

S

B

3

60

**COMMITTEE REPORT**  
**SENATE**

FURTHER:

Date 11/21/84

Mr. President

The Committee on Education considered SB 300

checking accounts.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt - CS for SB 300
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman recommendation

# Tougher bad-check penalties sought in proposed legislation

By Gary Dawson  
Staff Writer

Proposed legislation that would make it more difficult to open checking accounts and increase penalties for passing bad checks was unveiled at the Minnesota Capitol today.

Sen. Marilyn Lantry and Rep. Randy Kelly, both St. Paul DFLers, said at a press conference sponsored by the Minnesota Retail Merchants Association that they will introduce the legislation in January when the 1983 session convenes.

The bill would require banks to more closely scrutinize checking account applicants and increase civil and criminal penalties for bad check writing.

Banks would be required to obtain the names of other financial institutions where

checking account applicants had accounts for the previous 12 months. They would also have to determine whether the previous accounts are open or closed and, if closed, whether the action was voluntary on the part of the applicant. Also, banks would have to determine if the applicant had been convicted of bad check writing within the past five years.

The proposal also would provide new civil remedies for holders of bad checks. Now, judges may order restitution when handing down criminal sentences, but there is no specific relief spelled out in the law for merchants. Under the proposed legislation, holders of bad checks would be able to sue offenders for twice the amount written, plus 18 percent annual interest and a \$15 service charge. Merchants would have to post those provisions in their stores.

The criminal portion of the legislation

would change current misdemeanor provisions to a system of graduated penalties, depending on the amount of the bad check.

The penalty would remain a maximum of 90 days in jail and a \$500 fine for checks under \$300; checks between \$300 and \$2,499 would carry a maximum sentence of three years and \$3,000; checks for \$2,500 or more would carry a maximum of five years in prison and \$5,000 fine.

A new forgery offense also would be created. It would carry a maximum penalty of 10 years in prison and \$10,000 fine for falsely altering or issuing a check.

The proposed legislation was developed by a task force of law enforcement officials, representatives of the banking and food retailing industries and the merchants association.

## Nation/World

Turnbull's that authorized for near-1. Page 1C

**INFLATION MODEST.** Consumer prices rose only 0.1 percent in November, the smallest gain since March, the government said today. Page 3A

settlement the Metropolitan receive cash 100 in return that 338 on were de- Page 1C

**200 FIRE DEAD.** Exhausted firefighters armed with chemical foam and guided by associates of Texas oil-blaze troubleshooter Red Adair ringed a 3-day-old raging fuel-tank inferno in Venezuela... Page 3A

elter for 19 apartment

'CHEATED' OF CHILDHOOD. Christine

## Sports

**100-66 BASKETBALL.** The Marquette Warriors were unpleasantly surprised to learn there is more to the Gophers than just Randy Breuer in their setback Monday night. Page 3C

**50-34 FOOTBALL.** All kinds of records were set Monday night as the San Diego Chargers avenged last year's "Ice Bowl" loss to the Cincinnati Bengals. Page 3C

rope: "We are prepared, things, to agree that the Soviets retain in Europe only as many are kept there by Britain and a single one more."

## Opinion

**HOPE WE'LL MAKE A** to please can create an says columnist Ellen Good

## Forecast: Cloudy

TWIN CITIES. Tonight:

## Bad-check crackdown advocated

By the Associated Press

Minnesota merchants and legislative sponsors announced plans Tuesday to crack down on people who write bad checks.

Rep. Randy Kelly and Sen. Marilyn Lantry, both St. Paul DFLers, said they will ask the Legislature to enact tougher penalties on bad-check writers.

With the support of state retail organizations, they will push a three-pronged approach to the bad-check problem.

First, banks will be asked to gather more information about people who open new accounts. Under penalty of perjury, an applicant must provide the names of all banks where accounts were held in the last 12 months, and must state whether these accounts are open or closed.

The applicant must also state whether in the last three years an account was closed other than voluntarily, and whether the applicant has been convicted of a check offense in the last five years.

The proposed legislation calls for tougher civil penalties. It gives the holder of a bad check the right to collect twice the amount of the check, 18 percent interest, attorneys' fees and a \$15 service charge. The tougher civil penalties would apply only if a merchant displays written notice of the penalties on the premises.

There also are tougher criminal penalties. The penalty for passing bad checks worth \$2,500 or more is raised to 10 years in prison and a \$10,000 fine. From \$150 to \$2,500 of bad checks, the fine is \$3,000 and three years in prison, while the penalty for writing a bad check under \$150 would be 90 days in jail and a \$500 fine.

The bill allows the prosecution to aggregate the offenses, so a series of bad checks totaling more than \$2,500 would qualify for the toughest criminal penalties.

Bill Wheeler  
Rt 2 Box 91  
Delano, Mn.  
55328  
972-2282  
1-6-83

Senator Marilyn Lantry  
Representative Randy Kelly  
Minnesota State Capitol  
St. Paul, Mn.

Dear Legislators:

I am very glad to see that you are trying to change the law that seems to protect the criminal, the bad check writer. It's about time that this problem is dealt with.

As owners of a small seed business, we have become aware of the loopholes of the law that favor the bad check writer over the honest citizen.

We have learned that if the check is not written on the spot but sent through the mail and the check is bad, it alleviates all criminal liability. Also, if you agree to hold the check or receive only partial payment and the check is bad, it also eliminates any legal action.

Please refer to official form that explains several situations where a bad check becomes okay in our present system.

I think it is about time that this legalized theft is stopped.

Thank you again for trying to get this issue through.

Sincerely,

Bill Wheeler

# Long awaited bad check bill is now law in Minnesota thanks to MRMA and efforts of legislative sponsors

Few problems in the commercial marketplace have been more burdensome to retailers than the frequency with which they are given worthless checks by consumers. A major part of the ongoing problem has been the inability to get any reasonable sense of satisfaction on most of the bad checks that retailers at all levels are confronted with each month.

In the past, retailers have blamed the financial institutions for making it too easy for individuals to open checking accounts. The financial institutions have contended that it is not their obligation to check on the future honesty of those people applying for new checking accounts. Thus the arguments have raged on while law enforcement officials have been unable to prosecute bad check writers for reasons ranging from a lack of personnel and sufficient information on the check writer to a general unwillingness of the courts to levy any kind of severe punishment.

With this as background, the MRMA together with other retail organizations, set out to try and get some "teeth" put in to the Minnesota state law. The most important ingredient, the MRMA was soon to learn, was getting two plucky legislators who would not be deterred in the commitment to the businesses that have been plagued by bad checks. Two such legislators were Rep. Randy Kelly (DFL-St. Paul) and Sen. Marilyn Lantry (DFL-St. Paul).

It can rightly be stated that retailers in Minnesota have a new, more effective bad check law on the books because of these two legislators.

## Highlights of this new Bad Check law:

- financial institutions are required to ask a uniform set of questions of new checking account applicants including questions about previous accounts that were closed without the applicant's approval and whether the applicant has been convicted of a check offense. Financial institutions must now verify whether previous account was closed involuntarily. In those instances of involuntary closure of an account or conviction of a check offense by an applicant, the financial institution may not open the new checking account.

- merchants who get stuck with a worthless check will have the statutory authority, under this new law to charge a service fee of up to \$15.00 for returned checks.

- civil penalties have been increased to up to \$100, plus interest on the judgment and assessment of attorney's fees against those who pass bad checks.

- the ability to make a case in court against worthless checks has been improved by establishing that the check, with the proper information recorded on the back of the instrument, is now "prima facie" evidence of the presenter's identity. In addition, this new law now requires that financial institutions must release information about the account of a worthless check passer. That information must be released to both the holder of the bad check, such as the retailer, and the law enforcement authorities.

MRMA is busy drafting a handbook on "What Merchants Should Know About Minnesota's Worthless Check Laws". The handbook will be distributed to all MRMA members before the new law takes effect August 1, 1983.

**PODIUM:** Continued from pg. 4  
Association during the coming year. We are going to be bringing you a series of informational articles during the months ahead on just how unemployment comp hits our retailing industry harder than our rightful share of the problem would reasonably dictate.

We are not out to make each MRMA member an expert on unemployment comp. We merely would hope to provide you with enough information to make you knowledgeable on the subject so that you could communicate your personal business concern to your legislative representatives prior to the March start of the 1984 session.

**BANKRUPTCY:** Cont. from pg. 1  
between a tougher reform bill, which was killed in the House last year, and a weaker alternative. For now, it is the only hope retailers have for some measure of bankruptcy reform and relief.

Some of the bill's highlights include:

- Permits bankruptcy judges to dismiss flagrant cases.

- Requires repayment plans to be bona fide efforts to repay debts and extends repayment time to 5 years.

- Eliminates "loading up" before declaring bankruptcy. Debts incurred with 40 days of filing bankruptcy would not be dischargeable.

## Customer Relations Advice

An important element to customer relations that is often overlooked is the customer who is unhappy, but does not make a formal complaint.

Many retailers do not realize that this dissatisfied customer will usually not return to their store and will tell others of their unpleasant experience.

Here's five ways you can improve your customer relations and reduce the number of dissatisfied customers.

1. Solicit complaints - make it easy for unhappy customers to tell you what their problems are.
2. Solve customer complaints as quickly as possible and with a smile.
3. Keep records of why complaints occur.
4. Analyze how complaints can be prevented and make changes in your

## GOOD NEWS FOR WORKERS' COMP COVERAGE

MRMA's Workers' Comp Plan with Chandler Associates recently was expanded to include a Businessowner's Package Policy.

This additional line of insurance should provide eligible participants with dividends, subject to applicable law, based on loss experience.

The Businessowner's Plan, underwritten by Security Insurance Company, features competitive rates for Worker's Compensation, Property Liability, and Automobile coverage.

If you are not presently insured under our program and desire to receive a com-

RELEASE: 10:00 AM, Tues., Dec. 21, 1982  
INFO: Randy Morris 227-6631 or 800-652-9773

LEGISLATORS ANNOUNCE CRACKDOWN ON BAD  
CHECK WRITERS WITH PLANS FOR SWEEPING  
CHANGES IN EXISTING MINNESOTA STATUTES

Two Minnesota legislators have announced that they will introduce legislation that will significantly change the way in which Minnesota laws deal with persons who write worthless checks. Rep. Randy Kelly (DFL-St. Paul) and Senator Marilyn Lantry (DFL-St. Paul) told a State Capitol news conference today that they plan to jointly introduce in the 1983 legislative session a "tough new law that we expect will act as a first line deterrent against the individuals in our society who repeatedly prey on the small businesses of this state by writing and passing worthless checks."

