

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 328

Short Title: Sent. Commn/Crim Law Changes/AB.

(Public)

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Sponsors: Representatives Braswell and Kiser (Primary Sponsors).

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Referred to: Judiciary II.

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March 4, 1999

A BILL TO BE ENTITLED

1 AN ACT TO MAKE TECHNICAL CORRECTIONS TO CERTAIN CRIMINAL  
2 LAWS AND TO AMEND THE CRIMINAL PENALTIES FOR CERTAIN  
3 CRIMINAL LAWS AS RECOMMENDED BY THE NORTH CAROLINA  
4 SENTENCING AND POLICY ADVISORY COMMISSION.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 14-107 reads as rewritten:

8 "**§ 14-107. Worthless checks.**

9 (a) It ~~shall be~~ is unlawful for any person, firm or corporation, to draw, make, utter  
10 or issue and deliver to another, any check or draft on any bank or depository, for the  
11 payment of money or its equivalent, knowing at the time of the making, drawing,  
12 uttering, issuing and delivering ~~such the~~ check or ~~draft as aforesaid, draft,~~ that the maker or  
13 drawer ~~thereof~~ of it has not sufficient funds on deposit in or credit with ~~such the~~ bank or  
14 depository with which to pay the ~~same check or draft~~ upon presentation.

15 (b) It ~~shall be~~ is unlawful for any person, firm or corporation to solicit or to aid and  
16 abet any other person, firm or corporation to draw, make, utter or issue and deliver to any  
17 person, firm or corporation, any check or draft on any bank or depository for the payment  
18 of money or its equivalent, being informed, knowing or having reasonable grounds for  
19 believing at the time of the soliciting or the aiding and abetting that the maker or the

1 drawer of the check or draft has not sufficient funds on deposit in, or credit with, ~~such~~ the  
2 bank or depository with which to pay the ~~same~~ check or draft upon presentation.

3 (c) The word "credit" as used ~~herein shall be construed to mean~~ in this section means  
4 an arrangement or understanding with the bank or depository for the payment of ~~any such~~  
5 a check or draft.

6 (d) A violation of this section ~~shall be~~ is a Class I felony if the amount of the check  
7 or draft is more than two thousand dollars (\$2,000). If the amount of the check or draft is  
8 two thousand dollars (\$2,000) or less, a violation of this section ~~shall be~~ is a misdemeanor  
9 punishable as follows:

10 (1) ~~Except as provided in subdivision (3) or (4) of this subsection, if the~~  
11 ~~amount of the check or draft is not over one hundred dollars (\$100.00), the~~  
12 ~~person is guilty of a Class 2 misdemeanor. Provided, however, if such~~  
13 ~~the person has been convicted three times of violating G.S. 14-107, he~~  
14 ~~this section, the person shall on the fourth and all subsequent~~  
15 ~~convictions (i) be punished as for a Class 1 misdemeanor and (ii) be~~  
16 ~~ordered, as a condition of probation, to refrain from maintaining a~~  
17 ~~checking account or making or uttering a check for three years.~~

18 (2) ~~If the amount of the check or draft is over one hundred dollars~~  
19 ~~(\$100.00), the person is guilty of a Class 2 misdemeanor. Provided,~~  
20 ~~however, if such person has been convicted three times of violating G.S.~~  
21 ~~14-107, he shall on the fourth and all subsequent convictions (i) be~~  
22 ~~punished in the discretion of the district or superior court as for a Class~~  
23 ~~1 misdemeanor and (ii) be ordered, as a condition of probation, to~~  
24 ~~refrain from maintaining a checking account or making or uttering a~~  
25 ~~check for three years.~~

26 (3) If the check or draft is drawn upon a nonexistent account, the person is  
27 guilty of a Class 1 misdemeanor.

28 (4) If the check or draft is drawn upon an account that has been closed by  
29 the drawer prior to time the check is drawn, the person is guilty of a  
30 Class 1 misdemeanor.

31 (e) In deciding to impose any sentence other than an active prison sentence, the  
32 sentencing judge shall consider and may require, in accordance with the provisions of  
33 G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any  
34 service charges imposed on the payee by a bank or depository for processing the  
35 dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S.  
36 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled  
37 to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and  
38 assessed to the defendant."

39 Section 2. G.S. 14-229 reads as rewritten:

40 "**§ 14-229. Acting as officer before qualifying as such.**

41 If any officer shall enter on the duties of his office before he executes and delivers to  
42 the authority entitled to receive the same the bonds required by law, and qualifies by

1 taking and subscribing and filing in the proper office the oath of office prescribed, he  
2 shall be guilty of a Class 1 misdemeanor and shall be ejected from his office."

