

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 421  
HOUSE BILL 1234

AN ACT TO PROVIDE THAT A BANK EMPLOYEE'S AFFIDAVIT MAY BE  
USED IN A WORTHLESS CHECK PROSECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107.1 reads as rewritten:

**"§ 14-107.1. Prima facie evidence in worthless check cases.**

(a) Unless the context otherwise requires, the following definitions apply in this section:

- (1) Check Passer. – A natural person who draws, makes, utters, or issues and delivers, or causes to be delivered to another any check or draft on any bank or depository for the payment of money or its equivalent.
- (2) Acceptor. – A person, firm, corporation or any authorized employee thereof accepting a check or draft from a check passer.
- (3) Check Taker. – A natural person who is an acceptor, or an employee or agent of an acceptor, of a check or draft in a face-to-face transaction.

(b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below are met. The prima facie evidence provisions of subsection (e) apply if only conditions (5) through (7) are met. The conditions are:

- (1) The check or draft is delivered to a check taker.
- (2) The name and mailing address of the check passer are written or printed on the check or draft.
- (3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.
- (4) The license or identification card number of the check passer appears on the check or draft.
- (5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed

time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

- (6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).
- (7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:
  - a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.
  - b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.
  - c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).
  - d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).
  - e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor.

(c) In prosecutions under G.S. 14-107, where the check or draft is delivered to the acceptor by mail, or delivered other than in person, the prima facie evidence rule in subsections (d) and (e) shall apply if all the conditions below are met. The prima facie evidence rule in subsection (e) shall apply if conditions (5) through (7) below are met. The conditions are:

- (1) The check or draft is delivered to the acceptor by United States mail, or by some person or instrumentality other than a check passer.
- (2) The name and mailing address of the check passer are recorded on the check or draft.
- (3) The acceptor has previously identified the check passer, at the time of opening the account, establishing the course of dealing, or initiating the lease or contract, by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question, and obtained the signature of the person or persons who will be making payments on the account, course of dealing, lease or contract, and such signature is retained in the account file.

- (4) The acceptor compares the name, address, and signature on the check with the name, address, and signature on file in the account, course of dealing, lease, or contract, and notes that the information contained on the check corresponds with the information contained in the file, and the signature on the check appears genuine when compared to the signature in the file.
- (5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail to the address recorded on the check or draft identifying the check or draft, setting forth the circumstances of dishonor and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

- (6) The acceptor files the affidavits described in subdivision (7) of this subsection with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).
- (7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:
  - a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.
  - b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.
  - c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).
  - d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).
  - e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor.

(d) If the conditions of subsection (b) or (c) have been met, proof of meeting them is prima facie evidence that the person charged was in fact the identified check passer.

(e) If the bank or depository dishonoring a check or draft has returned it in the regular course of business stamped or marked or with an attachment indicating the

reason for dishonor ('insufficient funds,' 'no account,' 'account closed' or words of like meaning), the check or draft and any attachment may be introduced in evidence and constitute prima facie evidence of the facts of dishonor if the conditions of subdivisions (5) through (7) of subsection (b) or subdivisions (5) through (7) of subsection (c) have been met. The fact that the check or draft was returned dishonored may be received as evidence that the check passer had no credit with the bank or depository for payment of the check or draft.

(f) An affidavit by an employee of a bank or depository who has personal knowledge of the facts stated in the affidavit sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in a hearing or trial pursuant to a prosecution under G.S. 14-107 in the District Court Division of the General Court of Justice with respect to the facts of dishonor of the check or draft, including the existence of an account, the date the check or draft was processed, whether there were sufficient funds in an account to pay the check or draft, and other related matters. If the defendant requests that the bank or depository employee personally testify in the hearing or trial, the defendant may subpoena the employee. The defendant shall be provided a copy of the affidavit prior to trial and shall have the opportunity to subpoena the affiant for trial."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 22nd day of June, 1989.