

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 905  
Committee Substitute Favorable 5/9/95

Short Title: Worthless Checks Clarification.

(Public)

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Sponsors:

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Referred to:

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April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIVIL REMEDIES AVAILABLE FOR RETURNED CHECKS.

The General Assembly of North Carolina enacts:

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

**"§ 6-21.3. Remedies for returned check.**

(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, 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, 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

1 treble damages provided for in this subsection may be made by a subsequent letter of  
 2 demand prior to filing an action. In an action under this section the court or jury may,  
 3 however, waive all or part of the additional damages upon a finding that the defendant's  
 4 failure to satisfy the dishonored check or draft was due to economic hardship.

5 ~~The written demand shall: (i) describe the check or draft and the circumstances of its~~  
 6 ~~dishonor, (ii) contain a demand for payment and a notice of intent to file suit for the~~  
 7 ~~amount owing on the check, the service charges, and processing fees, and additional~~  
 8 ~~damages up to five hundred dollars (\$500.00) under this section if payment is not~~  
 9 ~~received within 30 days, and (iii) be mailed by certified mail to the defendant at his last~~  
 10 ~~known address.~~ The initial written demand for the amount of the check, the service  
 11 charges, and processing fees shall be mailed by certified mail to the defendant at the  
 12 defendant's last known address and shall be in the form set out in subsection (a1) or (a2)  
 13 of this section. The subsequent demand letter demanding the amount of the check, the  
 14 service charges, the processing fees, and treble damages shall be mailed by certified mail  
 15 to the defendant at the defendant's last known address and shall be in the form set out in  
 16 subsection (a3) of this section. If the payee chooses to send the demand letter set out in  
 17 subsection (a3) of this section, then the payee may not file an action to collect the amount  
 18 of the check, the service charges, the processing fees, or treble damages until 30 days  
 19 following the written demand set out in subsection (a3) of this section.

20 (a1) If the check was received in a face-to-face transaction, the first notification  
 21 letter shall be in the following form:

22 'This letter is written pursuant to G.S. 6-21.3 to inform you that on  
 23 , you made and delivered to the business listed above a check payable to  
 24 this business containing your name and address in the sum of \$ \_\_\_\_\_,  
 25 drawn upon \_\_\_\_\_ (bank or institution), account # \_\_\_\_\_.  
 26 This check contained a drivers license identification number from a card  
 27 with your photograph and mailing address, which was used to identify you  
 28 at the time the check was accepted. Also, we have received no affidavit  
 29 that this was a stolen check, if that is the circumstance.

30 The check has been dishonored by the bank for the following  
 31 reasons:

32  
 33 As acceptor of the check, we give you notice to rectify any bank error or  
 34 other error in connection with the transaction, and to pay the face value of  
 35 the check, plus the fees as authorized under G.S. 25-3-512 and G.S. 6-  
 36 21.3(a) as follows:

37	<u>Face value of the check #</u>	<u>\$</u>
38	<u>Processing fee authorized</u>	
39	<u>under G.S. 25-3-512</u>	<u>\$</u>
40	<u>Bank service fees authorized</u>	
41	<u>under G.S. 6-21.3</u>	<u>\$</u>
42	<u>Total amount due:</u>	<u>\$</u>

1 If the total amount due listed above is not paid within 30 days of the  
2 mailing of this letter, the laws of North Carolina allow us to pursue either  
3 or both of the following remedies:

4 1. After 30 days from the mailing of this letter, an affidavit may be  
5 filed to establish the issuance of a criminal pleading against you for  
6 allegedly giving a worthless check in violation of law (G.S. 14-107).

7 2. After 30 days from the mailing of this letter, an affidavit may be  
8 filed to seek civil damages of three times the amount of the check (with a  
9 minimum damage of one hundred dollars (\$100.00) and a maximum  
10 damage of five hundred dollars (\$500.00)) for allegedly giving a worthless  
11 check in violation of law (G.S. 6-21.3).

12 Appropriate relief will then be sought before a court of proper  
13 jurisdiction for full payment of the check plus all costs and witness fees.

14 A copy of this letter will constitute part of the prima facie evidence  
15 if a pleading is issued and will serve to identify you as the check passer. To  
16 pay the check or obtain information, contact the undersigned at the above  
17 business location. Cash or a bank official check will be the only acceptable  
18 means of redeeming the dishonored check.'

