

By Senator Simpson

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1 A bill to be entitled
2 An act relating to worthless checks, drafts, or orders
3 of payment; amending s. 68.065, F.S.; permitting
4 recovery of worthless checks, drafts, or orders of
5 payment without the sending of a specified written
6 demand if the payee has a specified notice posted at
7 the point of sale or on an invoice; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

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

14 68.065 Actions to collect worthless checks, drafts, or
15 orders of payment; attorney ~~attorney's~~ fees and collection
16 costs.—

17 (1) In any civil action brought for the purpose of
18 collecting a check, draft, or order of payment, the payment of
19 which was refused by the drawee because of the lack of funds,
20 credit, or an account, or where the maker or drawer stops
21 payment on the check, draft, or order of payment with intent to
22 defraud, and where the maker or drawer fails to pay the amount
23 owing, in cash, to the payee within 30 days following a written
24 demand therefor, as provided in subsection (3), the maker or
25 drawer shall be liable to the payee, in addition to the amount
26 owing upon such check, draft, or order, for damages of triple
27 the amount so owing. However, in no case shall the liability for
28 damages be less than \$50. The maker or drawer shall also be
29 liable for any court costs and reasonable attorney fees incurred

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30 by the payee in taking the action. Criminal sanctions, as
31 provided in s. 832.07, may be applicable.

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

41 (3) Before recovery under this section may be claimed,
42 either:

43 (a) A written demand must be delivered by certified or
44 registered mail, evidenced by return receipt, or by first-class
45 mail, evidenced by an affidavit of service of mail, to the maker
46 or drawer of the check, draft, or order of payment to the
47 address on the check or other instrument, to the address given
48 by the drawer at the time the instrument was issued, or to the
49 drawer's last known address. The form of such notice shall be
50 substantially as follows:

51 "You are hereby notified that a check numbered in the
52 face amount of \$.... issued by you on ...(date)..., drawn upon
53 ...(name of bank)..., and payable to, has been dishonored.
54 Pursuant to Florida law, you have 30 days from receipt of this
55 notice to tender payment in cash of the full amount of the
56 check, plus a service charge of \$25~~7~~ if the face value does not
57 exceed \$50, \$30~~7~~ if the face value exceeds \$50 but does not
58 exceed \$300, \$40~~7~~ if the face value exceeds \$300, or 5 percent

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59 of the face amount of the check, whichever is greater, the total
60 amount due being \$.... and cents. Unless this amount is
61 paid in full within the 30-day period, the holder of the check
62 or instrument may file a civil action against you for three
63 times the amount of the check, but in no case less than \$50, in
64 addition to the payment of the check plus any court costs,
65 reasonable attorney fees, and any bank fees incurred by the
66 payee in taking the action-"; or

67 (b) The payee must have posted at the point of sale or have
68 printed on an invoice sent before payment for goods or services
69 a notice in substantially the following form:

70
71 "If your check or debit card transaction is returned by
72 your bank for insufficient funds, you authorize the collection
73 of the amount of the check, as well as a return fee as provided
74 in section 832.08(5), Florida Statutes."

75
76 (4) A subsequent person receiving a check, draft, or order-
77 from the original payee or a successor endorsee has the same
78 rights that the original payee has against the maker of the
79 instrument, provided such subsequent person gives notice in a
80 substantially similar form to that provided in subsection (3)
81 above. A subsequent person providing such notice shall be immune
82 from civil liability for the giving of such notice and for
83 proceeding under the forms of such notice, so long as the maker
84 of the instrument has the same defenses against the subsequent
85 person as against the original payee. However, the remedies
86 available under this section may be exercised only by one party
87 in interest.

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

96 (6) If the court or jury determines that the failure of the
97 maker or drawer to satisfy the dishonored check was due to
98 economic hardship, the court or jury has the discretion to waive
99 all or part of the statutory damages.

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