

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 905

Short Title: Worthless Checks/New Remedy.

(Public)

Sponsors: Representatives McCombs; and Gardner.

Referred to: Judiciary I.

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDITIONAL CIVIL REMEDY BY DEMAND LETTER FOR RETURNED CHECKS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 6 of the General Statutes is amended by adding a new section to read:

**"§ 6-21.3A. Additional remedy by demand letter for returned check.**

(a) Notwithstanding G.S. 6-21.3, a person who accepts a check or draft that the bank or depository refuses to honor because the maker or drawer has insufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft or has closed the account may seek payment for damages under this section prior to filing a civil action by sending the violator a demand letter. The payee is liable for the amount of the check and treble damages. The damages shall be three times the amount of the check or one hundred fifty dollars (\$150.00), whichever is greater. The demand letter shall be sent by certified mail and shall be in a form that complies with subsection (b) or (c) of this section as appropriate.

(b) If the check was received in a face-to-face transaction, the demand letter shall be in the following form:

"This letter is written pursuant to G.S. 6-21.3A to inform you that on , 199 , you made and delivered to the business listed above a check

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

7 The check has been dishonored by the bank for the following reasons:  
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9 As Acceptor of the check, we give you notice to rectify any bank error  
10 or other error in connection with the transaction, and to pay the face  
11 value of the check and either (i) three times the amount of the check or  
12 (ii) \$150.00 whichever is greater, as authorized by law (G.S. 6-21.3A),  
13 at our business address listed above. If the check is not paid or the error  
14 corrected within the specified time, the laws of North Carolina allow us  
15 to pursue either of the following remedies:

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

19 2. After 30 days from the mailing of this letter, an affidavit may be  
20 filed to seek a civil penalty of three times the amount of the check (with  
21 a minimum penalty of \$150.00 and a maximum penalty of \$500.00) for  
22 allegedly giving a worthless check in violation of law (G.S. 6-21.3).

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

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

30 (c) If the check was delivered by mail, the demand letter shall be in the following  
31 form:

32 'This letter is written pursuant to G.S. 6-21.3A to inform you that a  
33 check containing your name and address as written above was received  
34 by the business listed above on \_\_\_\_\_, 199 . The check as in the sum  
35 of \$ \_\_\_\_\_, drawn upon \_\_\_\_\_ (bank or institution),  
36 account # \_\_\_\_\_ . We have compared your name, address, and  
37 signature on the check with the name, address, and signature on file in  
38 the account previously established by you or on your behalf, and the  
39 signature on the check appears to be genuine. Also, we have received  
40 no affidavit that the check was stolen if that is the circumstance.

41 The check has been dishonored by the bank for the following reasons:  
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1           As Acceptor of the check, we give you notice to rectify any bank error  
2 or other error in connection with the transaction, and to pay the value of  
3 the check and either (i) the amount of three times the check or (ii)  
4 \$150.00 whichever is greater, as authorized by law (G.S. 6-21.3A), at  
5 our business address listed above. If the check is not paid or the error  
6 corrected within the specified time, the laws of North Carolina allow us  
7 to pursue either of the following remedies:

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

11           2. After 30 days from the mailing of this letter, an affidavit may be  
12 filed to seek a civil penalty of three times the amount of the check (with  
13 a minimum penalty of \$150.00 and a maximum penalty of \$500.00) for  
14 allegedly giving a worthless check in violation of law (G.S. 6-21.3).

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

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

22           (d) If the recipient of a notice pursuant to this section pays the demanded treble  
23 damages or one hundred fifty dollars (\$150.00), whichever is greater, within 30 days of  
24 the recipient's receipt of the notice, the merchant shall have no further civil remedy  
25 against that violator for the incident described in the notice.

26           (e) Nothing contained in this section shall prohibit recovery upon any other theory  
27 in the law."

28           Sec. 2. G.S. 6-21.3(a) reads as rewritten:

29           "(a) Notwithstanding any criminal sanctions that may apply, a person, firm, or  
30 corporation who knowingly draws, makes, utters, or issues and delivers to another any  
31 check or draft drawn on any bank or depository that refuses to honor the same because  
32 the maker or drawer does not have sufficient funds on deposit in or credit with the bank  
33 or depository with which to pay the check or draft upon presentation, and who fails to  
34 pay the same amount, any service charges imposed on the payee by a bank or depository  
35 for processing the dishonored check, and any processing fees imposed by the payee  
36 pursuant to G.S. 25-3-512 in cash to the payee within 30 days following written demand  
37 therefor, shall be liable to the payee (i) for the amount owing on the check, the service  
38 charges, and processing fees and (ii) for additional damages of three times the amount  
39 owing on the check, not to exceed five hundred dollars (\$500.00) or to be less than one  
40 hundred ~~dollars (\$100.00)~~ fifty dollars (\$150.00). In an action under this section the court  
41 or jury may, however, waive all or part of the additional damages upon a finding that the  
42 defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

1       The written demand shall: (i) describe the check or draft and the circumstances of its  
2 dishonor, (ii) contain a demand for payment and a notice of intent to file suit for the  
3 amount owing on the check, the service charges, and processing fees, and additional  
4 damages up to five hundred dollars (\$500.00) under this section if payment is not  
5 received within 30 days, and (iii) be mailed by certified mail to the defendant at his last  
6 known address."

7               Sec. 3. This act becomes effective December 1, 1995.