According to the legislators, the proposed bill would change existing Minnesota statutes by providing for certain bank account opening procedures; by extending the civil liabilities for issuing a worthless check; and by changing the legal penalties for passing a bad check.

Under penalty of perjury, persons opening new checking accounts will have to give the names of all banks where accounts were held during the previous 12 months; whether these accounts are open or closed; whether an account was closed other than voluntarily; and, whether the applicant had been convicted of a bad check offense in the previous ten years.

The proposed measure will also permit the holder of a dishonored check to collect from the check writer twice the amount of the check, plus an 18 percent annual interest charge; attorney's fees, and a service charge of up to \$15.00. These remedies are in addition to the criminal prosecution where restitution is discretionary.

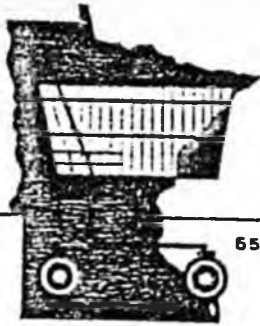
The proposed changes in the criminal penalties range from a jail sentence of 90 days and/or a \$500.00 fine for a bad check of up to \$300.00; to 5 years in prison and/or a \$5,000 fine for a worthless check in excess of \$2,500.00.

"Too few of us stop to realize what a terrible burden bad checks are for the small business people of this state," Representative Kelly stated. "One \$50.00 bad check, will often mean the merchant, depending on his rate of return, will have to sell an additional \$2,000.00 worth of merchandise in order to cover the loss from that one check," Kelly said.

The co-sponsors said that this legislation is directed at the "chronic and repeated bad check writers," and not the person who, on occasion, will inadvertently overdraw their checking account.

"Everybody talks about workers' compensation and unemployment compensation as the test for a good business climate in this state," Senator Lantry said. "Yet, there are few things that burden small businesses as much as the continuing flow of bad checks our state's merchants are now experiencing. Our studies have shown that some Minnesota supermarket and convenience store chains have received as many as 15,000 and 20,000 worthless checks during the single year of 1981. It is clear to us that the time has long since passed for the legislature to bring some badly needed relief to these business people," Lantry stated.

The bill that will be introduced in early January evolved from a bad check task force that included representatives from the banking community, the food retailers, the law enforcement authorities, county prosecutors, and the Minnesota Retail Merchants Association.



## MINNESOTA FOOD RETAILERS ASSOCIATION

655 WABASHA STREET / SUITE 215 / SAINT PAUL, MINNESOTA / 55102 / (612) 225-7809  
Toll Free Number 800-652-9030

HUGH R. COSGROVE, CAE  
President

### "Bad Check Statistics"

2000 Food Stores in MN.

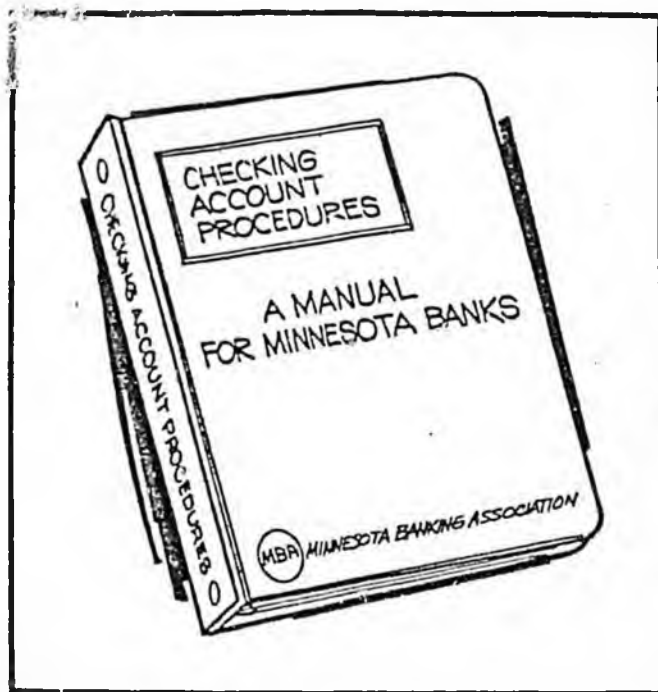
# 13,284,000 in Bad Checks ~~1/4/81~~ <sup>(1981)</sup> ~~1/2/81~~  
(# 6642 average per store)

# 10,384,000 recovered (78%)  
(# 5192 ave. per store)

# 2,900,000 lost to bad checks (22%)  
(# 1450 ave. per store)

# ? Cost of recovery

# 4,036,920,000 Total Food Sales  
in MN - 1981  
(# 2,018,460 ave. per store)



## **POLICIES AND PROCEDURES FOR OPENING NEW ACCOUNTS**

Each bank should create a written policy in regard to new account opening procedures. The following are policy ideas that may be considered in the development of your policies. All bank staff should be given a copy of these policies for their review and reference.

New account personnel shall be responsible for opening all new accounts. If at all possible, bookkeepers and tellers should not open new accounts because of their daily activity in the control of these accounts. Exception may be necessary in smaller banks due to the overlay of duties.

New account personnel should be trained to recognize account frauds and determine the acceptability of the account. It is far better for new account personnel to stop a fraud when an account is opened than for the bank and merchants to suffer a loss.

New account personnel should know the legal implications and the bank's policies concerning various kinds of accounts. They should be well versed and be able to offer understandable explanations of individual accounts, tenancy-in-common, joint tenancy with right of survivorship, trustee accounts of beneficiary, minor's accounts, powers of attorney, trade names, sole ownership, partnership, corporation, fraternal and any other accounts.

Each new account shall have a new account application completed in detail. This account should be verified by your check systems program and all of the information obtained shall be noted on the back of the application. (Do not deface application.)

The new accounts representative should explain the bank's policies and procedures regarding overdrafts, insufficient fund checks, statement cut-offs, account reconciliation, uncollected funds, service charges, etc. to the new checking account customer. The bank's policy for unsatisfactory checking accounts should be explained.

All necessary documentation is a vital function in opening new accounts. Vital documentation, other than the new account application, consists of signature cards, contractual agreements (usually incorporated in signature cards), applicable resolutions, credit applications, power of attorney, special agreements and other documents, depending on the kind of account opened.

Documentation is sometimes required for the assignment of account numbers and for setting up the new account on the bank's records. Bank policy, systems and the kind of account will govern the amount of documentation required.

Proper resolutions and other documentation must be obtained for persons signing in connection with accounts of corporations (private and non-profit), clubs, lodges, associations and other organizations. These applicants should be authorized to sign or countersign checks, notes and other instruments only to the extent that their authority to do so is indicated in the respective corporation's/organization's bylaws or in resolutions adopted by its Board of Directors or other governing body.

In order to deal with such persons and honor instruments signed by them, it is important that the bank obtain, for its records, a certified

copy of the bylaws or resolutions authorizing the signing of checks, notes and other instruments. This copy should also indicate the extent of the authority that has been granted to the person(s) signing.

Checks made payable to any of the authorized organizations must be deposited into the account.

A power of attorney, partnership certificate or other legal document giving authority should be obtained from individuals signing for other individuals or partnerships. The legal document should indicate the extent to which the individual is authorized to sign.

The bank should obtain copies of court orders, last wills and testaments, trust agreements or other similar instruments from persons signing as personal representatives or in other like fiduciary capacities. Copies of court orders should be certified unless they are authenticated as genuine by a responsible law firm or a well-known customer, in which case acceptance should be with officer approval only.

In the above situations, completed papers of authority for checking accounts should be reviewed and approved by an authorized individual before they are filed in a controlled area.

A form of resolutions covering facsimile signatures should be obtained in all cases where a machine signature will be used. Resolutions or other papers of authority covering the use of facsimile signatures should provide the same protection as the American Bankers Association form.

Checks may be signed the way the applicant usually signs the name, but the signature should be the same as the one on the signature card. That will help insure that checks are not returned because of an irregular or unauthorized signature. Signature cards should be signed with a ball point pen or regular type pen. Individual characteristics of a person's writing are lost when felt-tipped pens are used, consequently, forgeries are harder to detect.

If all of the necessary papers are not available when the account is opened, the new account representative should be assured by the customer that the proper papers will be furnished on or before a specified date agreed upon at the time that the account is opened. All delay agreements should be approved by an officer.

A tickler system should be established on all temporary signature cards, resolutions, etc. and if not received within a reasonable time period, a follow-up should be made to acquire the document.

The opening deposit ticket should be completed by the person opening the account and the deposit slip should be headed up exactly the same as it is shown on the new account application. If checks are included in the deposit, they should be scrutinized to be certain that they are payable to those in whose name the account will be carried, and properly endorsed over to the bank for collection and credit. If checks drawn on other banks are being deposited, the applicant should be informed that an "uncollected funds hold" will be placed on the account until the check is clear.

No cash back or split deposits should be allowed on any new accounts.

When the new account deposit ticket and documentation has been completed, the new account representative should take the applicant to a teller and obtain a receipt for the deposit. This will give the new account representative a chance to show the applicant how to make future deposits and give a teller the opportunity to meet the applicant. If cameras are used by the bank, a picture will be taken of the individual at this time.

The new account representative should place a hold on the initial deposit (other than cash) if the applicant and/or the identity of the drawer of the check being used for the initial deposit is not well known. The hold should be placed on the account for the actual number of days that it generally takes to clear the item.

The new account person should be especially wary of the following in opening a new account:

1. Forged checks
2. Stolen checks
3. Altered checks
4. Split entries
5. Payable through drafts
6. Checks drawn on other banks
7. Forged forms, e.g. signature cards, power of attorney, etc.

The task of opening accounts is not completed when the first deposit is processed and the new customer has left the bank. All new account applications should be sent to the Credit Department or the individual responsible for verifying the authenticity of the application. The Credit Department or authorized individual should verify the authenticity of the information by:

1. Confirming address
2. Verifying employment
3. Verifying references and obtaining credit reports
4. Reviewing the information on the application to assess its accuracy

Some banks verify signatures with former banking relations.

After the Credit Department is satisfied that the new account will be handled in a satisfactory manner, a dual purpose verification and public relations letter should be sent to all new account customers. Any undeliverable letters should be investigated immediately to determine the reason for its return.

Daily or regular listing of new accounts should be prepared and circulated within the bank. This will provide some control and will enable

bank personnel to identify new customers more easily. In some instances, it will enable them to thank a new customer for their business personally.

After the new account information has been verified, the supplies that a customer needs to use the account should be ordered. Start numbering all new account checks at No. 101. Any exception to this policy should be documented on the account application form.

