

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 535
House Committee Substitute Favorable 7/12/93

Short Title: Clarify Returned Check Damages.

(Public)

Sponsors:

Referred to:

March 24, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND REMEDIES FOR RETURNED CHECKS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO PROVIDE THAT RESTITUTION FOR VIOLATIONS OF G.S. 14-107 MAY INCLUDE SERVICE CHARGES AND PROCESSING FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 6-21.3(a) reads as rewritten:

"(a) Notwithstanding any criminal sanctions that may apply, a person, firm, or corporation who knowingly draws, makes, utters, or issues and delivers to another any check or draft drawn on any bank or depository that refuses to honor the same because the maker or drawer does not have sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon presentation, and who fails to pay the same ~~amount~~ amount, any service charges imposed on the payee by a bank or depository for processing the dishonored check, and any processing fees imposed by the payee pursuant to G.S. 25-3-512 in cash to the payee within 30 days following written demand therefor, shall be liable to the payee (i) for the amount owing on the ~~check~~ check, the service charges, and processing fees ~~and, in addition,~~ and (ii) for additional damages of the lesser of five hundred dollars (\$500.00) or three times the amount owing on the check, not to exceed five hundred dollars (\$500.00) but in no case or to be less than one hundred dollars (\$100.00) in addition to the amount owing on the check. (\$100.00). In an action under this section the court or jury may, however, waive all or part of the ~~treble~~ additional damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

1 The written demand shall: (i) describe the check or draft and the circumstances of
2 its dishonor, (ii) contain a demand for payment and a notice of intent to file suit for
3 ~~treble~~ the amount owing on the check, the service charges, and processing fees, and
4 additional damages up to five hundred dollars (\$500.00) under this section if payment is
5 not received within 30 days, and (iii) be mailed by certified mail to the defendant at his
6 last known address."

7 Sec. 2. G.S. 14-107 reads as rewritten:

8 "§ 14-107. Worthless checks. **It shall be unlawful for any person, firm or**
9 **corporation, to draw, make, utter or issue and deliver to another, any**
10 **check or draft on any bank or depository, for the payment of money or**
11 **its equivalent, knowing at the time of the making, drawing, uttering,**
12 **issuing and delivering such check or draft as aforesaid, that the maker or**
13 **drawer thereof has not sufficient funds on deposit in or credit with such**
14 **bank or depository with which to pay the same upon presentation.**

15 It shall be unlawful for any person, firm or corporation to solicit or to aid and abet
16 any other person, firm or corporation to draw, make, utter or issue and deliver to any
17 person, firm or corporation, any check or draft on any bank or depository for the
18 payment of money or its equivalent, being informed, knowing or having reasonable
19 grounds for believing at the time of the soliciting or the aiding and abetting that the
20 maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit
21 with, such bank or depository with which to pay the same upon presentation.

22 The word 'credit' as used herein shall be construed to mean an arrangement or
23 understanding with the bank or depository for the payment of any such check or draft.

24 A violation of this section shall be a Class J felony if the amount of the check or
25 draft is more than two thousand dollars (\$2,000). If the amount of the check or draft is
26 two thousand dollars (\$2,000) or less, a violation of this section shall be a misdemeanor
27 punishable as follows:

28 (1) If the amount of the check or draft is not over one hundred dollars
29 (\$100.00), the punishment shall be by a fine not to exceed fifty dollars
30 (\$50.00) or imprisonment for not more than 30 days. Provided,
31 however, if such person has been convicted three times of violating
32 G.S. 14-107, he shall on the fourth and all subsequent convictions (i)
33 be punished in the discretion of the district or superior court as for a
34 general misdemeanor and (ii) be ordered, as a condition of probation,
35 to refrain from maintaining a checking account or making or uttering a
36 check for three years.

37 (2) If the amount of the check or draft is over one hundred dollars
38 (\$100.00), the punishment shall be by a fine not to exceed two hundred
39 fifty dollars (\$250.00) or imprisonment for not more than six months,
40 or both. Provided, however, if such person has been convicted three
41 times of violating G.S. 14-107, he shall on the fourth and all
42 subsequent convictions (i) be punished in the discretion of the district
43 or superior court as for a general misdemeanor and (ii) be ordered, as a

1 condition of probation, to refrain from maintaining a checking account
2 or making or uttering a check for three years.

3 (3) If the check or draft is drawn upon a nonexistent account, the
4 punishment shall be by a fine not to exceed one thousand dollars
5 (\$1,000) or imprisonment for not more than two years, or both.

6 (4) If the check or draft is drawn upon an account that has been closed by
7 the drawer prior to time the check is drawn, the punishment shall be a
8 fine not to exceed four hundred dollars (\$400.00) or imprisonment for
9 not more than five months or both.

10 In deciding to impose any sentence other than an active prison sentence, the
11 sentencing judge shall consider and may require, in accordance with the provisions of
12 G.S. 15A-1343, restitution to the victim for (i) the amount of the check or ~~draft~~ draft,
13 (ii) any service charges imposed on the payee by a bank or depository for processing the
14 dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S.
15 25-3-512, and each prosecuting witness (whether or not under subpoena) shall be
16 entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the
17 cost and assessed to the defendant."

