

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1109

Short Title: Worthless Checks/Commercial Debts.

(Public)

Sponsors: Representatives McMahan; Berry, Black, Bowie, Culp, Dockham, Gulley, Kiser, Rayfield, Sexton, Starnes, Tallent, and Weatherly.

Referred to: Commerce, if favorable, Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A PERSON, FIRM, CORPORATION, OR
2 AUTHORIZED EMPLOYEE WHO ISSUES A CHECK FOR COMMERCIAL
3 DEBT PAYMENTS ON OPEN OR REVOLVING CREDIT ACCOUNTS MAY BE
4 PROSECUTED FOR A WORTHLESS CHECK VIOLATION.
5

6 The General Assembly of North Carolina enacts:

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

8 **"§ 14-107. Worthless checks.**

9 It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue
10 and deliver to another, any check or draft on any bank or depository, for the payment of
11 money or its equivalent, including payments for open accounts, knowing at the time of
12 the making, drawing, uttering, issuing and delivering such check or draft as aforesaid,
13 that the maker or 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 any
16 other person, firm or corporation to draw, make, utter or issue and deliver to any person,
17 firm or corporation, any check or draft on any bank or depository for the payment of
18 money or its equivalent, including payments for open accounts, being informed, knowing
19 or having reasonable grounds for believing at the time of the soliciting or the aiding and

1 abetting that the maker or the drawer of the check or draft has not sufficient funds on
2 deposit in, or credit with, such bank or depository with which to pay the same upon
3 presentation.

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

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

10 (1) If the amount of the check or draft is not over one hundred dollars
11 (\$100.00), the person is guilty of a Class 2 misdemeanor. Provided,
12 however, if such person has been convicted three times of violating G.S.
13 14-107, he shall on the fourth and all subsequent convictions (i) be
14 punished as for a Class 1 misdemeanor and (ii) be ordered, as a
15 condition of probation, to refrain from maintaining a checking account
16 or making or uttering a check for three years.

17 (2) If the amount of the check or draft is over one hundred dollars
18 (\$100.00), the person is guilty of a Class 2 misdemeanor. Provided,
19 however, if such person has been convicted three times of violating G.S.
20 14-107, he shall on the fourth and all subsequent convictions (i) be
21 punished in the discretion of the district or superior court as for a Class
22 1 misdemeanor and (ii) be ordered, as a condition of probation, to
23 refrain from maintaining a checking account or making or uttering a
24 check for three years.

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

27 (4) If the check or draft is drawn upon an account that has been closed by
28 the drawer prior to time the check is drawn, the person is guilty of a
29 Class 1 misdemeanor.

30 In deciding to impose any sentence other than an active prison sentence, the
31 sentencing judge shall consider and may require, in accordance with the provisions of
32 G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any
33 service charges imposed on the payee by a bank or depository for processing the
34 dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S.
35 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled
36 to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and
37 assessed to the defendant."

38 Section 2. G.S. 14-107.1 reads as rewritten:

39 "**§ 14-107.1. Prima facie evidence in worthless check cases.**

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

42 (1) Check Passer. – A natural ~~person~~person, firm, corporation, or any
43 authorized employee of the firm or corporation who draws, makes,

1 utters, or issues and delivers, or causes to be delivered to another any
2 check or draft on any bank or depository for the payment of money or
3 its equivalent.

4 (2) Acceptor. – A person, firm, corporation or any authorized employee
5 thereof accepting a check or draft from a check passer.

6 (3) Check Taker. – A natural person who is an acceptor, or an employee or
7 agent of an acceptor, of a check or draft in a face-to-face transaction.

8 (b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of
9 subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below
10 are met. If the check passer is a firm, corporation, or an authorized employee of the firm
11 or corporation, the prima facie evidence provisions of subdivisions (3) and (4) of this
12 subsection do not apply. The prima facie evidence provisions of subsection (e) apply if
13 only conditions (5) through (7) are met. The conditions are:

14 (1) The check or draft is delivered to a check taker.

15 (2) The name and mailing address of the check passer are written or printed
16 on the check or draft.

17 (3) The check taker identifies the check passer at the time of accepting the
18 check by means of a North Carolina driver's license, a special
19 identification card issued pursuant to G.S. 20-37.7, or other reliable
20 serially numbered identification card containing a photograph and
21 mailing address of the person in question.

22 (4) The license or identification card number of the check passer appears on
23 the check or draft.

24 (5) After dishonor of the check or draft by the bank or depository, the
25 acceptor sends the check passer a letter by certified mail, to the address
26 recorded on the check, identifying the check or draft, setting forth the
27 circumstances of dishonor, and requesting rectification of any bank
28 error or other error in connection with the transaction within 10 days.

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

33 (6) The acceptor files the affidavit described in subdivision (7) with a
34 judicial official, as defined in G.S. 15A-101(5), before issuance of the
35 first process or pleading in the prosecution under G.S. 14-107. The
36 affidavit must be kept in the case file (attached to the criminal pleading
37 in the case).

