

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 180

Short Title: Modify Various Criminal Penalties.

(Public)

Sponsors: Representatives Flaherty, Robinson, and Buchanan.

Referred to: Judiciary III.

February 27, 1991

A BILL TO BE ENTITLED

AN ACT TO INCREASE TO ONE THOUSAND DOLLARS OR MORE THE AMOUNT FOR WHICH THE FOLLOWING OFFENSES ARE DESIGNATED FELONIES RATHER THAN MISDEMEANORS AND TO MAKE CONFORMING CHANGES: WORTHLESS CHECKS, LARCENY OF PROPERTY, RECEIPT OF STOLEN GOODS, FRAUDULENT ATTEMPT TO OBTAIN FOOD STAMPS.

The General Assembly of North Carolina enacts:

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

"§ 14-107. Worthless checks.

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

It shall be unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, such bank or depository with which to pay the same upon presentation.

1 The word 'credit' as used herein shall be construed to mean an arrangement or  
2 understanding with the bank or depository for the payment of any such check or draft.

3 ~~Any person, firm or corporation violating any provision of this section shall be~~  
4 ~~guilty of a misdemeanor and upon conviction shall be punished as follow: A violation of~~  
5 ~~this section shall be a Class J felony if the amount of the check or draft is more than one~~  
6 ~~thousand dollars (\$1,000). If the amount of the check or draft is one thousand dollars~~  
7 ~~(\$1,000) or less, a violation of this section shall be a misdemeanor punishable as~~  
8 ~~follows:~~

- 9 (1) If ~~such the~~ amount of the check or draft is not over fifty dollars  
10 (\$50.00), the punishment shall be by a fine not to exceed fifty dollars  
11 (\$50.00) or imprisonment for not more than 30 days. Provided,  
12 however, if such person has been convicted three times of violating  
13 G.S. 14-107, he shall on the fourth and all subsequent convictions be  
14 punished in the discretion of the district or superior court as for a  
15 general misdemeanor.
- 16 (2) If the amount of ~~such the~~ check or draft is over fifty dollars (\$50.00),  
17 the punishment shall be by a fine not to exceed five hundred dollars  
18 (\$500.00) or imprisonment for not more than six months, or both.  
19 Provided, however, if such person has been convicted three times of  
20 violating G.S. 14-107, he shall on the fourth and all subsequent  
21 convictions be punished in the discretion of the district or superior  
22 court as for a general misdemeanor.
- 23 (3) If ~~such the~~ check or draft is drawn upon a nonexistent account, the  
24 punishment shall be by a fine not to exceed one thousand dollars  
25 (\$1,000) or imprisonment for not more than two years, or both.
- 26 (4) If ~~such the~~ check or draft is drawn upon an account that has been  
27 closed by the drawer prior to time the check is drawn, the punishment  
28 shall be a fine not to exceed four hundred dollars (\$400.00) or  
29 imprisonment for not more than five months or both.
- 30 (5) ~~In deciding to impose any sentence other than an~~

31 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 the amount of the check or draft and each  
34 prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as  
35 provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the  
36 defendant."

37 Sec. 2. G.S. 14-72(a) reads as rewritten:

38 "(a) Larceny of goods of the value of more than ~~four hundred dollars (\$400.00) one~~  
39 thousand dollars (\$1,000) is a Class H felony. The receiving or possessing of stolen  
40 goods of the value of more than ~~four hundred dollars (\$400.00) one thousand dollars~~  
41 (\$1,000) while knowing or having reasonable grounds to believe that the goods are  
42 stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a  
43 Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of  
44 this section is a Class H felony. Except as provided in subsections (b) and (c) of this

1 section, larceny of property, or the receiving or possession of stolen goods knowing or  
2 having reasonable grounds to believe them to be stolen, where the value of the property  
3 or goods is not more than ~~four hundred dollars (\$400.00)~~, one thousand dollars (\$1,000), is  
4 a misdemeanor punishable under G.S. 14-3(a). In all cases of doubt, the jury shall, in the  
5 verdict, fix the value of the property stolen."

6 Sec. 3. G.S. 14-73 reads as rewritten:

7 **"§ 14-73. Jurisdiction of the superior courts in cases of larceny and receiving stolen**  
8 **goods.**

9 The superior courts shall have exclusive jurisdiction of the trial of all cases of the  
10 larceny of property, or the receiving of stolen goods knowing them to be stolen, of the  
11 value of more than ~~four hundred dollars (\$400.00)~~ one thousand dollars (\$1,000)."

12 Sec. 4. G.S. 14-86.1(a) reads as rewritten:

13 "(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully  
14 conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or  
15 used by any person in the commission of armed or common-law robbery, or used by any  
16 person in the commission of any larceny when the value of the property taken is more  
17 than ~~four hundred dollars (\$400.00)~~ one thousand dollars (\$1,000) shall be subject to  
18 forfeiture as provided herein, except that:

- 19 (1) No conveyance used by any person as a common carrier in the  
20 transaction of the business of the common carrier shall be forfeited  
21 under the provisions of this section unless it shall appear that the  
22 owner or other person in custody or control of such conveyance was a  
23 consenting party or privy to a violation that may subject the  
24 conveyance to forfeiture under this section;
- 25 (2) No conveyance shall be forfeited under the provisions of this section  
26 by reason of any act or omission committed or omitted while such  
27 conveyance was unlawfully in the possession of a person other than  
28 the owner in violation of the criminal laws of the United States, or any  
29 state;
- 30 (3) No conveyance shall be forfeited pursuant to this section unless the  
31 violation involved is a felony;
- 32 (4) A forfeiture of a conveyance encumbered by a bona fide security  
33 interest is subject to the interest of the secured party who neither had  
34 knowledge of nor consented to the act or omission;
- 35 (5) No conveyance shall be forfeited under the provisions of this section  
36 unless the owner knew or had reason to believe the vehicle was being  
37 used in the commission of any violation that may subject the  
38 conveyance to forfeiture under this section;
- 39 (6) The trial judge in the criminal proceeding which may subject the  
40 conveyance to forfeiture may order the seized conveyance returned to  
41 the owner if he finds forfeiture inappropriate. If the conveyance is not  
42 returned to the owner the procedures provided in subsection (e) shall  
43 apply."

44 Sec. 5. G.S. 108A-53(a) reads as rewritten:

1       "(a) Any person, whether provider or recipient or person representing himself as  
2 such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain  
3 by means of making a willfully false statement or representation or by impersonation or  
4 by failing to disclose material facts or in any manner not authorized by this Part or the  
5 regulations issued pursuant thereto, transfers with intent to defraud any food stamps or  
6 authorization cards to which he is not entitled in the amount of ~~four hundred dollar~~  
7 ~~(\$400.00)~~ one thousand dollars (\$1,000) or less shall be guilty of a misdemeanor.  
8 Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain  
9 by means of making a willfully false statement or representation or by impersonation or  
10 by failing to disclose material facts or in any manner not authorized by this Part or the  
11 regulations issued pursuant thereto, transfers with intent to defraud any food stamps or  
12 authorization cards to which he is not entitled in an amount more than ~~four hundred~~  
13 ~~dollars (\$400.00)~~ one thousand dollars (\$1,000) shall be guilty of a felony and shall be  
14 punished as in cases of larceny."

15       Sec. 6. This act becomes effective October 1, 1991, and applies to offenses  
16 occurring on or after that date. Prosecutions for offenses committed before the effective  
17 date of this act are not abated or affected by this act, and the statutes that would be  
18 applicable but for this act remain applicable to those prosecutions.