

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

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SENATE BILL 36

Short Title: Bad Check Tax for Schools.

(Public)

Sponsors: Senator Ballance.

Referred to: Banks and Thrift Institutions.

February 7, 1991

1 **A BILL TO BE ENTITLED**

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

7 The General Assembly of North Carolina enacts:

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

9 **"§ 53-65. Deposits payable on demand.**

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

13 (b) A bank may charge and collect a processing fee not to exceed five dollars
14 (\$5.00) for each check or negotiable order of withdrawal draft drawn on that bank with
15 respect to an account with insufficient funds."

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

17 **"§ 54-109.55. Deposits.**

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

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

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

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

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

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

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

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

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

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

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

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

“ARTICLE 5B.

"RETURNED CHECK TAX."

"§ 105-187.20. Definitions.

The following definitions apply in this Article:

- (1) Check. A check or other negotiable order of withdrawal draft.

(2) Checking account. An account established by the deposit of funds which may be withdrawn or paid upon the checks of the depositor.

(3) Department. The Department of Revenue.

(4) Financial institution. A corporation that receives, solicits, or accepts 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 **"§ 105-187.21. Imposition of tax."**

5 There is levied a privilege tax upon every financial institution engaged in the
6 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 **"§ 105-187.22. Collection of tax."**

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

18 **"§ 105-187.23. When tax due; returns."**

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

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

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

35 **"§ 105-187.24. Distribution and use of tax revenue."**

36 The Secretary shall on a quarterly basis distribute the net proceeds of the tax levied
37 under this Article to the counties on a per capita basis according to the most recent
38 annual population estimates certified to the Secretary by the State Budget Officer. The
39 Secretary shall determine the amount of the net proceeds by deducting from gross
40 proceeds collected taxes refunded and the cost to the State of collecting and
41 administering the tax. Counties may use the proceeds of the tax levied under this
42 Article only for public school capital outlay purposes or to retire any indebtedness
43 incurred by the county for these purposes."

44 Sec. 6. This act becomes effective October 1, 1991.