

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1234  
Judiciary I Senate Committee Substitute Adopted 6/1/89

Short Title: Worthless Check Affidavit.

(Public)

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Sponsors:

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Referred to:

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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.

1 (3) The check taker identifies the check passer at the time of accepting the  
2 check by means of a North Carolina driver's license, a special  
3 identification card issued pursuant to G.S. 20-37.7, or other reliable  
4 serially numbered identification card containing a photograph and  
5 mailing address of the person in question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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