The initial check order may consist of 50 checks or less. These checks should include name and address. A post office box is not sufficient for an address. Any exception to your bank's policy should be documented on the account application form. Use discretion in the issuance of temporary (starter) checks.

Some banks have new account kits that include the supplies needed for the type of account opened. Deposit tickets, bank-by-mail envelopes, I.D. cards, bank rules and regulations, literature explaining banking hours, facilities and other services are common enclosures.

Imprinted checks, endorsement stamps, special imprinted deposit tickets and similar supplies should be ordered by new account personnel after Credit Department acceptance. Choice of colors, sizes and fees should be thoroughly explained by the person opening the account. If checks are not ordered through the bank, new account personnel should ascertain if the checks will meet the necessary MICR standards in order to avoid possible future processing problems.

New accounts should be reviewed after a period of time to determine whether the account is being maintained in a satisfactory manner.

Customers should be encouraged to come into the bank if they experience difficulties or start having problems. New account personnel should explain that perhaps the bank could counsel a customer and resolve the problem before it gets out of hand and the account has to be closed.

**Randy C. Kelly**

District 67A

Ramsey County

**Committees:**

Environment and Natural Resources

Judiciary

Criminal Justice Division

Taxes

Economic Development Division, Chairmar



# Minnesota House of Representatives

Harry A. Sleben, Jr., Speaker

January 31, 1984

**RECEIVED**

As per our conversation, I am sending you a copy of the bad check law which I authored and which became law on August 1, 1983.

I am also including the bill as first introduced and some other material.

In the summer of 1982, I formed an ad hoc taskforce comprised of bankers, merchants, police and prosecutors to identify what the problems were in this area and possible solutions.

We found a major criticism in that financial institutions rarely checked on predecessor account information for new applicants. So one of the major elements in the bill was to require some uniform information to be taken and a requirement for the financial institutions to verify this information. The banking community lobbied strongly against this provision but we prevailed.

The legislation is working well with approximately a 25% decline in the issuance of bad checks in Minnesota.

Please feel free to share this information I am sending with legislators in Alaska.

Good luck. It was a tough fight here in Minnesota but the results so far indicate that it was a worthwhile effort.

Sincerely,

A handwritten signature in cursive script that reads "Randy Kelly".

Randy C. Kelly  
State Representative

RK:DP

Reply to:  343 State Office Building, St. Paul, Minnesota 55155

Office: (612) 296-4277

1901 Hyacinth, St. Paul, Minnesota 55119

Distributed By  
 Secretary of the SENATE  
 Room 231, State Capitol  
 St. Paul, 296-2343

1  
 2  
 3  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29  
 30

relating to commerce; establishing standards and  
 procedures for the release of financial information;  
 establishing procedures for opening checking accounts;  
 providing for civil liability for issuance of  
 dishonored checks; clarifying conciliation court  
 jurisdiction for actions on dishonored checks;  
 requiring release of certain account information to  
 check holders and law enforcement authorities;  
 amending Minnesota Statutes 1982, sections 487.30,  
 subdivision 4; 488A.12, subdivision 3; 488A.29,  
 subdivision 3; and 609.535; proposing new law coded in  
 Minnesota Statutes, chapters 48 and 332; proposing new  
 law coded as Minnesota Statutes, chapter 13A;  
 repealing Minnesota Statutes 1982, section 48.511.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [13A.01] [DEFINITIONS.]

Subdivision 1. [SCOPE.] For the purpose of this chapter,  
 -----  
 the following terms have the meanings given them.  
 -----

Subd. 2. [FINANCIAL INSTITUTION.] "Financial institution"  
 -----  
 means any office of a bank, savings bank, industrial loan  
 -----  
 company, trust company, savings and loan, building and loan,  
 -----  
 credit union, or consumer finance institution, located in the  
 -----  
 state.  
 -----

Subd. 3. [FINANCIAL RECORD.] "Financial record" means an  
 -----  
 original of, a copy of, or information known to have been  
 -----  
 derived from, any record held by a financial institution  
 -----  
 pertaining to a customer's relationship with the financial  
 -----  
 institution.  
 -----

3 government, or any officer, employee, or agent of it.

4 Subd. 5. [CUSTOMER.] "Customer" means any natural person  
5 or authorized representative of that person who utilized or is  
6 utilizing any service of a financial institution, or for whom a  
7 financial institution is acting or has acted as a fiduciary, in  
8 relation to an account maintained in the person's name.

9 Subd. 6. [LAW ENFORCEMENT INQUIRY.] "Law enforcement  
10 inquiry" means a lawful investigation or official proceeding  
11 inquiring into a violation of, or failure to comply with, any  
12 criminal or civil statute or any rule or order issued pursuant  
13 to it.

14 Sec. 2. [13A.02] [ACCESS TO FINANCIAL RECORDS BY  
15 GOVERNMENT AUTHORITIES PROHIBITED.]

16 Subdivision 1. [ACCESS BY GOVERNMENT.] Except as  
17 authorized by this chapter, no government authority may have  
18 access to, or obtain copies of, or the information contained in,  
19 the financial records of any customer from a financial  
20 institution unless the financial records are reasonably  
21 described and:

- 22 (1) The customer has authorized the disclosure;  
23 (2) The financial records are disclosed in response to a  
24 search warrant;  
25 (3) The financial records are disclosed in response to a  
26 judicial or administrative subpoena; or  
27 (4) The financial records are disclosed pursuant to section  
28 609.535 or other statute or rule.

29 Subd. 2. [RELEASE PROHIBITED.] No financial institution,  
30 or officer, employee, or agent of a financial institution, may  
31 provide to any government authority access to, or copies of, or  
32 the information contained in, the financial records of any  
33 customer except in accordance with the provisions of this  
34 chapter.

35 Nothing in this chapter shall require a financial  
36 institution to inquire or determine that those seeking

3 warrant, subpoena, or written certification pursuant to section  
4 609.535, subdivision 5, or other statute or rule, served on or  
5 delivered to a financial institution shows compliance on its  
6 face.

7 Subd. 3. [NOTICE TO CUSTOMER.] Within 180 days after a  
8 government authority obtains access to the financial records of  
9 a customer pursuant to a search warrant or a judicial or  
10 administrative subpoena, it shall notify the customer of its  
11 action unless a delay of notice is obtained pursuant to section  
12 3. The notice shall be sufficient to inform the customer of the  
13 name of the government authority or government authorities  
14 having had access to the records, the financial records to which  
15 access was obtained, and the purpose of the law enforcement  
16 inquiry, including transfers of financial records made pursuant  
17 to subdivision 5. Notice may be given by providing the customer  
18 with a copy of the search warrant or subpoena.

19 Subd. 4. [DUTY OF FINANCIAL INSTITUTIONS.] Upon receipt of  
20 a request for financial records made by a government authority,  
21 the financial institution shall, unless otherwise provided by  
22 law, proceed to assemble the records requested within a  
23 reasonable time and be prepared to deliver the records to the  
24 government authority upon receipt of the search warrant or  
25 subpoena required under this section.

26 Subd. 5. [USE OF INFORMATION.] Financial records  
27 originally obtained pursuant to this chapter may be transferred  
28 to another government authority provided the transferred records  
29 are pertinent and necessary to the receiving authority in  
30 initiating, furthering, or completing a law enforcement inquiry.

31 When financial records subject to this chapter are  
32 transferred to another government authority, the transferring  
33 authority shall include the name of the receiving authority and  
34 the financial records transferred in the notice required by  
35 subdivision 3 of this section or, if the transfer occurs after  
36 the notice has been sent to the customer, the transferring

3 the financial records were transferred.

4 Subd. 6. [STATUS OF RECORDS.] All financial records  
5 obtained by a government authority pursuant to this section are  
6 subject to the provisions of section 13.82, subdivision 5.

7 Sec. 3. [13A 03] [DELAYED NOTICE.]

8 Subdivision 1. [APPLICATION.] Upon application of the  
9 government authority, a customer notice pursuant to section 2,  
10 subdivision 3, may be delayed by order of an appropriate court  
11 if the judge finds that:

12 (1) The law enforcement inquiry being conducted is within  
13 the lawful jurisdiction of the government authority seeking the  
14 financial records;

15 (2) There is reason to believe that the records being  
16 sought are relevant to a legitimate law enforcement inquiry; and

17 (3) There is reason to believe that the notice will result  
18 in (i) endangering life or physical safety of any person; (ii)  
19 flight from prosecution; (iii) destruction of or tampering with  
20 evidence; (iv) intimidation of potential witnesses; or (v)  
21 otherwise seriously jeopardizing an investigation or official  
22 proceeding or unduly delaying a trial or ongoing official  
23 proceeding.

24 An application for delay must be made with reasonable  
25 specificity.

26 Subd. 2. [ORDER.] If the court makes the findings required  
27 in subdivision 1, it shall enter an ex parte order granting the  
28 requested delay for a period not to exceed 180 days and an order  
29 prohibiting the financial institution from disclosing that  
30 records have been obtained. If the court finds that there is  
31 reason to believe that the notice may endanger the life or  
32 physical safety of any person, the court may specify that the  
33 delay be indefinite.

34 Extensions of the delay of notice of up to 90 days each may  
35 be granted by the court upon application.

36 Subd. 3. [NOTICE.] Upon expiration of the period of delay

3           Sec. 4. [13A.04] [EXCEPTIONS.]

4           Subdivision 1. [STATUTORY VIOLATIONS.] Nothing in this  
5 chapter precludes any financial institution, or any officer,  
6 employee, or agent of a financial institution, from notifying a  
7 government authority that the institution, or officer, employee,  
8 or agent has information which may be relevant to a possible  
9 violation of any statute or rule and providing access to  
10 financial records relevant to the possible violation.

11          Subd. 2. [RELEASE INCIDENT TO ANOTHER PROCEEDING.] Nothing  
12 in this chapter precludes a financial institution, as an  
13 incident to perfecting a security interest, proving a claim in  
14 bankruptcy, or otherwise collecting on a debt owing either to  
15 the financial institution itself or in its role as a fiduciary,  
16 from providing copies of any financial record to any court or  
17 government authority.

18          Subd. 3. [GOVERNMENT ASSISTANCE PROGRAMS.] Nothing in this  
19 chapter precludes a financial institution, as an incident to  
20 processing an application for assistance to a customer in the  
21 form of a government loan, loan guaranty, or loan insurance  
22 agreement, or as an incident to processing a default on, or  
23 administering a government guaranteed or insured loan, from  
24 providing access to an appropriate government authority with any  
25 financial record necessary to permit the authority to carry out  
26 its responsibilities under a loan, loan guaranty, or loan  
27 insurance agreement.

