

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 643
SENATE BILL 442

AN ACT TO PROVIDE FOR TREBLE DAMAGES AS A CIVIL REMEDY FOR
THE WRITING OF WORTHLESS CHECKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 6-21.3 is rewritten to read as follows:

"§ 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 in cash to the payee within 30 days following written demand therefor, shall be liable to the payee for the amount owing on the check and, in addition, for damages of the lesser of five hundred dollars (\$500.00) or three times the amount owing on the check, but in no case less than one hundred dollars (\$100.00) in addition to the amount owing on the check. In an action under this section the court or jury may, however, waive all or part of the treble damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

The written demand shall: (i) describe the check or draft and the circumstances of its dishonor, (ii) contain a demand for payment and a notice of intent to file suit for treble damages under this section if payment is not received within 30 days, and (iii) be mailed by certified mail to the defendant at his last known address.

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

(c) It shall be an affirmative defense, in addition to other defenses, to an action under this section if it is found that:

(i) full satisfaction of the amount of the check or draft was made prior to the commencement of the action, or (ii) that the bank or depository erred in dishonoring the check or draft, or (iii) that the acceptor of the check knew at the time of acceptance that there were insufficient funds on deposit in the bank or depository with which to cause the check to be honored.

(d) The remedy provided for herein shall apply only if the check was drawn, made, uttered or issued with knowledge there were insufficient funds in the account or

that no credit existed with the bank or depository with which to pay the check or draft upon presentation."

Sec. 2. This act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 8th day of July, 1985.