

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 180  
Senate Judiciary II Committee Substitute Adopted 6/26/91

Short Title: Modify Various Criminal Penalties.

(Public)

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Sponsors:

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Referred to:

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February 27, 1991

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE DOLLAR AMOUNT FOR WHICH CERTAIN  
2 PROPERTY OFFENSES ARE DESIGNATED FELONIES RATHER THAN  
3 MISDEMEANORS AND TO MAKE CONFORMING CHANGES.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 14-107 reads as rewritten:

7 "**§ 14-107. Worthless checks.**

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

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

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

1 Any person, firm or corporation violating any provision of this section shall be  
2 guilty of a misdemeanor and upon conviction shall be punished as follows: A violation  
3 of this section shall be a Class J felony if the amount of the check or draft is more than  
4 two thousand dollars (\$2,000). If the amount of the check or draft is two thousand  
5 dollars (\$2,000) or less, a violation of this section shall be a misdemeanor punishable as  
6 follows:

7 (1) If ~~such~~ the amount of the check or draft is not over ~~fifty dollars~~  
8 ~~(\$50.00)~~ one hundred dollars (\$100.00), the punishment shall be by a  
9 fine not to exceed fifty dollars (\$50.00) or imprisonment for not more  
10 than 30 days. Provided, however, if such person has been convicted  
11 three times of violating G.S. 14-107, he shall on the fourth and all  
12 subsequent convictions (i) be punished in the discretion of the district  
13 or superior court as for a general misdemeanor and (ii) be ordered, as a  
14 condition of probation, to refrain from maintaining a checking account  
15 or making or uttering a check for three years.

16 (2) If the amount of ~~such~~ the check or draft is over ~~fifty dollars (\$50.00)~~ one  
17 hundred dollars (\$100.00), the punishment shall be by a fine not to  
18 exceed ~~five hundred dollars (\$500.00)~~ two hundred fifty dollars  
19 (\$250.00) or imprisonment for not more than six months, or both.  
20 Provided, however, if such person has been convicted three times of  
21 violating G.S. 14-107, he shall on the fourth and all subsequent  
22 convictions (i) be punished in the discretion of the district or superior  
23 court as for a general misdemeanor and (ii) be ordered, as a condition  
24 of probation, to refrain from maintaining a checking account or  
25 making or uttering a check for three years.

26 (3) If ~~such~~ the check or draft is drawn upon a nonexistent account, the  
27 punishment shall be by a fine not to exceed one thousand dollars  
28 (\$1,000) or imprisonment for not more than two years, or both.

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

33 ~~(5) In deciding to impose any sentence other than an~~

34 In deciding to impose any sentence other than an active prison sentence, the  
35 sentencing judge shall consider and may require, in accordance with the provisions of  
36 G.S. 15A-1343, restitution to the victim for the amount of the check or draft and each  
37 prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as  
38 provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the  
39 defendant."

40 Sec. 2. G.S. 14-72 reads as rewritten:

41 "**§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods**  
42 **not exceeding \$400.00 in value.**

43 (a) Larceny of goods of the value of more than ~~four hundred dollars (\$400.00)~~ one  
44 thousand dollars (\$1,000) is a Class H felony. The receiving or possessing of stolen

1 goods of the value of more than ~~four hundred dollars (\$400.00)~~ one thousand dollars  
2 (\$1,000) while knowing or having reasonable grounds to believe that the goods are  
3 stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a  
4 Class H felony. Receiving or possession of stolen goods as provided in subsection (c)  
5 of this section is a Class H felony. Except as provided in subsections (b) and (c) of this  
6 section, larceny of property, or the receiving or possession of stolen goods knowing or  
7 having reasonable grounds to believe them to be stolen, where the value of the property  
8 or goods is not more than ~~four hundred dollars (\$400.00)~~, one thousand dollars (\$1,000), is  
9 a misdemeanor punishable under G.S. 14-3(a). In all cases of doubt, the jury shall, in  
10 the verdict, fix the value of the property stolen.

11 (b) The crime of larceny is a felony, without regard to the value of the property in  
12 question, if the larceny is:

13 (1) From the person; or

14 (2) Committed pursuant to a violation of G.S. 14-51, 14-53, 14-54 or 14-  
15 57; or

16 (3) Of any explosive or incendiary device or substance. As used in this  
17 section, the phrase 'explosive or incendiary device or substance' shall  
18 include any explosive or incendiary grenade or bomb; any dynamite,  
19 blasting powder, nitroglycerin, TNT, or other high explosive; or any  
20 device, ingredient for such device, or type or quantity of substance  
21 primarily useful for large-scale destruction of property by explosive or  
22 incendiary action or lethal injury to persons by explosive or incendiary  
23 action. This definition shall not include fireworks; or any form, type,  
24 or quantity of gasoline, butane gas, natural gas, or any other substance  
25 having explosive or incendiary properties but serving a legitimate  
26 nondestructive or nonlethal use in the form, type, or quantity stolen.