28          Whenever a customer applies for participation in a  
29 government loan, loan guaranty, or loan insurance program, the  
30 government authority administering the program shall give the  
31 customer written notice of the authority's access rights under  
32 this subdivision. No further notification shall be required for  
33 subsequent access by that authority during the term of the loan,  
34 loan guaranty, or loan insurance agreement.

35          Financial records obtained pursuant to this subdivision may  
36 be used only for the purpose for which they were originally

3 (a) Prohibits the disclosure of any financial records or  
4 information which is not identified with or identifiable as  
5 being derived from the financial records of a particular  
6 customer;

7 (b) Prohibits examination by or disclosure to the  
8 commissioner of banks of financial records or information in the  
9 exercise of his supervisory, regulatory, or monetary functions  
10 with respect to a financial institution;

11 (c) Shall apply when financial records are sought by a  
12 government authority under the rules of civil or criminal  
13 procedure in connection with litigation to which the government  
14 authority and the customer are parties;

15 (d) Shall apply when financial records are sought by a  
16 government authority in connection with a lawful proceeding,  
17 investigation, examination, or inspection directed at the  
18 financial institution in possession of the records or at a legal  
19 entity which is not a customer;

20 (e) Shall apply to any subpoena or court order issued in  
21 connection with proceedings before a grand jury;

22 (f) Shall apply to subpoenas issued in civil cases pursuant  
23 to the rules of civil procedure; or

24 (g) Shall apply when a government authority is seeking only  
25 the name, address, account number, and type of account of any  
26 customer or ascertainable group of customers associated with a  
27 financial transaction or class of financial transaction.

28 Sec. 5. [48.512] [PROCEDURES FOR OPENING CHECKING  
29 ACCOUNTS.]

30 Subdivision 1. [DEFINITIONS.] For the purpose of this  
31 section the following terms have the meanings given:

32 (a) "Financial intermediary" means any person doing  
33 business in this state who offers transaction accounts to the  
34 public.

35 (b) "Transaction account" means a deposit or account  
36 established and maintained by a natural person or persons under

3 permitted to make withdrawals by negotiable or transferable  
4 instruments, payment orders of withdrawal, or other similar  
5 device for the purpose of making payments or transfers to third  
6 persons or others, including demand deposits or accounts subject  
7 to check, draft, negotiable order of withdrawal, share draft, or  
8 other similar item. A transaction account does not include the  
9 deposit or account of a partnership having more than three  
10 partners, the personal representative of an estate, the trustee  
11 of a trust or a limited partnership.

12 Subd. 2. [REQUIRED INFORMATION.] Before opening or  
13 authorizing signatory power over a transaction account, a  
14 financial intermediary shall require one applicant to provide  
15 the following information on an application document signed by  
16 the applicant:

17 (a) full name;  
18 (b) birth date;  
19 (c) address of residence;  
20 (d) address of current employment, if employed;  
21 (e) telephone numbers of residence and place of employment,  
22 if any;

23 (f) social security number;  
24 (g) driver's license or identification card number issued  
25 pursuant to section 171.07. If the applicant does not have a  
26 driver's license or identification card, the applicant may  
27 provide an identification document number issued for  
28 identification purposes by any state, federal, or foreign  
29 government if the document includes the applicant's photograph,  
30 full name, birth date, and signature;

31 (h) whether the applicant has had a transaction account at  
32 the same or another financial intermediary within 12 months  
33 immediately preceding the application, and, if so, the name of  
34 the financial intermediary;

35 (i) whether the applicant has had a transaction account  
36 closed by a financial intermediary without the applicant's

3 (j) whether the applicant has been convicted of a criminal  
4 offense because of the use of a check or other similar item  
5 within 24 months immediately preceding the application.

6 A financial intermediary may require an applicant to  
7 disclose additional information.

8 An applicant who makes a false material statement that he  
9 does not believe to be true in an application document with  
10 respect to information required to be provided by this  
11 subdivision is guilty of perjury. The financial intermediary  
12 shall notify the applicant of the provisions of this paragraph.

13 Subd. 3. [CONFIRM NO INVOLUNTARY CLOSING.] Before opening  
14 or authorizing signatory power over a transaction account, the  
15 financial intermediary shall attempt to verify the information  
16 disclosed for subdivision 2, clause (1). The financial  
17 intermediary may not open or authorize signatory power over a  
18 transaction account if (i) the applicant had a transaction  
19 account closed by a financial intermediary without his consent  
20 because of his issuance of dishonored checks within 12 months  
21 immediately preceding the application, or (ii) the applicant has  
22 been convicted of a criminal offense because of the use of a  
23 check or other similar item within 24 months immediately  
24 preceding the application.

25 If the transaction account is refused, the reasons for the  
26 refusal shall be given to the applicant in writing.

27 Subd. 4. [IDENTIFICATION IS REQUIRED.] A financial  
28 intermediary shall not open or authorize signatory power over a  
29 transaction account if none of the applicants provides a  
30 driver's license, identification card, or identification  
31 document as required by subdivision 2. When a minor is the  
32 applicant and the minor does not have a driver's license or  
33 identification card issued pursuant to section 171.07, the  
34 identification requirements of subdivision 2, clause (g), and  
35 this subdivision are satisfied if the minor's parent or guardian  
36 provides identification of his own that meets the identification

3 or account with the financial intermediary for at least one year  
4 immediately preceding the time of application.

5 Subd. 5. [NO LIABILITY.] The requirements of this section  
6 do not impose any liability on financial intermediaries offering  
7 transaction accounts or, except as provided in subdivisions 3  
8 and 4, limit a financial intermediary's discretion as to whether  
9 to grant or deny an application subject to this section.

10 [WORTHLESS CHECK COLLECTIONS]

11 Sec. 6. [332.50] [CIVIL LIABILITY FOR ISSUANCE OF  
12 WORTHLESS CHECK.]

13 Subdivision 1. [DEFINITIONS.] "Check" means a check,  
14 draft, order of withdrawal, or similar negotiable or  
15 nonnegotiable instrument.

16 "Credit" means an arrangement or understanding with the  
17 drawee for the payment of the check.

18 Subd. 2. [ACTS CONSTITUTING.] Whoever issues any check  
19 that is dishonored and is not paid within 30 days after mailing  
20 a notice of dishonor and a copy of sections 6 and 609.535 in  
21 compliance with subdivision 3, is liable to the holder for the  
22 amount of the check plus a civil penalty of up to \$100, interest  
23 at the rate payable on judgments pursuant to section 549.09 on  
24 the face amount of the check from the date of dishonor,  
25 reasonable attorney fees if the amount of the check is over  
26 \$1,250, and a service charge not exceeding \$15 if written notice  
27 of the service charge was conspicuously displayed on the  
28 premises when the check was issued.

29 This subdivision prevails over any provision of law  
30 limiting, prohibiting, or otherwise regulating service charges  
31 authorized by this subdivision.

32 Subd. 3. [NOTICE OF DISHONOR REQUIRED.] Notice of  
33 nonpayment or dishonor and a copy of sections 6 and 609.535  
34 shall be sent by the payee or holder of the check to the drawer  
35 by certified mail, return receipt requested, or by regular mail,  
36 supported by an affidavit of service by mailing, to the address

3 drawer that the address is the correct address for receipt of  
4 mail concerning the check. Failure of the drawer to receive a  
5 regular or certified mail notice sent to that address is not a  
6 defense to liability under this section, if the drawer has had  
7 actual notice for 30 days that the check has been dishonored.

8 An affidavit of service by mailing shall be retained by the  
9 payee or holder of the check.

10 Subd. 4. [PROOF OF IDENTITY.] The check is prima facie  
11 evidence of the identity of the drawer if the person receiving  
12 the check:

13 (a) records the following information about the drawer on  
14 the check, unless it is printed on the face of the check:

15 (1) name;

16 (2) home or work address;

17 (3) home or work telephone number; and

18 (4) identification number issued pursuant to section 171.07;

19 (b) compares the drawer's physical appearance, signature,  
20 and the personal information recorded on the check with the  
21 drawer's identification card issued pursuant to section 171.07;  
22 and

23 (c) initials the check to indicate compliance with these  
24 requirements.

25 Subd. 5. [DEFENSES.] Any defense otherwise available to  
26 the drawer also applies to liability under this section.

27 Sec. 7. Minnesota Statutes 1982, section 487.30,  
28 subdivision 4, is amended to read:

29 Subd. 4. [JURISDICTION; WORTHLESS DISHONORED CHECKS.] The  
30 conciliation court has jurisdiction to determine a civil action  
31 commenced by a plaintiff, resident of the county, to recover the  
32 amount of a worthless dishonored check issued in the county  
33 within the meaning of section 609.535, notwithstanding that even  
34 though the defendant or defendants are not residents of the  
35 county provided that, if the notice of nonpayment or dishonor  
36 required by described in section 609.535, subdivision 3, is sent

3 payments of money may commence a conciliation court action in the  
4 county where the worthless dishonored check was issued to  
5 recover the amount of the check. This subdivision does not  
6 apply to a check or other order for payments of money that has  
7 been dishonored by a stop payment order. Notwithstanding any  
8 law or rule of civil procedure to the contrary, the summons in  
9 any action commenced under this subdivision may be served  
10 anywhere within the state of Minnesota. The conciliation court  
11 clerk shall attach a copy of the dishonored check or other order  
12 for payments of money to the summons before it is issued.

13 Sec. 3. Minnesota Statutes 1982, section 488A.12,  
14 subdivision 3, is amended to read:

15 Subd. 3. [JURISDICTION.] (a) Excepting actions involving  
16 title to real estate, the court has jurisdiction to hear,  
17 conciliate, try, and determine civil actions at law where the  
18 amount in controversy does not exceed the sum of \$1,250. The  
19 territorial jurisdiction of the court is coextensive with the  
20 geographic boundaries of the county of Hennepin.

21 (b) Notwithstanding the provisions of clause paragraph (a),  
22 or any rule of court to the contrary, the conciliation court of  
23 Hennepin county has jurisdiction to determine an action brought  
24 pursuant to section 504.20 for the recovery of a deposit on  
25 rental property located in whole or in part in Hennepin county,  
26 and the summons in the action may be served anywhere within the  
27 state of Minnesota.