19 (a2) If the check was delivered by mail, the first notification letter shall be in the  
20 following form:

21 'This letter is written pursuant to G.S. 6-21.3 to inform you that a check  
22 containing your name and address as written above was received by this  
23 business listed above on \_\_\_\_\_ . The check is in the sum of \$  
24 , drawn upon \_\_\_\_\_ (bank or institution), account # \_\_\_\_\_ . We  
25 have compared your name, address, and signature on the check with the  
26 name, address, and signature on file in the account previously established  
27 by you or on your behalf, and the signature on the check appears to be  
28 genuine. Also, we have received no affidavit that the check was stolen if  
29 that is the circumstance.

30 The check has been dishonored by the bank for the following reasons:

31  
32 1. After 30 days from the mailing of this letter, an affidavit may be  
33 filed to establish the issuance of a criminal pleading against you for  
34 allegedly giving a worthless check in violation of law (G.S. 14-107).

35 2. After 30 days from the mailing of this letter, an affidavit may be  
36 filed to seek civil damages of three times the amount of the check (with a  
37 minimum damage of one hundred dollars (\$100.00) and a maximum  
38 damage of five hundred dollars (\$500.00) for allegedly giving a worthless  
39 check in violation of law (G.S. 6-21.3).

40 Appropriate relief will then be sought before a court of proper jurisdiction  
41 for full payment of the check plus all costs and witness fees.

42 A copy of this letter will constitute part of the prima facie evidence if a  
43 pleading is issued and will serve to identify you as the check passer. To

pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.'

(a3) If the total amount due in subsection (a1) or (a2) above has not been paid within 30 days after the mailing of the notification letter, a subsequent demand letter may be sent and shall be in the following form:

'On \_\_\_\_\_, we informed you that you made and delivered to the business listed a check payable to this business containing your name and address in the sum of \$ \_\_\_\_\_, drawn upon \_\_\_\_\_ (bank or institution), account # \_\_\_\_\_. This check contained a drivers license identification number from a card with your photograph and mailing address, which was used to identify you at the time the check was accepted. Also, we have received no affidavit that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

We notified you that you were responsible for the face value of the check (\$ \_\_\_\_\_) plus the fees authorized under G.S. 25-3-512 (\$ \_\_\_\_\_) and G.S. 6-21.3(a) (\$ \_\_\_\_\_) for a total amount due of \$ \_\_\_\_\_. Thirty days have passed since the mailing of that notification letter, and you have not made payment to us for that total amount due.

Under G.S. 6-21.3, you are now liable for the face value of the check plus treble damages. These damages shall be three times the amount of the check or one hundred dollars (\$100.00), whichever is greater, but cannot exceed five hundred dollars (\$500.00). The total amount now due is:

<u>Face value of the check</u>	<u>\$ _____</u>	
<u>Three times the face value of the check, with a minimum of \$100.00 and a maximum of \$500.00</u>	<u>\$ _____</u>	
		<u>Total amount</u>
<u>due</u>		<u>\$ _____</u>

Payment of the total amount due above within 30 days of the mailing of this letter shall satisfy this civil remedy for the returned check.

If payment has not been received within this 30-day period, appropriate relief will then be sought before a court of proper jurisdiction for full payment of the check plus all costs and witness fees.

A copy of this letter will constitute part of the prima facie evidence if a pleading is issued and will serve to identify you as the check passer. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.'

(b) In an action under subsection (a) of this section, the presiding judge or magistrate may award the prevailing party, as part of the court costs payable, a reasonable attorney's fee to the duly licensed attorney representing the prevailing party in such suit.

1       (c) It shall be an affirmative defense, in addition to other defenses, to an action  
2 under this section if it is found that: (i) full satisfaction of the amount of the check or  
3 draft was made prior to the commencement of the action, or (ii) that the bank or  
4 depository erred in dishonoring the check or draft, or (iii) that the acceptor of the check  
5 knew at the time of acceptance that there were insufficient funds on deposit in the bank or  
6 depository with which to cause the check to be honored.

7       (d) The remedy provided for herein shall apply only if the check was drawn, made,  
8 uttered or issued with knowledge there were insufficient funds in the account or that no  
9 credit existed with the bank or depository with which to pay the check or draft upon  
10 presentation."

11       Sec. 2. This act becomes effective December 1, 1995, and applies to checks  
12 delivered on or after that date.