

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

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 5B.**  
35 **"RETURNED CHECK TAX.**

36 **"§ 105-187.20. 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. A 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 **"§ 105-187.21. 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.