28 (c) Notwithstanding the provisions of clause paragraph (a),  
29 or any rule of court to the contrary, the conciliation court of  
30 Hennepin county has jurisdiction to determine a civil action  
31 commenced by a plaintiff, a resident of Hennepin county, to  
32 recover the amount of a worthless dishonored check issued in the  
33 county within the meaning of section 509.535, notwithstanding  
34 that even though the defendant or defendants are not residents  
35 of Hennepin county provided that, if the notice of nonpayment or  
36 dishonor required by described in section 509.535, subdivision

3 order of payment of money may commence a conciliation court  
4 action in the county where the worthless dishonored check was  
5 issued to recover the amount of the check. This clause does not  
6 apply to a check or other order for payment of money that has  
7 been dishonored by a stop payment order. Notwithstanding any  
8 law or rule of civil procedure to the contrary, the summons in  
9 any action commenced under this clause may be served anywhere  
10 within the state of Minnesota. The conciliation court  
11 administrator shall attach a copy of the dishonored check or  
12 other order for payment of money to the summons before it is  
13 issued.

14 Sec. 9. Minnesota Statutes 1982, section 483A.29,  
15 subdivision 3, is amended to read:

16 Subd. 3. [JURISDICTION.] (a) Excepting actions involving  
17 title to real estate, the court has jurisdiction to hear,  
18 conciliate, try and determine civil actions at law where the  
19 amount in controversy does not exceed the sum of \$1,250. The  
20 territorial jurisdiction of the court is coextensive with the  
21 geographic boundaries of the county of Ramsey.

22 (b) Notwithstanding the provisions of clause paragraph (a)  
23 or any rule of court to the contrary, the conciliation court of  
24 Ramsey county has jurisdiction to determine an action brought  
25 pursuant to section 504.20 for the recovery of a deposit on  
26 rental property located in whole or in part in Ramsey county,  
27 and the summons in the action may be served anywhere in the  
28 state of Minnesota.

29 (c) Notwithstanding the provisions of clause paragraph (a)  
30 or any rule of court to the contrary, the conciliation court of  
31 Ramsey county has jurisdiction to determine a civil action  
32 commenced by a plaintiff, resident of Ramsey county, to recover  
33 the amount of a worthless dishonored check issued in the county  
34 within the meaning of section 509.535, notwithstanding that even  
35 though the defendant or defendants are not residents of Ramsey  
36 county provided that, if the notice of nonpayment or dishonor

4 states that the payee or holder of the check or other order for  
5 payment of money may commence a conciliation court action in the  
6 county where the worthless dishonored check was issued to  
7 recover the amount of the check. This clause does not apply to  
8 a check or other order for the payment of money that has been  
9 dishonored by a stop payment order. Notwithstanding any law or  
10 rule of civil procedure to the contrary, the summons in any  
11 action commenced under this clause may be served anywhere within  
12 the state of Minnesota. The conciliation court administrator  
13 shall attach a copy of the dishonored check or other order for  
14 payment of money to the summons before it is issued.

15 Sec. 10. Minnesota Statutes 1982, section 609.535, is  
16 amended to read:

17 609.535 [ISSUANCE OF WORTHLESS DISHONORED CHECKS.]

18 Subdivision 1. [DEFINITION DEFINITIONS.] For the purpose  
19 of this section, the following terms have the meanings given  
20 them.

21 (a) "Check" means a check, draft, order of withdrawal, or  
22 similar negotiable or nonnegotiable instrument.

23 (b) "Credit" means an arrangement or understanding with the  
24 drawee for the payment of the a check or other order for the  
25 payment of money to which this section applies.

26 Subd. 2. [ACTS CONSTITUTING.] Whoever issues any a check  
27 or other order for the payment of money which, at the time of  
28 issuance, he intends shall not be paid, is guilty of a  
29 misdemeanor. In addition, restitution may be ordered by the  
30 court.

31 Subd. 3. [PROOF OF INTENT.] Any of the following is  
32 evidence sufficient to sustain a finding that the person at the  
33 time he issued the check or other order for the payment of  
34 money, intended it should not be paid:

35 (1) Proof that, at the time of issuance, he did not have an  
36 account with the drawee; or

(2) Proof that, at the time of issuance, he did not have

3 mailing or notice of nonpayment or dishonor as provided in this  
4 subdivision; or

5 (3) Proof that, when presentment was made within a  
6 reasonable time, the issuer did not have sufficient funds or  
7 credit with the drawee and that he failed to pay the check or  
8 other order within five business days after mailing of notice of  
9 nonpayment or dishonor as provided in this subdivision.

10 Notice of nonpayment or dishonor and a copy of this section  
11 shall be sent by the payee or holder of the check to the maker  
12 or drawer by certified mail, return receipt requested, or by  
13 regular mail, supported by an affidavit of service by mailing,  
14 to the address printed on the check. Refusal by the maker or  
15 drawer of the check to accept certified mail notice or failure  
16 to claim certified or regular mail notice shall is not  
17 constitute a defense that notice was not received.

18 The notice may state that unless the check is paid in full  
19 within five business days after mailing of the notice of  
20 non-payment nonpayment or dishonor, the payee or holder of the  
21 check or other order for the payment of money will or may refer  
22 the matter to proper authorities for prosecution under this  
23 section.

24 An affidavit of service by mailing shall be retained by the  
25 payee or holder of the check.

26 Subd. 4. [PROOF OF LACK OF FUNDS OR CREDIT.] If the check  
27 or other order for the payment of money has been protested, the  
28 notice of protest thereof is admissible as proof of  
29 presentation, nonpayment, and protest, and is evidence  
30 sufficient to sustain a finding that there was a lack of funds  
31 or credit with the drawee.

32 Subd. 5. [EXCEPTIONS.] This section does not apply to a  
33 postdated check or to a check given for a past consideration,  
34 except a payroll check or a check issued to a fund for employee  
35 benefits.

36 Subd. 6. [RELEASE OF ACCOUNT INFORMATION TO LAW

3 information specified below to any state, county, or local law  
4 enforcement or prosecuting authority which first certifies in  
5 writing that it is investigating or prosecuting a complaint  
6 against the drawer under this section or section 609.52,  
7 subdivision 2, clause (3)(a), and that 15 days have elapsed  
8 since the mailing of the notice of dishonor required by  
9 subdivisions 3 and 8. This subdivision applies to  
10 the following information relating to the drawer's account:

11 (1) Documents relating to the opening of the account by the  
12 drawer;

13 (2) Correspondence between the drawer and the drawee  
14 relating to the status of the account. Notices regarding  
15 nonsufficient funds, overdrafts, and the dishonor of any check  
16 drawn on the account within a period of six months of the date  
17 of request;

18 (3) Periodic statements mailed to the drawer by the drawee  
19 for the periods immediately prior to, during, and subsequent to  
20 the issuance of any check or other order for the payment of  
21 money which is the subject of the investigation or prosecution;  
22 or

23 (4) The last known home and business addresses and  
24 telephone numbers of the drawer.

25 The drawee shall release all of the information described  
26 in clauses (1) to (4) that it possesses within ten days after  
27 receipt of a request conforming to all of the provisions of this  
28 subdivision. The drawee may impose a reasonable fee for the  
29 cost for furnishing this information to law enforcement or  
30 prosecuting authorities, not to exceed 15 cents per page.

31 A drawee is not liable in a criminal or civil proceeding  
32 for releasing information in accordance with this subdivision.

33 Subd. 7. (RELEASE OF ACCOUNT INFORMATION TO PAYEE OR  
34 HOLDER.) If there is a written request to a drawee from a payee  
35 or holder of a check or other order for the payment of money  
36 that has been dishonored other than by a cash payment order,

3 in a civil or criminal proceeding for releasing shall release  
4 the information specified in clauses (1) and (2) to the payee or  
5 holder any of a check that has been dishonored who makes a  
6 written request for this information and states in writing that  
7 the check has been dishonored and that 30 days have elapsed  
8 since the mailing of the notice described in subdivision 3 and  
9 who accompanies this request with a copy of the dishonored check  
10 and a copy of the notice of dishonor.

11 The requesting payee or holder shall notify the drawee  
12 immediately to cancel this request if payment is made before the  
13 drawee has released this information.

14 This subdivision applies to the following information  
15 relating to the drawer's account:

16 (1) Whether at the time the check or other order for  
17 payment of money was issued or presented for payment the drawer  
18 had sufficient funds or credit with the drawee, and whether at  
19 that time the account was open, closed, or restricted for any  
20 reason and the date it was closed or restricted; and

21 (2) The last known home and business addresses address and  
22 telephone numbers number of the drawer. A drawee may be liable  
23 in a civil or criminal proceeding for releasing the business  
24 address or business telephone number of the drawer to the payee  
25 or holder.

26 The drawee shall release all of the information described  
27 in clauses (1) and (2) that it possesses within ten days after  
28 receipt of a request conforming to all of the provisions of this  
29 subdivision. The drawee may require the person requesting the  
30 information to pay the reasonable costs, not to exceed 15 cents  
31 per page, of reproducing and mailing the requested information.

32 A drawee is not liable in a criminal or civil proceeding  
33 for releasing information in accordance with this subdivision.

34 Subd. 8. [NOTICE.] The provisions of subdivisions 6 and 7  
35 are not applicable unless the notice to the maker or drawer  
36 required by subdivision 3 states that if the check or other

3 be authorized to release information relating to the account to  
4 the payee or holder of the check or other order for the payment  
5 of money and may also release this information to law  
6 enforcement or prosecuting authorities.

7 Sec. 11. [REPEALER.]

8 Minnesota Statutes 1982, section 48.511, is repealed.

9 Sec. 12. [EFFECTIVE DATE.]

10 Sections 1 to 4 are effective January 1, 1984. Sections 5  
11 to 11 are effective August 1, 1983.

*Jerome M. Hughes*  
Jerome M. Hughes  
President of the Senate.

*Harry A. Sieben, Jr.*  
Harry A. Sieben, Jr.  
Speaker of the House of Representatives

Passed the Senate this 12th day of May  
nine hundred and eighty-three.

in the year of Our Lord one thousand

*Patrick E. Flahaven*  
Patrick E. Flahaven  
Secretary of the Senate.

Passed the House of Representatives this 12th day of May  
one thousand nine hundred and eighty-three.

in the year of Our Lord

*Edward A. Burdick*  
Edward A. Burdick  
Chief Clerk, House of Representatives.

Approved

6/1/83

*Rudy Perpich*  
Rudy Perpich  
Governor of the State of Minnesota.

Filed 6/1/83

*Joan Anderson Growe*  
Joan Anderson Growe  
Secretary of State.

