

The Florida Senate

2023 Florida Statutes (including 2023C)

<p><u>Title VI</u> CIVIL PRACTICE AND PROCEDURE</p>	<p><u>Chapter 68</u> MISCELLANEOUS PROCEEDINGS <u>Entire Chapter</u></p>	<p>SECTION 065 Actions to collect worthless payment instruments; attorney fees and collection costs.</p>
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68.065 Actions to collect worthless payment instruments; attorney 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) **In any civil action brought for the purpose of collecting 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, and where the maker or drawer fails to pay the amount owing, in cash, to the payee within 30 days after a written demand therefor, as provided in subsection (4), **the maker or drawer is liable to the payee, in addition to the amount owing upon such payment instrument, 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 also 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) The payee may also charge the maker or drawer of the 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 payment instrument.

(4) Before recovery under subsection (3) 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 payment instrument to the address on the 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, 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, 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 instrument may file a civil action against you for three times the amount of the dishonored instrument, but in no case less than \$50, in addition to the payment of the dishonored instrument plus any court costs, reasonable attorney fees, and any bank fees incurred by the payee in taking the action.”

(5) A subsequent person receiving a payment instrument from the original payee or a successor endorsee has the same rights that the original payee has against the maker of the instrument, if such subsequent person gives notice in a substantially similar form to that provided in subsection (4). A subsequent person providing such notice is 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) After commencement of the action but before 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, 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) If the court or jury determines that the failure of the maker or drawer to satisfy the dishonored payment instrument was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages.

History.—s. 2, ch. 79-345; s. 1, ch. 86-89; s. 41, ch. 88-381; s. 1, ch. 89-303; s. 1, ch. 91-211; s. 1, ch. 96-239; s. 1, ch. 98-297; s. 1, ch. 2001-243; s. 1, ch. 2003-69; s. 1, ch. 2013-113.

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