3 Section 3. G.S. 15A-1340.14(b) reads as rewritten:

4 "(b) Points. – Points are assigned as follows:

5 (1) For each prior felony Class A conviction, 10 points.

6 (1a) For each prior felony Class B1 conviction, 9 points.

7 (2) For each prior felony Class B2, C, or D conviction, 6 points.

8 (3) For each prior felony Class E, F, or G conviction, 4 points.

9 (4) For each prior felony Class H or I conviction, 2 points.

10 (5) For each prior ~~Class A1 or Class 1~~ misdemeanor conviction or prior  
11 ~~impaired driving conviction under G.S. 20-138.1, conviction as defined~~  
12 ~~in this subsection, 1 point, except that convictions for Class 1~~  
13 ~~misdemeanor offenses under Chapter 20 of the General Statutes, other~~  
14 ~~than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2))~~  
15 ~~and conviction for impaired driving in a commercial vehicle (G.S. 20-~~  
16 ~~138.2), shall not be assigned any points for purposes of determining a~~  
17 ~~person's prior record for felony sentencing point. For purposes of this~~  
18 ~~subsection, misdemeanor is defined as any Class A1 and Class 1~~  
19 ~~nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1),~~  
20 ~~impaired driving in a commercial vehicle (G.S. 20-138.2), and~~  
21 ~~misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other~~  
22 ~~misdemeanor traffic offense under Chapter 20 of the General Statutes.~~

23 (6) If all the elements of the present offense are included in any prior  
24 offense for which the offender was convicted, whether or not the prior  
25 offense or offenses were used in determining prior record level, 1 point.

26 (7) If the offense was committed while the offender was on supervised or  
27 unsupervised probation, parole, or post-release supervision, or while the  
28 offender was serving a sentence of imprisonment, or while the offender  
29 was on escape from a correctional institution while serving a sentence of  
30 imprisonment, 1 point.

31 For purposes of determining prior record points under this subsection, a conviction for  
32 a first degree rape or a first degree sexual offense committed prior to the effective date of  
33 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any  
34 other felony Class B offense committed prior to the effective date of this subsection shall  
35 be treated as a felony Class B2 conviction."

36 Section 4. G.S. 19A-35 reads as rewritten:

37 "**§ 19A-35. Penalty for failure to adequately care for animals; disposition of**  
38 **animals.**

39 Failure of any person licensed or registered under this Article to adequately house,  
40 feed, and water animals in his possession or custody shall constitute a Class 3  
41 misdemeanor, and such person shall be subject to a fine of not less than five dollars  
42 (\$5.00) per animal or more than a total of one thousand dollars (\$1,000). Such animals  
43 shall be subject to seizure and impoundment and upon conviction may be sold or

1 euthanized at the discretion of the Director and such failure shall also constitute grounds  
2 for revocation of license after public hearing. The Director is hereby authorized to  
3 disburse State funds in such amount as in his discretion is necessary to provide for the  
4 welfare of the animals until either sold or euthanized and any fine levied in connection  
5 with this section shall be applied toward reimbursement of such State funds as the  
6 Director shall have expended."

7 Section 5. G.S. 106-418.14 reads as rewritten:

8 **"§ 106-418.14. Penalties.**

9 Any person who violates G.S. 106-418.10(1) ~~may be fined not in excess of one hundred~~  
10 ~~dollars (\$100.00) or imprisoned for not in excess of 30 days.~~ is guilty of a Class 3  
11 misdemeanor. For a second or subsequent violation of G.S. 106-418.10(1), a person ~~may~~  
12 ~~be fined not in excess of five hundred dollars (\$500.00) or imprisoned for not in excess of six~~  
13 ~~months, or both fined and imprisoned.~~ is guilty of a Class 2 misdemeanor."