(A)

Mrs. Lantry, Messrs. Bertram, Solon and Anderson introduced--

S. F. No. 78 Referred to the Committee on Economic Development and Commerce

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

A bill for an act

relating to commerce; providing procedures for opening checking accounts; extending civil liability for issuing a worthless check; clarifying conciliation court jurisdiction regarding dishonored checks; modifying procedures to prove issuance of a worthless check; expanding types of worthless checks prohibited; requiring banks to release certain checking account information; increasing penalties for issuing a worthless or forged check; amending Minnesota Statutes 1982, sections 487.30, subdivision 4; 488A.12, subdivision 3; 488A.29, subdivision 3; 609.535, subdivisions 2, 3, 5, 6, 7, and 8, and by adding subdivisions; and 609.625, subdivision 1; proposing new law coded in Minnesota Statutes, chapters 48, 332, and 609.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [48.512] [PROCEDURES FOR OPENING CHECKING ACCOUNTS.]

Subdivision 1. [DEFINITIONS.] For the purpose of this section the following terms have the meanings given:

(a) "Financial institution" means a financial institution as defined in section 48.511.

(b) "Checking account" means an account from which funds may be withdrawn by check, draft, order of withdrawal or similar negotiable or nonnegotiable instrument.

Subd. 2. [REQUIRED INFORMATION.] Before opening or authorizing signatory power over a checking account, a financial institution shall require each applicant to provide the following information in a written, signed application made

2 (a) full name,  
3 (b) birth date,  
4 (c) residence address,  
5 (d) residence telephone number,  
6 (e) identification number issued under section 171.07,  
7 (f) names of all financial institutions in which the  
8 applicant had a checking account or signatory power over a  
9 checking account within the 12 months just before applying,  
10 (g) whether these accounts are open or closed,  
11 (h) whether the applicant had a checking account closed  
12 other than voluntarily within the five years just before  
13 applying, and  
14 (i) whether the applicant had been convicted of an offense  
15 involving the use of a check within the five years just before  
16 applying.  
17 A financial institution may require an applicant to  
18 disclose additional information.  
19 For purposes of item (e) and subdivision 3, an applicant  
20 may provide an identification number and card or other document  
21 issued by any state, federal, or foreign government for  
22 identification purposes if the card or other document includes  
23 the applicant's signature, an attached photograph of the  
24 applicant, and the information required for items (a), (b), (c),  
25 and (e).  
26 Subd. 3. [REVIEW.] A financial institution shall review  
27 the application before it opens a checking account or authorizes  
28 signatory power over a checking account. The person reviewing  
29 the application shall compare the applicant's signature and  
30 items (a), (b), (c), and (e) with the identification card or  
31 other document. Item (d) shall be compared with a list  
32 published or provided by a telephone company. Oral or written  
33 confirmation shall be obtained for items (f) and (g) from the  
34 financial institution disclosed by the applicant and for item  
35 (h) from any commercially reliable source. The person reviewing  
36 the application shall initial the completed application to

4  
3           Sec. 2. [332.50] [CIVIL LIABILITY FOR ISSUANCE OF  
4 WORTHLESS CHECK.]

5           Subdivision 1. [DEFINITIONS.] "Check" means a check,  
6 draft, order of withdrawal or similar negotiable or  
7 nonnegotiable instrument.

8           "Credit" means an arrangement or understanding with the  
9 drawee for the payment of the check.

10          Subd. 2. [ACTS CONSTITUTING.] Whoever issues any check  
11 which, at the time of issuance, he intends shall not be paid, is  
12 liable to the holder for twice the amount of the check, interest  
13 at 18 percent per year on the face amount of the check from the  
14 date of dishonor, reasonable attorney fees, and a service charge  
15 not exceeding \$15 if written notice of the service charge was  
16 conspicuously displayed on the premises when the check was  
17 issued.

18          Subd. 3. [PROOF OF INTENT.] Any of the following is  
19 evidence sufficient to sustain a finding that the person at the  
20 time he issued the check intended it should not be paid:

21           (1) proof that, at the time of issuance, he did not have an  
22 account with the drawee; or

23           (2) proof that, at the time of issuance, he did not have  
24 sufficient funds or credit with the drawee and that he failed to  
25 pay the check within five business days after mailing of notice  
26 of nonpayment or dishonor as provided in this subdivision; or

27           (3) proof that, when presentment was made within a  
28 reasonable time, the issuer did not have sufficient funds or  
29 credit with the drawee and that he failed to pay the check  
30 within five business days after mailing of notice of nonpayment  
31 or dishonor as provided in this subdivision.

32          Notice of nonpayment or dishonor shall be sent by the payee  
33 or holder of the check to the drawer by certified mail, return  
34 receipt requested, or by regular mail, supported by an affidavit  
35 of service by mailing, to the address printed or written on the  
36 check. The issuance of a check with an address printed or

2 to the correct address for receipt of mail concerning the  
3 check. Failure of the drawer to receive a regular or certified  
4 mail notice sent to that address is not a defense to liability  
5 under this section, nor does it rebut the presumption of intent  
6 established by this subdivision.

7 An affidavit of service by mailing shall be retained by the  
8 payee or holder of the check.

9 Subd. 4. [PROOF OF LACK OF FUNDS OR CREDIT.] If the check  
10 has been protested, the notice of protest thereof is admissible  
11 as proof of presentation, nonpayment, and protest, and is  
12 evidence sufficient to sustain a finding that there was a lack  
13 of funds or credit with the drawee.

14 Subd. 5. [PROOF OF IDENTITY.] The check is prima facie  
15 evidence of the identity of the drawer if the person receiving  
16 the check:

17 (a) records the following information about the drawer on  
18 the check, unless it is printed on the face of the check:

- 19 (1) full name,  
20 (2) home or work address,  
21 (3) home or work telephone number, and  
22 (4) identification number issued pursuant to section 171.07;

23 (b) compares the drawer's physical appearance, signature,  
24 and the personal information recorded on the check with the  
25 drawer's identification card issued pursuant to section 171.07;  
26 and

27 (c) initials the check to indicate compliance with these  
28 requirements.

29 Subd. 6. [EXCEPTION.] Subdivision 3, clause (2) does not  
30 apply to a postdated check.

31 Subd. 7. [DEFENSES.] Any defense otherwise available to  
32 the drawer also applies to liability under this section.

33 Sec. 3. Minnesota Statutes 1982, section 487.30,  
34 subdivision 4, is amended to read:

35 Subd. 4. [JURISDICTION; WORTHLESS DISHONORED CHECKS.] The  
36 conciliation court has jurisdiction to determine a civil action

2 amount of a worthless dishonored check issued in the county  
3 ~~within the meaning of section 509.535,~~ notwithstanding that the  
4 defendant or defendants are not residents of the county;  
5 provided that the notice of nonpayment or dishonor required by  
6 described in section 509.535, subdivision 3, is sent to the  
7 maker or drawer as specified therein and the notice states that  
8 the payee or holder of the check or other order of payment of  
9 money may commence a conciliation court action in the county  
10 where the worthless dishonored check was issued to recover the  
11 amount of the check. This subdivision does not apply to a check  
12 or other order for payment of money that has been dishonored by  
13 a stop payment order. Notwithstanding any law or rule of civil  
14 procedure to the contrary, the summons in any action commenced  
15 under this subdivision may be served anywhere within the state  
16 of Minnesota. The conciliation court clerk shall attach a copy  
17 of the dishonored check or other order for payment of money to  
18 the summons before it is issued.

19 Sec. 4. Minnesota Statutes 1982, section 483A.12,  
20 subdivision 3, is amended to read:

21 Subd. 3. [JURISDICTION.] (a) Excepting actions involving  
22 title to real estate, the court has jurisdiction to hear,  
23 conciliate, try and determine civil actions at law where the  
24 amount in controversy does not exceed the sum of \$1,250. The  
25 territorial jurisdiction of the court is coextensive with the  
26 geographic boundaries of the county of Hennepin.

27 (b) Notwithstanding the provisions of clause (a), or any  
28 rule of court to the contrary, the conciliation court of  
29 Hennepin county has jurisdiction to determine an action brought  
30 pursuant to section 504.20 for the recovery of a deposit on  
31 rental property located in whole or in part in Hennepin county,  
32 and the summons in the action may be served anywhere within the  
33 state of Minnesota.

34 (c) Notwithstanding the provisions of clause (a), or any  
35 rule of court to the contrary, the conciliation court of  
36 Hennepin county has jurisdiction to determine a civil action

1 recover the amount of a worthless dishonored check issued in  
2  
3 county within the meaning of section 609.535, notwithstanding  
4 that the defendant or defendants are not residents of Hennepin  
5 county; provided that the notice of nonpayment or dishonor  
6 required by described in section 609.535, subdivision 3, is sent  
7 to the maker or drawer as specified therein and the notice  
8 states that the payee or holder of the check or other order of  
9 payment of money may commence a conciliation court action in the  
10 county where the worthless dishonored check was issued to  
11 recover the amount of the check. This clause does not apply to a  
12 check or other order for payment of money that has been  
13 dishonored by a stop payment order. Notwithstanding any law or  
14 rule of civil procedure to the contrary, the summons in any  
15 action commenced under this clause may be served anywhere within  
16 the state of Minnesota. The conciliation court administrator  
17 shall attach a copy of the dishonored check or other order for  
18 payment of money to the summons before it is issued.

19 Sec. 5. Minnesota Statutes 1982, section 482A.29,  
20 subdivision 3, is amended to read:

21 Subd. 3. [JURISDICTION.] (a) Excepting actions involving  
22 title to real estate, the court has jurisdiction to hear,  
23 conciliate, try and determine civil actions at law where the  
24 amount in controversy does not exceed the sum of \$1,250. The  
25 territorial jurisdiction of the court is coextensive with the  
26 geographic boundaries of the county of Ramsey.

27 (b) Notwithstanding the provisions of clause (a) or any  
28 rule of court to the contrary, the conciliation court of Ramsey  
29 county has jurisdiction to determine an action brought pursuant  
30 to section 504.20 for the recovery of a deposit on rental  
31 property located in whole or in part in Ramsey county, and the  
32 summons in the action may be served anywhere in the state of  
33 Minnesota.

