~(3)~~, the maker or drawer is ~~shall~~
50 ~~be~~ liable to the payee, in addition to the amount owing upon
51 such payment instrument ~~check, draft, or order~~, for damages of
52 triple the amount so owing. However, in no case shall the
53 liability for damages be less than \$50. The maker or drawer is
54 ~~shall~~ also ~~be~~ liable for any court costs and reasonable attorney
55 fees incurred by the payee in taking the action. Criminal
56 sanctions, as provided in s. 832.07, may be applicable.

57 (b) ~~(2)~~ The payee may also charge the maker or drawer of the
58 ~~check, draft, or order of payment~~ instrument a service charge

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

67 ~~(4)(3)~~ Before recovery under subsection (3) ~~this section~~
68 may be claimed, a written demand must be delivered by certified
69 or registered mail, evidenced by return receipt, or by first-
70 class mail, evidenced by an affidavit of service of mail, to the
71 maker or drawer of the ~~check, draft, or order of~~ payment
72 instrument to the address on the ~~check or other~~ instrument, to
73 the address given by the drawer at the time the instrument was
74 issued, or to the drawer's last known address. The form of such
75 notice shall be substantially as follows:

76 "You are hereby notified that a check, draft, order of
77 payment, debit card order, or electronic funds transfer numbered
78 in the face amount of \$.... issued by you on ...(date)...,
79 drawn upon ...(name of bank)..., and payable to, has been
80 dishonored. Pursuant to Florida law, you have 30 days from
81 receipt of this notice to tender payment in cash of the full
82 amount of the dishonored payment instrument, ~~check~~ plus a
83 service charge of \$25~~7~~ if the face value does not exceed \$50,
84 \$30~~7~~ if the face value exceeds \$50 but does not exceed \$300,
85 \$40~~7~~ if the face value exceeds \$300, or 5 percent of the face
86 amount of the dishonored instrument ~~check~~, whichever is greater,
87 the total amount due being \$.... and cents. Unless this

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88 amount is paid in full within the 30-day period, the holder of
89 the dishonored payment ~~check or~~ instrument may file a civil
90 action against you for three times the amount of the dishonored
91 instrument ~~check~~, but in no case less than \$50, in addition to
92 the payment of the dishonored instrument ~~check~~ plus any court
93 costs, reasonable attorney fees, and any bank fees incurred by
94 the payee in taking the action."

95 (5) ~~(4)~~ A subsequent person receiving a payment instrument
96 ~~check, draft, or order~~, from the original payee or a successor
97 endorsee has the same rights that the original payee has against
98 the maker of the instrument, if provided such subsequent person
99 gives notice in a substantially similar form to that provided in
100 subsection (4) above. A subsequent person providing such notice
101 is ~~shall be~~ immune from civil liability for the giving of such
102 notice and for proceeding under the forms of such notice, so
103 long as the maker of the instrument has the same defenses
104 against the subsequent person as against the original payee.
105 However, the remedies available under this section may be
106 exercised only by one party in interest.

107 (6) ~~(5)~~ After Subsequent to the commencement of the action
108 but before ~~prior to~~ the hearing, the maker or drawer may tender
109 to the payee, as satisfaction of the claim, an amount of money
110 equal to the sum of the payment instrument ~~check~~, the service
111 charge, court costs, and incurred bank fees. Other provisions
112 notwithstanding, the maker or drawer is liable to the payee for
113 all attorney fees and collection costs incurred by payee as a
114 result of the payee's claim.

115 (7) ~~(6)~~ If the court or jury determines that the failure of
116 the maker or drawer to satisfy the dishonored payment instrument

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117 ~~check~~ was due to economic hardship, the court or jury has the
118 discretion to waive all or part of the statutory damages.

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