

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 924

Short Title: Bad Check Tax for Schools.

(Public)

Sponsors: Senator Ballance.

Referred to: Finance.

April 18, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE MAXIMUM FEES THAT MAY BE CHARGED BY FINANCIAL INSTITUTIONS AND MERCHANTS FOR RETURNED CHECKS, TO LEVY A TAX ON THE PROCESSING OF RETURNED CHECKS, AND TO PROVIDE THAT THE PROCEEDS OF THE TAX SHALL BE USED FOR PUBLIC SCHOOL BUILDING CAPITAL COSTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-65 reads as rewritten:

"§ 53-65. Deposits payable on demand.

(a) Any bank may receive deposits of funds subject to withdrawals or to be paid upon the checks of the depositor. All deposits in such banks shall be payable on demand, without notice, except when the contract of deposit shall otherwise provide.

(b) A bank may charge and collect a processing fee not to exceed five dollars (\$5.00) for each check or negotiable order of withdrawal draft drawn on that bank with respect to an account with insufficient funds."

Sec. 2. G.S. 54-109.55 reads as rewritten:

"§ 54-109.55. Deposits.

(a) A credit union may receive on deposit the savings of its members and also nonmembers in such amounts and upon such terms as the board of directors may determine and the bylaws shall provide.

(b) A credit union may charge and collect a processing fee not to exceed five dollars (\$5.00) for each check or negotiable order of withdrawal draft drawn on that credit union with respect to an account with insufficient funds."

Sec. 3. G.S. 54B-147 reads as rewritten:

1 **"§ 54B-147. Collection of processing fee for returned checks.**

2 Notwithstanding any other provision of law, a processing fee may be charged and
3 collected by any association for checks (including negotiable order of withdrawal
4 drafts) on which payment has been refused by the payor depository institution. An
5 association may also collect ~~said~~ a processing fee not to exceed five dollars (\$5.00) for
6 ~~checks~~ each check or negotiable order of withdrawal draft drawn on that association
7 with respect to an account with insufficient funds."

8 Sec. 4. G.S. 25-3-512 reads as rewritten:

9 **"§ 25-3-512. Collection of processing fee for returned checks.**

10 A processing fee, not to exceed ~~fifteen dollars (\$15.00)~~, ten dollars (\$10.00) may be
11 charged and collected for checks on which payment has been refused by the payor bank
12 because of insufficient funds or because the drawer did not have an account at that bank
13 if at the time the consumer presented the check to the person, a sign:

- 14 (1) Was conspicuously posted on or in the immediate vicinity of the cash
15 register;
16 (2) Was in plain view of anyone paying for goods or services by check;
17 (3) Was no smaller than 8 by 11 inches; and
18 (4) Stated the amount of the fee that would be charged for returned
19 checks.

20 When the drawer sends a check by mail for payment of a debt and the check is
21 dishonored and returned, the processing fee may be collected if the drawer was given
22 prior written notice that a fee would be charged for returned checks. Any document that
23 clearly and conspicuously states the amount of the fee that will be charged for returned
24 checks and is delivered to the drawer or his agent, or is mailed first-class mail to the
25 drawer at his last known address as part of any document requesting payment of a debt
26 satisfies this notice requirement for that payment only.

27 If a collection agency collects or seeks to collect on behalf of its principal a
28 processing fee as specified in this section in addition to the sum payable of a check, the
29 amount of such processing fee must be separately stated on the collection notice. The
30 collection agency shall not collect or seek to collect from the drawer any sum other than
31 the actual amount of the returned check and the specified processing fee."

32 Sec. 5. Chapter 105 of the General Statutes is amended by adding a new
33 Article to read:

34 **"ARTICLE 5A.**
35 **"RETURNED CHECK TAX.**

36 **"§ 105-187.1. Definitions.**

37 The following definitions apply in this Article:

- 38 (1) Check. A check or other negotiable order of withdrawal draft.
39 (2) Checking account. An account established by the deposit of funds
40 which may be withdrawn or paid upon the checks of the depositor.
41 (3) Department. The Department of Revenue.
42 (4) Financial institution. Any corporation that receives, solicits, or accepts
43 money or its equivalent on deposit as a business.

1 (5) Returned check. A check drawn on a financial institution with respect
2 to an account with insufficient funds.

3 (6) Secretary. The Secretary of Revenue.

4 **"§ 105-187.2. Imposition of tax.**

5 There is levied a privilege or license tax upon every financial institution engaged in
6 the business of receiving deposits of funds subject to withdrawals or to be paid upon the
7 checks of the depositor. The tax shall be at the rate of ten dollars (\$10.00) for each
8 check drawn on the financial institution with respect to an account with insufficient
9 funds. The tax is in addition to any other State or local tax.

10 **"§ 105-187.3. License.**

11 Every financial institution engaged in the business taxed under this Article shall
12 obtain from the Secretary upon payment of the sum of five dollars (\$5.00) a license to
13 engage in that business on the condition that the financial institution pay the tax that
14 accrues under this Article. A license obtained under this section shall be a continuing
15 license unless revoked for failure to comply with the provisions of this Article.

16 **"§ 105-187.4. Collection of tax.**

17 Every financial institution subject to the tax levied under this Article shall collect the
18 tax. This tax shall be collected as part of the charge for processing the returned check.
19 The tax shall be stated and charged separately on the checking account statement and
20 shall be deducted from the depositor's checking account by the financial institution as
21 trustee for and on account of the State. The tax shall be added to the returned check
22 processing fee and shall be passed on to the depositor instead of being borne by the
23 financial institution.

24 **"§ 105-187.5. When tax due; returns.**

25 The State shall design, print, and furnish to all appropriate financial institutions in
26 the State the necessary forms for filing returns and instructions to ensure the full
27 collection of the tax. The tax levied under this Article is due and payable to the
28 Secretary in monthly installments on or before the 15th day of the month following the
29 month in which the tax accrues. Every financial institution liable for the tax shall, on or
30 before the 15th day of each month, prepare and render a return on the form prescribed
31 by the Secretary. The return shall state the total number of returned checks processed
32 by the financial institution in the preceding month. A return filed with the Secretary
33 under this section is not a public record as defined by G.S. 132-1 and may not be
34 disclosed except as required by law.

35 The Secretary may for good cause shown extend the time for filing a return required
36 under this Article by no more than 30 additional days. If the time for filing a return is
37 extended, interest at the rate established pursuant to G.S. 105-241.1(i) from the
38 time the return was due until the date of payment shall be added and paid.

39 The provisions of Division VII and Division VIII of Article 5 of this Chapter shall
40 apply to the administration of this Article.

41 **"§ 105-187.6. Distribution and use of tax revenue.**

42 The Secretary shall on a quarterly basis distribute the net proceeds of the tax levied
43 under this Article to the counties on a per capita basis according to the most recent
44 annual population estimates certified to the Secretary by the State Budget Officer. The

1 Secretary shall determine the amount of the net proceeds by deducting from gross
2 proceeds collected taxes refunded and the cost to the State of collecting and
3 administering the tax. Counties may use the proceeds of the tax levied under this
4 Article only for public school capital outlay purposes or to retire any indebtedness
5 incurred by the county for these purposes."

6 Sec. 6. This act shall become effective October 1, 1989.