

ENROLLED
CS/CS/HB 457

2013 Legislature

1
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

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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 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.

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

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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
 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

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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
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.