34 (c) Notwithstanding the provisions of clause (a) or any  
35 rule of court to the contrary, the conciliation court of Ramsey  
36 county has jurisdiction to determine a civil action commenced by

2 a worthless dishonored check issued in the county within the  
3 meaning of section 609.535, notwithstanding that the defendant  
4 or defendants are not residents of Ramsey county; provided that  
5 the notice of nonpayment or dishonor required by described in  
6 section 609.535, subdivision 3, is sent to the maker or drawer  
7 as specified therein and the notice states that the payee or  
8 holder of the check or other order of payment of money may  
9 commence a conciliation court action in the county where the  
10 worthless dishonored check was issued to recover the amount of  
11 the check. This clause does not apply to a check or other order  
12 for the payment of money that has been dishonored by a stop  
13 payment order. Notwithstanding any law or rule of civil  
14 procedure to the contrary, the summons in any action commenced  
15 under this clause may be served anywhere within the state of  
16 Minnesota. The conciliation court administrator shall attach a  
17 copy of the dishonored check or other order for payment of money  
18 to the summons before it is issued.

19 Sec. 6. Minnesota Statutes 1982, section 609.535,  
20 subdivision 2, is amended to read:

21 Subd. 2. [ACTS CONSTITUTING.] Whoever issues any check or  
22 other order for the payment of money which, at the time of  
23 issuance, he intends shall not be paid, is guilty of a  
24 misdemeanor crime and is punishable as provided in subdivision  
25 10. In addition, restitution may be ordered by the court.

26 Sec. 7. Minnesota Statutes 1982, section 609.535,  
27 subdivision 3, is amended to read:

28 Subd. 3. [PROOF OF INTENT.] Any of the following is  
29 evidence sufficient to sustain a finding that the person at the  
30 time he issued the check or other order for the payment of  
31 money, intended it should not be paid:

32 (1) Proof that, at the time of issuance, he did not have an  
33 account with the drawee; or

34 (2) Proof that, at the time of issuance, he did not have  
35 sufficient funds or credit with the drawee and that he failed to  
36 pay the check or other order within five business days after

2 subdivision; or

3 (3) Proof that, when presentment was made within a  
4 reasonable time, the issuer did not have sufficient funds or  
5 credit with the drawee and that he failed to pay the check or  
6 other order within five business days after mailing of notice of  
7 nonpayment or dishonor as provided in this subdivision; or

8 (4) Where the check is issued for the purchase of property,  
9 the drawer stops payment on the check without first returning  
10 the property to the seller.

11 Notice of nonpayment or dishonor shall be sent by the payee  
12 or holder of the check to the maker or drawer by certified mail,  
13 return receipt requested, or by regular mail, supported by an  
14 affidavit of service by mailing, to the address printed or  
15 written on the check. Refusal by the maker or drawer of the  
16 check to accept certified mail notice or failure to claim  
17 certified or regular mail notice shall not constitute a defense  
18 that notice was not received. The issuance by the drawer or maker  
19 of a check, draft, or other order for the payment of money with  
20 an address printed or written on the instrument at the time of  
21 issuance constitutes a representation by the drawer or maker  
22 that he has designated that address as the place for receipt of  
23 mail concerning that check, draft, or other order. Failure of  
24 the drawer or maker to receive a regular or certified mail  
25 notice sent to that address by the payee or holder shall not  
26 constitute a defense to a charge of violating section 609.535 or  
27 rebut the presumption of intent established by this subdivision.

28 The notice may state that unless the check is paid in full  
29 within five business days after mailing of the notice of  
30 non-payment or dishonor, the payee or holder of the check or  
31 other order for the payment of money will or may refer the  
32 matter to proper authorities for prosecution under this section.

33 An affidavit of service by mailing shall be retained by the  
34 payee or holder of the check.

35 Sec. 8. Minnesota Statutes 1982, section 609.535,  
36 subdivision 5, is amended to read:

2 postdated check, draft, or other order for the payment of money  
3 unless the payee or the payee's employee who received the check,  
4 draft, or other order for the payment of money did not know that  
5 it was post-dated, or to a check, draft, or other order for the  
6 payment of money given for a past consideration, except a  
7 payroll check or a check, draft, or other order for the payment  
8 of money issued to a fund for employee benefits.

9 Sec. 9. Minnesota Statutes 1982, section 609.535,  
10 subdivision 6, is amended to read:

11 Subd. 6. [RELEASE OF ACCOUNT INFORMATION TO LAW  
12 ENFORCEMENT AUTHORITIES.] A drawee shall not be liable in a  
13 civil or criminal proceeding for releasing the information  
14 specified below to any state, county, or local law enforcement  
15 or prosecuting authority which first certifies in writing that  
16 it is investigating or prosecuting a complaint against the  
17 drawer under this section or section 609.52, subdivision 2,  
18 clause (3)(a), and that 15 days have elapsed since the mailing  
19 of the notice required by subdivision 3. This subdivision  
20 applies to the following information relating to the drawer's  
21 account:

22 (1) Documents relating to the opening of the account by the  
23 drawer;

24 (2) Correspondence between the drawer and the drawee  
25 relating to the status of the account;

26 (3) Periodic statements mailed to the drawer by the drawee  
27 for the periods immediately prior to, during, and subsequent to  
28 the issuance of any check or other order for the payment of  
29 money which is the subject of the investigation or prosecution;  
30 or

31 (4) The last known home and business addresses and  
32 telephone numbers of the drawer.

33 The drawee shall release all of the information described  
34 in clauses (1) to (4) which it possesses within ten days after  
35 receipt of a request from a law enforcement or prosecuting  
36 authority which makes the written certification required by this

2 cost for furnishing this information to law enforcement or  
3 prosecuting authorities.  
-----

4 Sec. 10. Minnesota Statutes 1982, section 609.535,  
5 subdivision 7, is amended to read:

6 Subd. 7. [RELEASE OF ACCOUNT INFORMATION TO PAYEE OR  
7 HOLDER.] If there is a written request to a drawee from a payee  
8 or holder of a check or other order for the payment of money  
9 that has been dishonored other than by a stop payment order,  
10 which request is accompanied by a copy of the dishonored check  
11 or other order for payment of money and a copy of the notice of  
12 dishonor described in subdivision 8, the drawee is not liable in  
13 a civil or criminal proceeding for releasing to the payee or  
14 holder any of the following information relating to the drawer's  
15 account:

16 (1) Whether at the time the check or other order for  
17 payment of money was issued or presented for payment the drawer  
18 had sufficient funds or credit with the drawee, and whether at  
19 that time the account was open, closed or restricted for any  
20 reason and the date it was closed or restricted; and

21 (2) The last known home and business addresses and  
22 telephone numbers of the drawer.

23 The drawee shall release all of the information described  
24 in clauses (1) and (2) which it possesses within ten days after  
25 receipt of a request from a payee or holder, which request is  
26 accompanied by a copy of the notice to the maker or drawer  
27 described in subdivision 8, and a copy of the dishonored check,  
28 draft, or other order for the payment of money.  
-----

29 Sec. 11. Minnesota Statutes 1982, section 609.535,  
30 subdivision 8, is amended to read:

31 Subd. 8. [NOTICE.] The provisions of subdivisions 6 and 7  
32 are not applicable unless the notice to the maker or drawer  
33 required by subdivision 3 states that if the check or other  
34 order for the payment of money is not paid in full within five  
35 business days after mailing of the notice, the drawee may will  
36 be authorized to release information relating to the account to  
-----

2 of money and may also .....  
3 enforcement or prosecuting authorities.  
4

5 Sec. 12. Minnesota Statutes 1982, section 609.535, is  
6 amended by adding a subdivision to read:

7 Subd. 9. [PROOF OF IDENTITY.] In any prosecution under  
8 this section or section 609.52, subdivision 2, clause (3)(a),  
9 the check, draft, or other order for the payment of money is  
10 prima facie evidence of the identity of the drawer of a check,  
11 draft, or order if the person receiving the check, draft, or  
12 order:

13 (a) records the following information about the drawer on  
14 the check, unless it is printed on the face of the check, draft,  
15 or other order:

- 16 (1) full name,
- 17 (2) home or work address,
- 18 (3) home or work telephone number, and
- 19 (4) identification number issued pursuant to section 171.07;

20 (b) compares the drawer's physical appearance, signature,  
21 and the personal information recorded on the check, draft, or  
22 other order with the drawer's identification card issued  
23 pursuant to section 171.07; and

24 (c) initials the check to indicate compliance with these  
25 requirements.

26 Sec. 13. Minnesota Statutes 1982, section 609.535, is  
27 amended by adding a subdivision to read:

28 Subd. 10. [PENALTIES.] Whoever violates subdivision 2 may  
29 be sentenced as follows:

30 (1) to imprisonment for not more than ten years or to  
31 payment of a fine of not more than \$10,000, or both, if the  
32 aggregate amount of the checks, drafts, or other orders exceeds  
33 \$2,500; or

34 (2) to imprisonment for not more than five years or to  
35 payment of a fine of not more than \$5,000, or both, if the  
36 aggregate amount of the checks, drafts, or other orders exceeds  
37 \$150 but is not more than \$2,500; or

2 of a fine of not more than \$500, or both, if the aggregate  
3 amount of the checks, drafts, or other orders is \$150 or less.  
4 The amount of any checks, drafts, or other orders for the  
5 payment of money issued by the defendant in violation of  
6 subdivision 2 within any six-month period may be aggregated and  
7 the defendant charged and punished accordingly in applying the  
8 provisions of this subdivision; and when two or more violations  
9 of subdivision 2 are committed by the same person in two or more  
10 counties, the defendant may be prosecuted in any county in which  
11 one of the offenses was committed and his checks, drafts, or  
12 other orders for the payment of money may be aggregated pursuant  
13 to this subdivision. The election to aggregate checks, drafts,  
14 or other orders for the payment of money within any six-month  
15 period and to charge the defendant accordingly under this  
16 section shall not bar any prosecution of the defendant on  
17 nonaggregated checks, drafts, or other orders for the payment of  
18 money issued by the defendant during that same six-month period.

19 Sec. 14. Minnesota Statutes 1982, section 609.625,  
20 subdivision 1, is amended to read:

21 609.625 [AGGRAVATED FORGERY.]

22 Subdivision 1. [MAKING OR ALTERING WRITING OR OBJECT.]

23 Whoever, with intent to defraud, falsely makes or alters a  
24 writing or object of any of the following kinds so that it  
25 purports to have been made by another or by himself under an  
26 assumed or fictitious name, or at another time, or with  
27 different provisions, or by authority of one who did not give  
28 such authority, is guilty of aggravated forgery and may be  
29 sentenced to imprisonment for not more than ten years or to  
30 payment of a fine of not more than \$10,000, or both

31 (1) A writing or object other than a check, draft, or other  
32 order for the payment of money whereby, when genuine, legal  
33 rights, privileges, or obligations are created, terminated,  
34 transferred, or evidenced, or any writing normally relied upon  
35 as evidence of debt or property rights; or

36 (2) An official seal or the seal of a corporation; or

3 (4) An official return or certificate entitled to be  
4 received as evidence of its contents; or

5 (5) A court order, judgment, decree, or process; or

6 (6) The records or accounts of a public body, office, or  
7 officer; or

8 (7) The records or accounts of a bank or person, with whom  
9 funds of the state or any of its agencies or subdivisions are  
10 deposited or entrusted, relating to such funds.

