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WORTHLESS CHECK EVIDENCE LAW

by

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This memorandum will discuss the new worthless check law (Ch. 615) enacted by the 1979 General Assembly. Some confusion apparently exists about the effect of this law, which this memo hopefully will clarify.

Chapter 615 creates a new G.S. 14-107.1, effective October 1, 1979, which provides that if the merchant receiving the check takes certain steps, his case can be proved much easier at the trial. The substantive offense of writing a worthless check, G.S. 14-107, has not been amended and remains the same as it has been. In order to issue a warrant or summons for a violation of G.S. 14-107, the magistrate still must find probable cause to believe:

- (1) the defendant made the check;
- (2) without having sufficient funds or credit with the bank; and
- (3) knowing that there are insufficient funds or credit available.

The new statute does not change that law. Testimony that would have been sufficient for a magistrate to find probable cause before the new law has passed is still sufficient to issue criminal process and the warrant and summons forms continue to be proper to use.

As mentioned, the new G.S. 14-107.1 provides that certain evidence is prima facie proof of the first two elements of the crime of writing a worthless check. If the acceptor of the check (who may be any employee of the store not just the check taker) does the following things he will establish prima facie evidence that the defendant was the check passer: (1) the check was delivered in a face to face transaction with a person authorized to take checks; (2) the name and address of the check passer are on the check; (3) the check taker identifies the check passer at the time of acceptance by a North Carolina driver's license or other serially numbered card containing the person's photo and mailing address; (4) the license or identification card number of the check passer appears on the check; (5) after dishonor, the acceptor sends the check passer a letter by certified mail setting forth

the circumstances of dishonor and requesting that any error in connection with the transaction be disposed of in ten days; and (6) the acceptor files an affidavit with a judicial official before issuance of the first criminal process declaring that the other conditions have been satisfied and that 15 days have transpired since he mailed the letter to the check passer and any error has not been remedied. The acceptor must attach to the affidavit a copy of the letter sent to the check passer, a receipt from the U.S. Postal Service certifying the mailing of the letter, and the check or a copy of the check, including the marking by the bank indicating why it was returned. A similar procedure is outlined for cases in which the check is delivered to the acceptor through the mail. Magistrates should read subsection (c) of G.S. 14-107.1 for those provisions, and should note that the check passer has to have been personally identified in advance of the store's receiving the check by mail.

In addition, if the bank that dishonors the check returns it in the regular course of business indicating the reasons for dishonor and the acceptor mails the certified letter and files the above-described affidavit, the check may be introduced as prima facie evidence of dishonor and as evidence that the check passer had no credit with the bank, thus establishing the second element of the crime.

Prima facie evidence means that this evidence, without more, is sufficient to withstand dismissal at the trial. If the acceptor of the check follows the new statute, then two of the three elements of the crime can be established with one witness. Rather than sending each clerk who accepted a check, the store can send one employee to testify in all its cases. Also testimony from a bank official about the dishonor of the check would not be necessary.

Because it will make the trial easier, merchants may choose to follow the new statute and file the affidavit when they seek issuance of criminal process. It is up to the merchant as to whether he wishes to use the new statute. If he chooses not to file the affidavit, the magistrate must go ahead and determine probable cause as before. However in some districts, the District Attorney has decided to take a dismissal in all worthless check cases in which the merchant has not complied with G.S. 14-107.1. In those districts, magistrates have been informed by their District Attorney or Chief District Judge not to issue worthless check warrants without the accompanying affidavit.

Obviously, magistrates in those districts should follow the direction from their judge or district attorney.

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

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

- (1) Check passer. A natural person who draws, makes, utters, or issues and delivers, or causes to be delivered to another any check or draft on any bank or depository for the payment of money or its equivalent.
- (2) Acceptor. A person, firm, corporation or any authorized employee thereof accepting a check or draft from a check passer.
- (3) Check taker. A natural person who is an acceptor, or an employee or agent of an acceptor, of a check or draft in a face-to-face transaction.

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

- (1) The check or draft is delivered to a check taker.
- (2) The name and mailing address of the check passer are written or printed on the check or draft.
- (3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.
- (4) The license or identification card number of the check passer appears on the check or draft.
- (5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.
- (6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).
- (7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:
 - a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.
 - b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.
 - c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).

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

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

- (1) The check or draft is delivered to the acceptor by United States mail, or by some person or instrumentality other than a check passer.
- (2) The name and mailing address of the check passer are recorded on the check or draft.
- (3) The acceptor has previously identified the check passer, at the time of opening the account, establishing the course of dealing, or initiating the lease or contract, by means a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question, and obtained the signature of the person or persons who will be making payments on the account, course of dealing, lease or contract, and such signature is retained in the account file.
- (4) The acceptor compares the name, address, and signature on the check with the name, address, and signature on file in the account, course of dealing, lease, or contract, and notes that the information contained on the check corresponds with the information contained in the file, and the signature on the check appears genuine when compared to the signature in the file.
- (5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail to the address recorded on the check or draft identifying the check or draft, setting forth the circumstances of dishonor and requesting rectification of any bank error or other error in connection with the transaction within 10 days.
- (6) The acceptor files the affidavits described in subdivision (7) of this subsection with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).
- (7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:
 - a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.

- b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.
- c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).
- d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).
- e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor.

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

(e) If the bank or depository dishonoring a check or draft has returned it in the regular course of business stamped or marked or with an attachment indicating the reason for dishonor ("insufficient funds", or "no account", "account closed" or words of like meaning), the check or draft and any attachment may be introduced in evidence and constitute prima facie evidence of the facts of dishonor if the conditions of subdivisions (5) through (7) of subsection (b) or subdivisions (5) through (7) of subsection (c) have been met. The fact that the check or draft was returned dishonored may be received as evidence that the check passer had no credit with the bank or depository for payment of the check or draft. (1979, c. 615)

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