

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1234

Short Title: Worthless Check Affidavit.

(Public)

Sponsors: Representatives Flaherty; and Buchanan.

Referred to: Judiciary.

April 12, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A BANK EMPLOYEE'S AFFIDAVIT MAY BE
3 USED IN A WORTHLESS CHECK PROSECUTION.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 14-107.1 reads as rewritten:

6 "**§ 14-107.1. Prima facie evidence in worthless check cases.**

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

9 (1) Check Passer. – A natural person who draws, makes, utters, or issues
10 and delivers, or causes to be delivered to another any check or draft on
11 any bank or depository for the payment of money or its equivalent.

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

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

16 (b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of
17 subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below
18 are met. The prima facie evidence provisions of subsection (e) apply if only conditions
19 (5) through (7) are met. The conditions are:

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

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

23 (3) The check taker identifies the check passer at the time of accepting the
24 check by means of a North Carolina driver's license, a special

1 identification card issued pursuant to G.S. 20-37.7, or other reliable
2 serially numbered identification card containing a photograph and
3 mailing address of the person in question.

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

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

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

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

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

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

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

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

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

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

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

43 (1) The check or draft is delivered to the acceptor by United States mail,
44 or by some person or instrumentality other than a check passer.

- 1 (2) The name and mailing address of the check passer are recorded on the
2 check or draft.
- 3 (3) The acceptor has previously identified the check passer, at the time of
4 opening the account, establishing the course of dealing, or initiating
5 the lease or contract, by means of a North Carolina driver's license, a
6 special identification card issued pursuant to G.S. 20-37.7, or other
7 reliable serially numbered identification card containing a photograph
8 and mailing address of the person in question, and obtained the
9 signature of the person or persons who will be making payments on
10 the account, course of dealing, lease or contract, and such signature is
11 retained in the account file.
- 12 (4) The acceptor compares the name, address, and signature on the check
13 with the name, address, and signature on file in the account, course of
14 dealing, lease, or contract, and notes that the information contained on
15 the check corresponds with the information contained in the file, and
16 the signature on the check appears genuine when compared to the
17 signature in the file.
- 18 (5) After dishonor of the check or draft by the bank or depository, the
19 acceptor sends the check passer a letter by certified mail to the address
20 recorded on the check or draft identifying the check or draft, setting
21 forth the circumstances of dishonor and requesting rectification of any
22 bank error or other error in connection with the transaction within 10
23 days.
- 24 An acceptor may advise the check passer in a letter that legal action
25 may be taken against him if payment is not made within the prescribed
26 time period. Such letter, however, shall be in a form which does not
27 violate applicable provisions of Article 2 of Chapter 75.
- 28 (6) The acceptor files the affidavits described in subdivision (7) of this
29 subsection with a judicial official, as defined in G.S. 15A-101(5),
30 before issuance of the first process or pleading in the prosecution
31 under G.S. 14-107. The affidavit must be kept in the case file (attached
32 to the criminal pleading in the case).
- 33 (7) The affidavit of the acceptor, sworn to before a person authorized to
34 administer oaths, must:
- 35 a. State the facts surrounding acceptance of the check or draft. If
36 the conditions set forth in subdivisions (1) through (5) have
37 been met, the specific facts demonstrating observance of those
38 conditions must be stated.
- 39 b. Indicate that at least 15 days have elapsed since the mailing of
40 the letter required under subdivision (5) and that the check
41 passer has failed to rectify any error that may have occurred
42 with respect to the dishonored check or draft.
- 43 c. Have attached a copy of the letter sent to the check passer
44 pursuant to subdivision (5).

- 1 d. Have attached the receipt, or a copy of it, from the United
2 States Postal Service certifying the mailing of the letter
3 described in subdivision (5).
4 e. Have attached the check or draft or a copy thereof, including
5 any stamp, marking or attachment indicating the reason for
6 dishonor.

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

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

19 (f) An affidavit by an employee of a bank or depository sworn to and properly
20 executed before an official authorized to administer oaths is admissible in evidence
21 without further authentication in a hearing or trial pursuant to a prosecution under G.S.
22 14-107 in the District Court Division of the General Court of Justice with respect to the
23 facts of dishonor of the check or draft, including the existence of an account, the date
24 the check or draft was processed, whether there were sufficient funds in an account to
25 pay the check or draft, and other related matters. If the defendant requests that the bank
26 or depository employee personally testify in the hearing or trial, the defendant may
27 subpoena the employee. The Administrative Office of the Courts shall design and
28 distribute an appropriate form for use by bank and depository employees in making the
29 affidavit authorized in this subsection."

30 Sec. 2. This act shall become effective October 1, 1989, and shall apply to
31 offenses occurring on or after that date.