18 Sec. 3. G.S. 7A-180 reads as rewritten:

19 **"§ 7A-180. Functions of clerk of superior court in district court matters.**

20 The clerk of superior court:

21 (1) Has and exercises all of the judicial powers and duties in respect of
22 actions and proceedings pending from time to time in the district court
23 of his county which are now or hereafter conferred or imposed upon
24 him by law in respect of actions and proceedings pending in the
25 superior court of his county;

26 (2) Performs all of the clerical, administrative and fiscal functions
27 required in the operation of the district court of his county in the same
28 manner as he is required to perform such functions in the operation of
29 the superior court of his county;

30 (3) Maintains, under the supervision of the Administrative Office of the
31 Courts, an office of uniform consolidated records of all judicial
32 proceedings in the superior court division and the district court
33 division of the General Court of Justice in his county. Those records
34 shall include civil actions, special proceedings, estates, criminal
35 actions, juvenile actions, minutes of the court and all other records
36 required by law to be maintained. The form and procedure for filing,
37 docketing, indexing, and recording shall be as prescribed by the
38 Administrative Officer of the Courts notwithstanding any contrary
39 statutory provision as to the title and form of the record or as a method
40 of indexing;

41 (4) Has the power to accept written appearances, waivers of trial or
42 hearing and pleas of guilty or admissions of responsibility for the types
43 of offenses specified in G.S. 7A-273(2) in accordance with the
44 schedules of offenses promulgated by the Conference of Chief District

- 1 Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment
2 and collect the fine or penalty and costs;
- 3 (5) Has the power to issue warrants of arrest valid throughout the State,
4 and search warrants valid throughout the county of the issuing clerk;
- 5 (6) Has the power to conduct an initial appearance in accordance with
6 Chapter 15A, Article 24, Initial Appearance, and to fix conditions of
7 release in accordance with Chapter 15A, Article 26, Bail;
- 8 (7) Continues to exercise all powers, duties and authority theretofore
9 vested in or imposed upon clerks of superior court by general law, with
10 the exception of jurisdiction in juvenile matters; and
- 11 (8) Has the power to accept written appearances, waivers of trial and pleas
12 of guilty to violations of G.S. 14-107 when ~~restitution~~ restitution,
13 including service charges and processing fees allowed under G.S. 14-
14 107, is made, the amount of the check is two thousand dollars (\$2,000)
15 or less, and the warrant does not charge a fourth or subsequent
16 violation of this statute, and, in such cases, to enter such judgments as
17 the chief district judge shall direct and, forward the amounts collected
18 as restitution to the appropriate prosecuting witnesses and to collect
19 the costs."

20 Sec. 4. G.S. 7A-273 reads as rewritten:

21 **"§ 7A-273. Powers of magistrates in infractions or criminal actions.**

22 In criminal actions or infractions, any magistrate has power:

- 23 (1) In misdemeanor or infraction cases, other than the types of offenses
24 specified in subdivision (2) of this section, in which the maximum
25 punishment which can be adjudged cannot exceed imprisonment for 30
26 days, or a fine of fifty dollars (\$50.00) or a penalty of not more than
27 fifty dollars (\$50.00), exclusive of costs, to accept guilty pleas or
28 admissions of responsibility and enter judgment;
- 29 (2) In misdemeanor or infraction cases involving alcohol offenses under
30 Chapter 18B of the General Statutes, traffic offenses, hunting, fishing,
31 State park and recreation area rule offenses under Chapter 113 of the
32 General Statutes, boating offenses under Chapter 75A of the General
33 Statutes, and littering offenses under G.S. 14-399(c), to accept written
34 appearances, waivers of trial or hearing and pleas of guilty or
35 admissions of responsibility, in accordance with the schedule of
36 offenses and fines or penalties promulgated by the Conference of
37 Chief District Judges pursuant to G.S. 7A-148, and in such cases, to
38 enter judgment and collect the fines or penalties and costs;
- 39 (3) To issue arrest warrants valid throughout the State;
- 40 (4) To issue search warrants valid throughout the county;
- 41 (5) To grant bail before trial for any noncapital offense;
- 42 (6) Notwithstanding the provisions of subdivision (1) of this section, to
43 hear and enter judgment as the chief district judge shall direct in all
44 worthless check cases brought under G.S. 14-107, when the amount of

- 1 the check is two thousand dollars (\$2,000) or less. Provided, however,
2 that under this section magistrates may not impose a prison sentence
3 longer than 30 days;
- 4 (7) To conduct an initial appearance as provided in G.S. 15A-511; and
- 5 (8) To accept written appearances, waivers of trial and pleas of guilty in
6 violations of G.S. 14-107 when the amount of the check is two
7 thousand dollars (\$2,000) or less, ~~restitution~~restitution, including
8 service charges and processing fees allowed by G.S. 14-107, is made,
9 and the warrant does not charge a fourth or subsequent violation of this
10 statute, and in these cases to enter judgments as the chief district judge
11 directs."
- 12 Sec. 5. This act becomes effective December 1, 1993, and applies to checks
13 written on or after that date.