38 (7) The affidavit of the acceptor, sworn to before a person authorized to
39 administer oaths, must:

40 a. State the facts surrounding acceptance of the check or draft. If
41 the conditions set forth in subdivisions (1) through (5) have been
42 met, the specific facts demonstrating observance of those
43 conditions must be stated.

- 1 b. Indicate that at least 15 days have elapsed since the mailing of
- 2 the letter required under subdivision (5) and that the check passer
- 3 has failed to rectify any error that may have occurred with
- 4 respect to the dishonored check or draft.
- 5 c. Have attached a copy of the letter sent to the check passer
- 6 pursuant to subdivision (5).
- 7 d. Have attached the receipt, or a copy of it, from the United States
- 8 Postal Service certifying the mailing of the letter described in
- 9 subdivision (5).
- 10 e. Have attached the check or draft or a copy thereof, including any
- 11 stamp, marking or attachment indicating the reason for dishonor.

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

- 17 (1) The check or draft is delivered to the acceptor by United States mail, or
- 18 by some person or instrumentality other than a check passer.
- 19 (2) The name and mailing address of the check passer are recorded on the
- 20 check or draft.
- 21 (3) The acceptor has previously identified the check passer, at the time of
- 22 opening the account, establishing the course of dealing, or initiating the
- 23 lease or contract, by means of a North Carolina driver's license, a
- 24 special identification card issued pursuant to G.S. 20-37.7, or other
- 25 reliable serially numbered identification card containing a photograph
- 26 and mailing address of the person in question, and obtained the
- 27 signature of the person or persons who will be making payments on the
- 28 account, course of dealing, lease or contract, and such signature is
- 29 retained in the account file.
- 30 (4) The acceptor compares the name, address, and signature on the check
- 31 with the name, address, and signature on file in the account, course of
- 32 dealing, lease, or contract, and notes that the information contained on
- 33 the check corresponds with the information contained in the file, and the
- 34 signature on the check appears genuine when compared to the signature
- 35 in the file.
- 36 (5) After dishonor of the check or draft by the bank or depository, the
- 37 acceptor sends the check passer a letter by certified mail to the address
- 38 recorded on the check or draft identifying the check or draft, setting
- 39 forth the circumstances of dishonor and requesting rectification of any
- 40 bank error or other error in connection with the transaction within 10
- 41 days.

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

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

3 (6) The acceptor files the affidavits described in subdivision (7) of this
4 subsection with a judicial official, as defined in G.S. 15A-101(5), before
5 issuance of the first process or pleading in the prosecution under G.S.
6 14-107. The affidavit must be kept in the case file (attached to the
7 criminal pleading in the case).

8 (7) The affidavit of the acceptor, sworn to before a person authorized to
9 administer oaths, must:

10 a. State the facts surrounding acceptance of the check or draft. If
11 the conditions set forth in subdivisions (1) through (5) have been
12 met, the specific facts demonstrating observance of those
13 conditions must be stated.

14 b. Indicate that at least 15 days have elapsed since the mailing of
15 the letter required under subdivision (5) and that the check passer
16 has failed to rectify any error that may have occurred with
17 respect to the dishonored check or draft.

18 c. Have attached a copy of the letter sent to the check passer
19 pursuant to subdivision (5).

20 d. Have attached the receipt, or a copy of it, from the United States
21 Postal Service certifying the mailing of the letter described in
22 subdivision (5).

23 e. Have attached the check or draft or a copy thereof, including any
24 stamp, marking or attachment indicating the reason for dishonor.

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

27 (e) If the bank or depository dishonoring a check or draft has returned it in the
28 regular course of business stamped or marked or with an attachment indicating the reason
29 for dishonor ('insufficient funds,' 'no account,' 'account closed' or words of like
30 meaning), the check or draft and any attachment may be introduced in evidence and
31 constitute prima facie evidence of the facts of dishonor if the conditions of subdivisions
32 (5) through (7) of subsection (b) or subdivisions (5) through (7) of subsection (c) have
33 been met. The fact that the check or draft was returned dishonored may be received as
34 evidence that the check passer had no credit with the bank or depository for payment of
35 the check or draft.

36 (f) An affidavit by an employee of a bank or depository who has personal
37 knowledge of the facts stated in the affidavit sworn to and properly executed before an
38 official authorized to administer oaths is admissible in evidence without further
39 authentication in a hearing or trial pursuant to a prosecution under G.S. 14-107 in the
40 District Court Division of the General Court of Justice with respect to the facts of
41 dishonor of the check or draft, including the existence of an account, the date the check or
42 draft was processed, whether there were sufficient funds in an account to pay the check or
43 draft, and other related matters. If the defendant requests that the bank or depository

1 employee personally testify in the hearing or trial, the defendant may subpoena the
2 employee. The defendant shall be provided a copy of the affidavit prior to trial and shall
3 have the opportunity to subpoena the affiant for trial."

4 Section 3. This act becomes effective December 1, 1997, and applies to
5 offenses committed on or after that date.