14 Section 6. G.S. 106-549.35(a) reads as rewritten:

15 "(a) Any person, firm, or corporation who violates any provision of this or the  
16 previous Article or any regulation of the Board for which no other criminal penalty is  
17 provided by this or the previous Article ~~shall upon conviction be subject to imprisonment for~~  
18 ~~not more than six months, or a fine of not more than five hundred dollars (\$500.00), or both such~~  
19 ~~imprisonment and fine;~~ is guilty of a Class 2 misdemeanor; but if such violation involves  
20 intent to defraud, or any distribution or attempted distribution of an article that is  
21 adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation  
22 ~~shall be subject to imprisonment for not more than three years or~~ is guilty of a Class H felony  
23 which may include a fine of not more than ten thousand dollars (\$10,000) or both:  
24 (\$10,000). Provided, that no person, firm, or corporation shall be subject to penalties  
25 under this section for receiving for transportation any article or animal in violation of this  
26 or the previous Article if such receipt was made in good faith, unless such person, firm,  
27 or corporation refuses to furnish on request of a representative of the Meat and Poultry  
28 Inspection Service the name and address of the person from whom he received such  
29 article or animal, and copies of all documents, if any there be, pertaining to the delivery  
30 of the article or animal to him."

31 Section 7. G.S. 106-549.59 reads as rewritten:

32 **"§ 106-549.59. Punishment for violations; carriers exempt; interference with**  
33 **enforcement.**

34 (a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-  
35 549.58 or 106-549.61 ~~shall be fined not more than one thousand dollars (\$1,000) or imprisoned~~  
36 ~~not more than one year, or both;~~ is guilty of a Class 1 misdemeanor; but if such violation  
37 involves intent to defraud, or any distribution or attempted distribution of an article that is  
38 adulterated (except as defined in G.S. 106-549.51(1)h), such person ~~shall be fined~~ is guilty  
39 of a Class H felony which may include a fine of not more than ten thousand dollars  
40 (\$10,000) or imprisoned not more than three years or both. (\$10,000). When construing or  
41 enforcing the provisions of said sections the act, omission, or failure of any person acting  
42 for or employed by any individual, partnership, corporation, or association within the  
43 scope of his employment or office shall in every case be deemed the act, omission, or

1 failure of such individual, partnership, corporation, or association, as well as of such  
2 person.

3 (b) No carrier shall be subject to the penalties of this Article, other than the  
4 penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or  
5 delivery, in the usual course of business, as a carrier, of poultry or poultry products,  
6 owned by another person unless the carrier has knowledge, or is in possession of facts  
7 which would cause a reasonable person to believe that such poultry or poultry products  
8 were not inspected or marked in accordance with the provisions of this Article or were  
9 otherwise not eligible for transportation under this Article or unless the carrier refuses to  
10 furnish on request of a representative of the Department of Agriculture and Consumer  
11 Services the name and address of the person from whom he received such poultry or  
12 poultry products, and copies of all documents, if any there be, pertaining to the delivery  
13 of the poultry or poultry products to such carrier.

14 (c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or  
15 interferes with any person while engaged in or on account of the performance of his  
16 official duties under this Article ~~shall be fined~~ is guilty of a Class 2 misdemeanor which  
17 may include a fine of not more than five thousand dollars (\$5,000) or imprisoned not more  
18 than three years, or both. (\$5,000). Whoever, in the commission of any such acts, uses a  
19 deadly or dangerous weapon, ~~shall be fined~~ is guilty of a Class A1 misdemeanor which  
20 may include a fine of not more than ten thousand dollars (\$10,000) or imprisoned not more  
21 than 10 years, or both. (\$10,000)."

22 Section 8. G.S. 106-549.71 reads as rewritten:

23 "**§ 106-549.71. Penalty for violation.**

24 Any person, firm or corporation violating the provisions of this Article ~~shall, upon~~  
25 ~~conviction, be fined or imprisoned in the discretion of the court.~~ is guilty of a Class 1  
26 misdemeanor."

27 Section 9. G.S. 106-549.88 reads as rewritten:

28 "**§ 106-549.88. Penalties.**

29 Any person who violates any provisions of this Article or any regulations thereunder  
30 ~~shall, upon conviction thereof, be subject to a fine of not more than five hundred dollars~~  
31 ~~(\$500.00) or imprisonment not to exceed six months, or both fine and imprisonment.~~ is  
32 guilty of a Class 2 misdemeanor."

33 Section 10. G.S. 113-337(b) reads as rewritten:

34 "(b) Each person convicted of violating the provisions of this Article ~~shall in~~  
35 ~~addition to any other penalty prescribed in the discretion of the court be fined not less~~  
36 ~~than one hundred dollars (\$100.00) upon the first conviction, and not less than five~~  
37 ~~hundred dollars (\$500.00) upon any subsequent conviction.~~ is guilty of a Class 1  
38 misdemeanor."

39 Section 11. This act becomes effective December 1, 1999, and applies to acts  
40 committed on or after that date.