

CHAPTER 2013-113

Committee Substitute for Committee Substitute for House Bill No. 457

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

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

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.

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

(3)(a)(1) In any civil action brought for the purpose of collecting a check, draft, or order of payment instrument, the payment of which is was refused by the drawee because of the lack of funds, lack of credit, or lack of an account, or where the maker or drawer stops payment on the instrument check, draft, or order of payment with intent to defraud, and where the maker or drawer fails to pay the amount owing, in cash, to the payee within 30 days after following a written demand therefor, as provided in subsection (4) (3), the maker or drawer is shall be liable to the payee, in addition to the amount owing upon such payment instrument check, draft, or order, for

damages of triple the amount so owing. However, in no case shall the liability for damages be less than \$50. The maker or drawer ~~is~~ shall also be liable for any court costs and reasonable attorney fees incurred by the payee in taking the action. Criminal sanctions, as provided in s. 832.07, may be applicable.

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

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

"You are hereby notified that a check, draft, order of payment, debit card order, or electronic funds transfer numbered in the face amount of \$..... issued by you on ...(date)..., drawn upon ...(name of bank)..., and payable to, has been dishonored. Pursuant to Florida law, you have 30 days from receipt of this notice to tender payment in cash of the full amount of the dishonored payment instrument, check plus a service charge of \$25, if the face value does not exceed \$50, \$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or 5 percent of the face amount of the dishonored instrument check, whichever is greater, the total amount due being \$..... and cents. Unless this amount is paid in full within the 30-day period, the holder of the dishonored payment check or instrument may file a civil action against you for three times the amount of the dishonored instrument check, but in no case less than \$50, in addition to the payment of the dishonored instrument check plus any court costs, reasonable attorney fees, and any bank fees incurred by the payee in taking the action."

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

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

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

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

Approved by the Governor June 5, 2013.

Filed in Office Secretary of State June 5, 2013.