

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 905

Committee Substitute Favorable 5/9/95

Senate Judiciary I/Constitution Committee Substitute Adopted 6/20/95

Short Title: Worthless Checks Clarification.

(Public)

Sponsors:

Referred to:

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,

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

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

21 (a1) The first notification letter shall be substantially 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  
24 check payable to this business containing your name and address in the sum  
25 of \$ \_\_\_\_\_ , drawn upon \_\_\_\_\_ (bank or institution),  
26 account # \_\_\_\_\_ . **[If the check was received in a face-to-face**  
27 **transaction insert this sentence:** This check contained a drivers license  
28 identification number from a card with your photograph and mailing  
29 address, which was used to identify you at the time the check was  
30 accepted.] **[If the check was delivered by mail insert this sentence:** We  
31 have compared your name, address, and signature on the check with the  
32 name, address, and signature on file in the account previously established  
33 by you or on your behalf, and the signature on the check appears to be  
34 genuine.] Also, we have received no information that this was a stolen  
35 check, if that is the circumstance.

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

38  
39 As acceptor of the check, we give you notice to rectify any bank error or  
40 other error in connection with the transaction, and to pay the face value of  
41 the check, plus the fees as authorized under G.S. 25-3-512 and G.S. 6-  
42 21.3(a) as follows:

43 Face value of the check # \_\_\_\_\_ §

1                    Processing fee authorized  
 2                    under G.S. 25-3-512                    \$  
 3                    Bank service fees authorized  
 4                    under G.S. 6-21.3                    \$  
 5                    Total amount due:                    \$

6                    If the total amount due listed above is not paid within 30 days of the  
 7                    mailing of this letter, thereafter we may file a civil action to seek civil  
 8                    damages of three times the amount of the check (with a minimum damage  
 9                    of one hundred dollars (\$100.00) and a maximum damage of five hundred  
 10                    dollars (\$500.00)) for allegedly giving a worthless check in violation of law  
 11                    (G.S. 6-21.3), in addition to the amount of the check and the fees specified  
 12                    above.

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

16                    If you do not believe you are liable for these amounts, you will have  
 17                    a right to present your defense in court. To pay the check or obtain  
 18                    information, contact the undersigned at the above business location. Cash  
 19                    or a bank official check will be the only acceptable means of redeeming the  
 20                    dishonored check.

21                    If you do not believe that you owe the amount claimed in this letter  
 22                    or if you believe you have received this letter in error, please notify the  
 23                    undersigned at the above business location as soon as possible.'

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

27                    'On \_\_\_\_\_, we informed you that we received a check payable to  
 28                    this business containing your name and address in the sum of \$ \_\_\_\_\_,  
 29                    drawn upon \_\_\_\_\_ (bank or institution), account # \_\_\_\_\_. This  
 30                    check contained identification information which was used to identify you  
 31                    as the maker of the check. Also, we have received no information that this  
 32                    was a stolen check, if that is the circumstance.

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

35  
 36                    We notified you that you were responsible for the face value of the  
 37                    check (\$ \_\_\_\_\_) plus the fees authorized under G.S. 25-3-512 (\$ \_\_\_\_\_) and G.S.  
 38                    6-21.3(a) (\$ \_\_\_\_\_) for a total amount due of \$ \_\_\_\_\_. Thirty days have  
 39                    passed since the mailing of that notification letter, and you have not made  
 40                    payment to us for that total amount due.

41                    Under G.S. 6-21.3, we claim you are now liable for the face value of  
 42                    the check, the fees, and treble damages. The damages we claim are three  
 43                    times the amount of the check or one hundred dollars (\$100.00), whichever

1 is greater, but cannot exceed five hundred dollars (\$500.00). The total  
 2 amount we claim now due is:

3	<u>Face value of the check</u>	\$
4	<u>Processing fee authorized</u>	
5	<u>under G.S. 25-3-512</u>	\$
6	<u>Bank service fees authorized</u>	
7	<u>under G.S. 6-21.3</u>	\$
8	<u>Three times the face value of the</u>	
9	<u>check, with a minimum of \$100.00</u>	
10	<u>and a maximum of \$500.00</u>	\$
11	<u>Total amount due:</u>	\$

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

14 If payment has not been received within this 30-day period, we will  
 15 seek appropriate relief before a court of proper jurisdiction for full payment  
 16 of the check plus all costs, treble damages, and witness fees.

17 If you do not believe you are liable for these amounts, you will have  
 18 a right to present your defense in court. To pay the check or obtain  
 19 information, contact the undersigned at the above business location. Cash  
 20 or a bank official check will be the only acceptable means of redeeming the  
 21 dishonored check.

22 If you do not believe that you owe the amount claimed in this letter  
 23 or if you believe you have received this letter in error, please notify the  
 24 undersigned at the above business location as soon as possible.'

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

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

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

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