

20 GCA REMEDIES
CH. 6 FRAUDULENT INSTRUMENTS AND TRANSFERS

CHAPTER 6
FRAUDULENT INSTRUMENTS AND TRANSFERS

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§ 6101. Transfers, Etc., Defraud Creditors.

Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

SOURCE: CC § 3439.

§ 6102. Creditor's Rights Judicially Determined.

A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

SOURCE: CC § 3440.

§ 6103. Question of Fraud, How Determined.

In all cases arising under 21 GCA §41101 [*Void Instruments, purchases*], or under the provisions of this Chapter, except as otherwise provided in 7 GCA §50500 [*Transfers, Etc., Defraud Creditors*], the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration; provided, however, that any transfer or encumbrance of property made or given voluntarily, or without a valuable consideration, by a party while insolvent or in contemplation of insolvency, shall be fraudulent, and void as to existing creditors.

SOURCE: CC § 3442.

§ 6104. Bad Checks; Remedies.

Any person who makes, utters, draws or delivers any check, or draft, or order upon any bank of depository, or upon or to any person, or firm, or corporation, for the payment of money, payment of which instrument is refused or dishonored for lack of funds or credit to pay, or because the maker has no account with the drawee under the account number specified in the check, draft or order and who fails to pay to the payee or payee's transferee the amount thereof together with such charges as may be lawfully imposed on account thereof, in cash or other medium satisfactory to the payee or transferee, within thirty (30) days following a written demand therefor delivered personally to the maker, or mailed to the maker by certified mail to the address shown on the check, draft or order or such other address of the maker as may be actually known by the payee or transferee, shall be liable to the payee or transferee for the amount owing upon such check, draft or order, plus interest or other damages claimed or, at the election of the payee or transferee, damages of treble the face amount of the check, but in no case less than \$50.00 nor more than \$750.00 in respect of any such instrument. It is a condition of the award of treble damages herein provided that the said notice shall contain a statement substantially as follows, in capital, bold or other contrasting type, or in any other manner which the court reasonably determines as conspicuous:

“YOUR FAILURE TO PAY THE CHECK AMOUNT TOGETHER WITH ANY LAWFUL CHARGE WITHIN 30 DAYS FOLLOWING DELIVERY OR MAILING OF THIS NOTICE MAY RESULT IN A COURT JUDGMENT AGAINST YOU FOR THREE TIMES THE AMOUNT OF THE CHECK. (20 GCA § 6104)”

A cause of action under this Section may be brought in Small Claims Court if it does not exceed the jurisdiction of that court, or in any other appropriate court. The right to treble damages provided herein shall not accrue, and no action shall be brought therefore, until after the aforesaid 30-day notice period.

SOURCE: CC § 3443 added by P.L. 17-60:1 (7/26/84).

§ 6105. Bad Checks; Damages.

In any action brought by the payee, or the payee's transferee, after the notice period hereinbelow provided, to collect any sum owing by any person who makes, utters, draws or delivers any check, or draft, or order to

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or upon any bank or depository, or person, or firm, or corporation, for the payment of money, payment of which instrument is refused or dishonored for lack of funds or credit to pay, or because the maker has no account with the drawee under the account number specified in the instrument, after failure to pay the amount thereof together with such charges as may be lawfully imposed thereupon, in cash or other medium satisfactory to the payee or transferee, within thirty (30) days following a written demand therefor delivered to the maker personally or mailed to the maker by certified mail to the address shown on the check, draft or order or such other address of the maker as may be actually known by the payee or transferee, and regardless whether the payee has elected the treble damages provided by §3443 of the Civil Code, the payee or the payee's transferee shall be entitled to reasonable attorneys' fees as awarded by the court, but not less than \$25.00 nor more than \$250.00 in respect of each such check, draft or order. Said notice shall contain a statement substantially as follows, in a conspicuous manner:

**“IF YOU HAVE NOT PAID THIS CHECK AND ALLOW-
ABLE CHARGES WITHIN 30 DAYS OF DELIVERY OR
MAILING OF THIS NOTICE, AND SUIT IS BROUGHT
TO COLLECT THE AMOUNTS OWING UNDER THE
CHECK, THE COURT MUST AWARD ATTORNEYS'
FEES AS PROVIDED IN 20 GCA § 6105.”**

Attorneys' fees shall be allowed to any plaintiff employing or retaining an attorney in the action, however the limitation on attorneys' fees shall not apply to any post judgment representation. The court may, in its discretion, award the plaintiff additional attorneys' fees in such amount as it deems appropriate for representation in any post judgment collection matter.

SOURCE: CC § 3444 added by P.L. 17-60:1 (7/26/84).

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CH. 7 ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

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§ 7101. Assignments for the benefit of creditors.

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Assignment for the benefit of creditors is covered by the insolvency law, as set forth in Title 7 [Civil Procedure] of this Code.

SOURCE: CC § 3449.

NOTE: No CC §§ 3450-3459 existed.

NOTE: The *Bulk Transfers Act*, §§3460-3469, was repealed by P.L. 13-150 as a part of the laws enacting the Uniform Commercial Code (Title 13 of this Code).
