

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 374
SENATE BILL 535

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.

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

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

"§ 14-107. Worthless checks. It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft as aforesaid, that the maker or

drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

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

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

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

- (1) If the amount of the check or draft is not over one hundred dollars (\$100.00), the punishment shall be by a fine not to exceed fifty dollars (\$50.00) or imprisonment for not more than 30 days. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a general misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.
- (2) If the amount of the check or draft is over one hundred dollars (\$100.00), the punishment shall be by a fine not to exceed two hundred fifty dollars (\$250.00) or imprisonment for not more than six months, or both. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a general misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.
- (3) If the check or draft is drawn upon a nonexistent account, the punishment shall be by a fine not to exceed one thousand dollars (\$1,000) or imprisonment for not more than two years, or both.
- (4) If the check or draft is drawn upon an account that has been closed by the drawer prior to time the check is drawn, the punishment shall be a fine not to exceed four hundred dollars (\$400.00) or imprisonment for not more than five months or both.

In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or ~~draft~~ draft, (ii) any service charges imposed on the payee by a bank or depository for processing the

dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. 25-3-512, and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

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

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

The clerk of superior court:

- (1) Has and exercises all of the judicial powers and duties in respect of actions and proceedings pending from time to time in the district court of his county which are now or hereafter conferred or imposed upon him by law in respect of actions and proceedings pending in the superior court of his county;
- (2) Performs all of the clerical, administrative and fiscal functions required in the operation of the district court of his county in the same manner as he is required to perform such functions in the operation of the superior court of his county;
- (3) Maintains, under the supervision of the Administrative Office of the Courts, an office of uniform consolidated records of all judicial proceedings in the superior court division and the district court division of the General Court of Justice in his county. Those records shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court and all other records required by law to be maintained. The form and procedure for filing, docketing, indexing, and recording shall be as prescribed by the Administrative Officer of the Courts notwithstanding any contrary statutory provision as to the title and form of the record or as a method of indexing;
- (4) Has the power to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility for the types of offenses specified in G.S. 7A-273(2) in accordance with the schedules of offenses promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fine or penalty and costs;
- (5) Has the power to issue warrants of arrest valid throughout the State, and search warrants valid throughout the county of the issuing clerk;
- (6) Has the power to conduct an initial appearance in accordance with Chapter 15A, Article 24, Initial Appearance, and to fix conditions of release in accordance with Chapter 15A, Article 26, Bail;
- (7) Continues to exercise all powers, duties and authority theretofore vested in or imposed upon clerks of superior court by general law, with the exception of jurisdiction in juvenile matters; and
- (8) Has the power to accept written appearances, waivers of trial and pleas of guilty to violations of G.S. 14-107 when ~~restitution~~—restitution, including service charges and processing fees allowed under G.S. 14-

107, is made, the amount of the check is two thousand dollars (\$2,000) or less, and the warrant does not charge a fourth or subsequent violation of this statute, and, in such cases, to enter such judgments as the chief district judge shall direct and, forward the amounts collected as restitution to the appropriate prosecuting witnesses and to collect the costs."

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

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

In criminal actions or infractions, any magistrate has power:

- (1) In misdemeanor or infraction cases, other than the types of offenses specified in subdivision (2) of this section, in which the maximum punishment which can be adjudged cannot exceed imprisonment for 30 days, or a fine of fifty dollars (\$50.00) or a penalty of not more than fifty dollars (\$50.00), exclusive of costs, to accept guilty pleas or admissions of responsibility and enter judgment;
- (2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;
- (3) To issue arrest warrants valid throughout the State;
- (4) To issue search warrants valid throughout the county;
- (5) To grant bail before trial for any noncapital offense;
- (6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars (\$2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;
- (7) To conduct an initial appearance as provided in G.S. 15A-511; and
- (8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars (\$2,000) or less, restitution—restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs."

Sec. 5. This act becomes effective December 1, 1993, and applies to checks written on or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives