



## GENERAL STATUTES COMMISSION

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**To:** Senate Committee on Judiciary I  
**From:** General Statutes Commission  
**Re:** SB 807 (Conform Full-payment Check Law to UCC)  
**Date:** May 10, 2016

### General Comments

This bill conforms G.S. 25-3-311(c) to the corresponding provision of Section 3-311 of the Uniform Commercial Code.

### Background

Under case law, a debtor can settle an unliquidated<sup>1</sup> debt or a debt disputed in good faith by sending the person to whom the debt is owed a check marked "paid in full" or similar language or accompanied by a written communication that makes it clear that the check is being tendered in full satisfaction of the debt. The check and the notation or communication are treated as an informal offer to settle the dispute. If the creditor cashes the check, the creditor is treated as having accepted the offer and the debt is discharged even if the check is for less money than the amount claimed by the creditor.

This case law principle was expressly incorporated in 1990 into Revised Article 3 (Negotiable Instruments) of the Uniform Commercial Code in Section 3-311(a) and (b).

The Uniform Law Commission, however, provided two exceptions to the case law principle. First, Section 3-311(c)(1) allows organizations to establish a person, office, or place to receive this type of payment. If the organization has notified the debtor about the designated person, office, or place, the check and any accompanying document must be sent there or the debt will not be treated as discharged. Second, Section 3-311(c)(2) allows any creditor that has not designated a person, office, or place under subdivision (c)(1) to repay the amount of the check within 90 days and reinstate the debt (including the dispute). As a whole, Section 3-311(c) is designed to allow a creditor that uses a modern high-volume automated check processing system to avoid an inadvertent accord and satisfaction.

When Revised Article 3 was introduced in this State at the recommendation of the General Statutes Commission in 1995, the bill encountered some opposition from individual legislators. At least one of these was unsympathetic to automated check processing. As a compromise, it was agreed to remove the 90-day repayment option in subdivision (c)(2), and that provision was not enacted as part of G.S. 25-3-311(c).

Twenty-one years later, this State's version of Section 3-311(c) is an anomaly and a trap for the unwary business that operates across state lines. The North Carolina Bar Association's Business Law Section and Commercial Law Committee requested the General Statutes Commission to recommend conforming G.S. 25-3-311(c) to Section 3-311 of the Uniform Act in the interest of uniformity of the law in this area. The General Statutes Commission

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<sup>1</sup> An unliquidated debt is one in which the existence of the debt is not disputed but the amount is uncertain or disputed.

noted the passage of time and the more wide-spread acceptance of automated processing systems and agreed that the requested amendment should be recommended.

### **Specific Comments**

**Section 1** amends G.S. 25-3-311(c) to designate as subdivision (1) the existing exception, which allows the designation of a person, office, or place for a debtor to send a check tendered in full payment of an unliquidated or disputed debt, and to incorporate as subdivision (2) the Uniform Act's additional exception allowing a creditor 90 days to repay a check tendered in full satisfaction of such a debt and reinstate the debt.

**Section 2** provides an effective date of October 1, 2016, and provides for the act to apply to negotiable instruments tendered in full satisfaction of a claim on or after that date.