

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

2

HOUSE BILL 784
Committee Substitute Favorable 5/6/13

Short Title: Worthless Check/Present Cashed Check.

(Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE REMEDIES AND PENALTIES FOR WORTHLESS CHECKS ALSO APPLY WHEN A CHECK THAT HAS BEEN PAID IN FULL IS PRESENTED AGAIN FOR PAYMENT AND TO PROVIDE THAT CHECKS REFUSED TO BE HONORED BY A BANK MAY BE SUBMITTED AS EVIDENCE IF THEY ARE STAMPED OR MARKED WITH ONE OF A NUMBER OF DIFFERENT LISTED TERMS.

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~~, presentation or because the check has previously been presented and honored for the payment of money or its equivalent, and who fails to pay the same 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. 25-3-506 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, the service charges, and processing fees and (ii) for additional damages of three times the amount owing on the check, not to exceed five hundred dollars (\$500.00) or to be less than one hundred dollars (\$100.00). If the amount claimed in the first demand letter is not paid, the claim for the amount of the check, the service charges and processing fees, and the treble damages provided for in this subsection may be made by a subsequent letter of demand prior to filing an action. In an action under this section the court or jury may, however, waive all or part of the additional damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

The initial written demand for the amount of the check, the service charges, and processing fees shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a1) of this section. The subsequent demand letter demanding the amount of the check, the service charges, the processing fees, and treble damages shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a2) of this section. If the payee chooses to send the demand letter set out in subsection (a2) of this section, then the payee may not file an action to collect the amount of the check, the service charges, the processing fees, or treble damages until 30 days following the written demand set out in subsection (a2) of this section."



1 **SECTION 2.** G.S. 6-21.3(d) reads as rewritten:

2 "(d) The remedy provided for herein shall apply only if the check was drawn, made,
3 uttered or issued with knowledge there were insufficient funds in the ~~account or account~~, that no
4 credit existed with the bank or depository with which to pay the check or draft upon
5 ~~presentation~~-presentation, or that the check was presented with the knowledge that the check
6 had previously been presented and honored for the payment of money or its equivalent."

7 **SECTION 3.** G.S. 6-21.3 is amended by adding a new subsection to read:

8 "(e) A check or draft or the image of such that is refused by a bank or depository that is
9 stamped or marked or with an attachment may be submitted as evidence for the remedy
10 provided by this section if, in the regular course of business, it is business stamped, marked or
11 with an attachment that indicates the reason for the dishonor with terms that include, but are not
12 limited to, the following: "insufficient funds," "no account," "account closed," "NSF,"
13 "uncollected," "unable to locate," "stale dated," "postdated," "endorsement irregular,"
14 "signature irregular," "nonnegotiable," "altered," "unable to process," "wrong bank," "refer to
15 maker," "duplicate presentment," "forgery," "noncompliant," or "UCD noncompliant.""

16 **SECTION 4.** G.S. 14-107 reads as rewritten:

17 **"§ 14-107. Worthless ~~checks~~-checks; multiple presentment of checks.**

18 (a) It is unlawful for any person, firm or corporation, to draw, make, utter or issue and
19 deliver to another, any check or draft on any bank or depository, for the payment of money or
20 its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering the
21 check or draft, that the maker or drawer of ~~it~~-it:

22 (1) ~~has~~-Has not sufficient funds on deposit in or credit with the bank or
23 depository with which to pay the check or draft upon
24 ~~presentation~~-presentation, or

25 (2) Has previously presented the check or draft for the payment of money or its
26 equivalent.

27 (b) It is unlawful for any person, firm or corporation to solicit or to aid and abet any
28 other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm
29 or corporation, any check or draft on any bank or depository for the payment of money or its
30 equivalent, being informed, knowing or having reasonable grounds for believing at the time of
31 the soliciting or the aiding and abetting that the maker or the drawer of the check or ~~draft~~-draft:

32 (1) ~~has~~-Has not sufficient funds on deposit in, or credit with, the bank or
33 depository with which to pay the check or draft upon
34 ~~presentation~~-presentation, or

35 (2) Has previously presented the check or draft for the payment of money or its
36 equivalent.

37 (c) The word "credit" as used in this section means an arrangement or understanding
38 with the bank or depository for the payment of a check or draft.

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

42 (1) Except as provided in subdivision (3) or (4) of this subsection, the person is
43 guilty of a Class 2 misdemeanor. Provided, however, if the person has been
44 convicted three times of violating this section, the person shall on the fourth
45 and all subsequent convictions (i) be punished as for a Class 1 misdemeanor
46 and (ii) be ordered, as a condition of probation, to refrain from maintaining a
47 checking account or making or uttering a check for three years.

48 (2) Repealed by Session Laws 1999-408, s. 1.

49 (3) If the check or draft is drawn upon a nonexistent account, the person is
50 guilty of a Class 1 misdemeanor.

1 (4) If the check or draft is drawn upon an account that has been closed by the
2 drawer, or that the drawer knows to have been closed by the bank or
3 depository, prior to time the check is drawn, the person is guilty of a Class 1
4 misdemeanor.

5 (e) In deciding to impose any sentence other than an active prison sentence, the
6 sentencing judge shall consider and may require, in accordance with the provisions of
7 G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service
8 charges imposed on the payee by a bank or depository for processing the dishonored check, and
9 (iii) any processing fees imposed by the payee pursuant to G.S. 25-3-506, and each prosecuting
10 witness (whether or not under subpoena) shall be entitled to a witness fee as provided by
11 G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

12 **SECTION 5.** G.S. 14-107.1(e) reads as rewritten:

13 "(e) If the bank or depository dishonoring a check or draft has returned it in the regular
14 course of business stamped or marked or with an attachment indicating the reason for ~~dishonor~~
15 (~~"insufficient funds," "no account," "account closed" or words of like meaning~~), dishonor, the
16 check or draft and any attachment may be introduced in evidence and constitute prima facie
17 evidence of the facts of dishonor if the conditions of subdivisions (5) through (7) of subsection
18 (b) or subdivisions (5) through (7) of subsection (c) have been met. The reason for dishonor
19 may be indicated with terms that include, but are not limited to, the following: "insufficient
20 funds," "no account," "account closed," "NSF," "uncollected," "unable to locate," "stale dated,"
21 "postdated," "endorsement irregular," "signature irregular," "nonnegotiable," "altered," "unable
22 to process," "wrong bank," "refer to maker," "duplicate presentment," "forgery,"
23 "noncompliant," or "UCD noncompliant." The fact that the check or draft was returned
24 dishonored may be received as evidence that the check passer had no credit with the bank or
25 depository for payment of the check or draft."

26 **SECTION 6.** This act becomes effective December 1, 2013, and applies to
27 offenses committed on or after that date.