27 (4) Of any firearm. As used in this section, the term 'firearm' shall include  
28 any instrument used in the propulsion of a shot, shell or bullet by the  
29 action of gunpowder or any other explosive substance within it. A  
30 'firearm,' which at the time of theft is not capable of being fired, shall  
31 be included within this definition if it can be made to work. This  
32 definition shall not include air rifles or air pistols.

33 (5) Of any record or paper in the custody of the North Carolina State  
34 Archives as defined by G.S. 121-2(7) and 121-2(8).

35 (c) The crime of possessing stolen goods knowing or having reasonable grounds  
36 to believe them to be stolen in the circumstances described in subsection (b) is a felony  
37 or the crime of receiving stolen goods knowing or having reasonable grounds to believe  
38 them to be stolen in the circumstances described in subsection (b) is a felony, without  
39 regard to the value of the property in question."

40 Sec. 3. G.S. 14-73 reads as rewritten:

41 "**§ 14-73. Jurisdiction of the superior courts in cases of larceny and receiving**  
42 **stolen goods.**

1 The superior courts shall have exclusive jurisdiction of the trial of all cases of the  
2 larceny of property, or the receiving of stolen goods knowing them to be stolen, of the  
3 value of more than ~~four hundred dollars (\$400.00)~~ one thousand dollars (\$1,000)."

4 Sec. 4. G.S. 14-86.1(a) reads as rewritten:

5 "(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully  
6 conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or  
7 used by any person in the commission of armed or common-law robbery, or used by any  
8 person in the commission of any larceny when the value of the property taken is more  
9 than ~~four hundred dollars (\$400.00)~~ two thousand dollars (\$2,000) shall be subject to  
10 forfeiture as provided herein, except that:

- 11 (1) No conveyance used by any person as a common carrier in the  
12 transaction of the business of the common carrier shall be forfeited  
13 under the provisions of this section unless it shall appear that the  
14 owner or other person in custody or control of such conveyance was a  
15 consenting party or privy to a violation that may subject the  
16 conveyance to forfeiture under this section;
- 17 (2) No conveyance shall be forfeited under the provisions of this section  
18 by reason of any act or omission committed or omitted while such  
19 conveyance was unlawfully in the possession of a person other than  
20 the owner in violation of the criminal laws of the United States, or any  
21 state;
- 22 (3) No conveyance shall be forfeited pursuant to this section unless the  
23 violation involved is a felony;
- 24 (4) A forfeiture of a conveyance encumbered by a bona fide security  
25 interest is subject to the interest of the secured party who neither had  
26 knowledge of nor consented to the act or omission;
- 27 (5) No conveyance shall be forfeited under the provisions of this section  
28 unless the owner knew or had reason to believe the vehicle was being  
29 used in the commission of any violation that may subject the  
30 conveyance to forfeiture under this section;
- 31 (6) The trial judge in the criminal proceeding which may subject the  
32 conveyance to forfeiture may order the seized conveyance returned to  
33 the owner if he finds forfeiture inappropriate. If the conveyance is not  
34 returned to the owner the procedures provided in subsection (e) shall  
35 apply."

36 Sec. 5. G.S. 108A-53(a) reads as rewritten:

37 "(a) Any person, whether provider or recipient or person representing himself as  
38 such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain  
39 by means of making a willfully false statement or representation or by impersonation or  
40 by failing to disclose material facts or in any manner not authorized by this Part or the  
41 regulations issued pursuant thereto, transfers with intent to defraud any food stamps or  
42 authorization cards to which he is not entitled in the amount of ~~four hundred dollar~~  
43 ~~(\$400.00)~~ two thousand dollars (\$2,000) or less shall be guilty of a misdemeanor.  
44 Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain

1 by means of making a willfully false statement or representation or by impersonation or  
2 by failing to disclose material facts or in any manner not authorized by this Part or the  
3 regulations issued pursuant thereto, transfers with intent to defraud any food stamps or  
4 authorization cards to which he is not entitled in an amount more than ~~four hundred~~  
5 ~~dollars (\$400.00)~~ two thousand dollars (\$2,000) shall be guilty of a felony and shall be  
6 punished as in cases of larceny."

7           Sec. 6. This act becomes effective October 1, 1991, and applies to offenses  
8 occurring on or after that date. Prosecutions for offenses committed before the effective  
9 date of this act are not abated or affected by this act, and the statutes that would be  
10 applicable but for this act remain applicable to those prosecutions.