11 Sec. 15. [609.636] [CHECK FORGERY.]

12 Subdivision 1. [CHECK FORGERY; ELEMENTS.] Whoever, with  
13 intent to defraud, falsely makes or alters a check, draft, or  
14 other order for the payment of money so that it purports to have  
15 been made by another or by himself under an assumed or  
16 fictitious name, or at another time, or with different  
17 provisions, or by the authority of one who did not give such  
18 authority, is guilty of check forgery and may be sentenced as  
19 provided in subdivision 2.

20 Subd. 2. [PENALTIES.] Whoever violates this section is  
21 punishable as follows:

22 (a) if the aggregate face amounts of the checks, drafts, or  
23 other orders forged by the defendant is more than \$2,500, to  
24 imprisonment for not more than 15 years or to payment of a fine  
25 of not more than \$15,000, or both; or

26 (b) if the aggregate face amounts of the checks, drafts, or  
27 other orders forged by the defendant is more than \$150 but does  
28 not exceed \$2,500, to imprisonment for not more than ten years  
29 or to payment of a fine of not more than \$10,000, or both; or

30 (c) if the aggregate face amounts of the checks, drafts, or  
31 other orders forged by the defendant is \$150 or less, to  
32 imprisonment for not more than five years or to payment of a  
33 fine of not more than \$5,000, or both.

34 In any prosecution under this section, the amount of any  
35 checks, drafts, or other orders for the payment of money falsely  
36 made or altered by the defendant in violation of subdivision 1

2 charged and punished accordingly in applying the provisions of  
3 this subdivision; and when two or more violations of subdivision  
4 1 are committed by the same person in two or more counties, the  
5 defendant may be prosecuted in any county in which one of the  
6 offenses was committed, and his checks, drafts, or other orders  
7 for the payment of money may be aggregated pursuant to this  
8 subdivision. The election to aggregate checks, drafts, or other  
9 orders for the payment of money within any six-month period and  
10 to charge the defendant accordingly under this section shall not  
11 bar any prosecution of the defendant on nonaggregated checks,  
12 drafts, or other orders for the payment of money falsely made or  
13 altered by the defendant during that six-month period.

14       Sec. 16. [609.637] [OBTAINING SIGNATURE ON CHECK BY FALSE  
15       PRETENSE.]

16       Whoever, by false pretense, obtains the signature of  
17 another to a check, draft, or other order for the payment of  
18 money may be punished as though the check, draft, or other order  
19 was a forgery under section 15.

STATE LAWS ON ISSUANCE OF WORTHLESS CHECKS

February 1984

ASSOCIATION OF GENERAL MERCHANDISE CHAINS, INC.  
1625 EYE STREET, N.W.  
WASHINGTON, D.C. 20006  
202-785-2060

Edward T. Borda  
President

NOTICE

February, 1984

The summary is now being compiled and issued with each state on a separate page or pages. In the future, only pages for states in which changes have occurred will be updated and sent out. Therefore, please be sure to keep this 1984 summary and simply insert the new pages rather than discarding this summary when new material is received.

## PREFACE

This paper summarizes state laws on insufficient funds or no-account checks. It is intended to serve as a convenient reference for retailers; however, users are cautioned that it is only a summary. If you have doubts about any provision, added information or legal advice should be obtained from your attorney.

STATE LAWS ON ISSUANCE OF WORTHLESS CHECKSALABAMA

The law prohibits engaging in the following conduct with intent to defraud:

(1) Drawing, or causing or directing drawing of, a check while knowing that:

(a) there is no account,

(b) the depository is fictitious, or

(c) There are insufficient funds or credit for full payment of that check and all others outstanding (coverage includes postdated checks where the drawer does not notify the payee or arrange for the check to be held);

(2) Obtaining anything of value by means of a check while knowing when the check is drawn that there are insufficient funds or credit for full payment of it and all others outstanding;

(3) Withdrawing, or causing withdrawal of, funds after a check has been drawn and before it is presented for payment without leaving sufficient funds or credit to cover it and all others outstanding; or

(4) Drawing, or causing or directing the drawing of, a postdated check, willfully not depositing sufficient funds or establishing enough credit before the postdate for payment of that check and others outstanding, and knowing at the time of the drawing that there are insufficient funds or credit and that such funds or credit will not be in the depository on the postdate.

("Draw" is defined in include the making, drawing,

uttering, issuing, or delivering of a check.)

Refusal of the bank to honor the check is prima facie evidence of intent to defraud and knowledge of insufficient funds if the amount is not paid to the holder within ten days after the drawer receives notice that payment was refused. (This applies to postdated checks when payment is refused on presentation after the postdate.) ("Notice is notice given in person or in writing. Written notice is presumed given when deposited as certified or registered mail to the address on the check or the last know address. The retailer and the bank may assess a \$2 service charge against the drawer.

Reasons for refusing to honor a check must be indicated on the check by the bank. Introduction of any unpaid, dishonored check with the bank's refusal on it is prima facie evidence of its drawing and proper dishonor. Penalties fall into three categories. (1) When the check is for less than \$100, the fine is \$50 to \$100 for the first offense; \$100 to \$200 and/or imprisonment for up to 30 days for the second offense; and from \$200 to \$400 and/or imprisonment for up to three months for third and subsequent offenses (2) When the check is for \$100 or more but less than \$500, the fine is \$100 to \$200 for the first offense; \$200 to \$400 and/or imprisonment for up to three months for the second offense; and \$400 to \$800 and/or imprisonment for up to 18 months for the third and subsequent offenses. If a number of checks drawn within 90 days of one another are involved and each is for an amount less than \$100, the amount may be totaled to be punishable under category (2). (3) When the check is for \$500 or more, the fine is \$500 to \$5,000 and/or imprisonment for up to three years. Second or subsequent offense penalties apply regardless of the category under which the person was previously

convicted.

Any court passing sentence on a person convicted under the Worthless Check Act must order full and immediate restitution and payment of all court costs by the convicted defendant.

Complainants who suggest that a case be dismissed without just cause or legal excuse after they have filed a complaint alleging violation, furnished information leading to acceptance of such a complaint, or testified before a grand jury which thereafter returned an indictment, must pay all costs of the proceedings.

In a civil action, the person who made, uttered, or delivered the bad check will be liable to the holder for punitive and compensatory damages, including reasonable attorney's fees, assessed by the court or jury. Such an action may be maintained even if there has been no prosecution, conviction, or acquittal of the defendant. Action must be brought within one year.

The service charge payable to the holder of a dishonored check shall be not more than \$10.00

ALASKA

A person commits the crime of issuing a bad check if he issues a check knowing that it will not be honored. A person "issues" a check when, as a drawer, he delivers it (or causes it to be delivered) to a person who thereby acquires a right against the drawer with respect to the check.

It is prima facie evidence that the drawer knew that the check would not be honored if (1) payment is refused for lack of funds on presentation within 30 days after issuance and the drawer fails to pay the face amount plus all costs and protest fees assessed by the bank within 15 days after notice of dishonor was sent by first class mail to the address on the check or his last known address; (2) if he had no account at the time the check was issued. "Check" does not include a postdated check or promissory note.

Issuing a bad check is a class B felony if the amount is \$25,000 or more; a class C felony if \$500 but less than \$25,000; a class A misdemeanor if \$50 but less than \$500; and a class B misdemeanor if less than \$50.

ARIZONA

In a civil action, any person who, for himself or another, with intent to defraud, makes, draws, utters, or delivers a check or draft while knowing that there is not an account or that there are insufficient funds or credit to meet the check or draft in full upon presentation will be liable to the holder for twice the amount of the check or \$50.00, whichever is greater, plus costs and reasonable attorney's fees.

Proof that, at the time of presentment, the maker, issuer, or drawer did not have sufficient funds and that he failed to pay within 12 days after receiving notice of nonpayment is prima facie evidence of intent to defraud. "Notice" is notice in person or in writing by certified mail, return receipt requested, to the address on the check.

Notice of formal protest is admissible as proof of presentation, nonpayment and protest and is prima facie evidence of insufficiency of funds or credit.

Under the criminal code, issuing bad checks is prosecuted as "theft." Theft is a class one misdemeanor if the value of the property or services is \$100 or less; a class four felony if the value is more than \$100 but less than \$1,000; and a class three felony if the value is more than \$1,000. Amounts taken pursuant to one scheme or course of conduct (whether from one or several persons) may be aggregated to determine the classification of the offense.

ARKANSAS

It is unlawful to, for any purpose (including to procure anything of value, secure possession of any personal property to which a lien has been attached, or make payment of any taxes, licenses, or fees), make, draw, utter, or deliver, with intent to defraud, any check, draft, or order while knowing that there are insufficient funds for full payment of the instrument and all others outstanding.

It is unlawful to make, draw, utter, or deliver (or to cause or direct the making, drawing, uttering, or delivering of) any check in payment of wages knowing that there are insufficient funds and without good reason to believe that it will be paid on presentation.

Prima facie evidence of intent and knowledge that an instrument will be dishonored exists where the maker or drawer had no account with the drawee at the time the check was issued; the check bears the endorsement or stamp of a collecting bank indicating that the check was returned because of insufficient funds; or payment was refused by the drawee for lack of funds upon presentation within 30 days after delivery and the maker has not paid the holder of the check the amount due together with a service charge of up to \$10.00 within 10 days after receiving written notice that payment had been refused.

Notice shall be sent by certified or registered mail, evidenced by return receipt, to the address printed on the instrument or given at the time of issuance, or current residence.

The form of the notice shall be substantially as follows: 'You are hereby notified that a check or instrument, numbered \_\_\_\_\_, issued by you on \_\_\_\_\_ (date), drawn upon \_\_\_\_\_ (name of bank), in the amount of \_\_\_\_\_, and payable to

\_\_\_\_\_, has been dishonored. Pursuant to Arkansas law, you have ten (10) days from receipt of this notice to tender payment of the full amount of such check or instrument plus a service charge of \$\_\_\_\_\_ (not to exceed \$10.00), the total amount due being \$\_\_\_\_\_. Unless this amount is paid in full within the specified time above, the holder of such check or instrument may turn over the dishonored check or instrument and all other available information relating to this incident to the Prosecuting Attorney for criminal prosecution.'

Any party holding a dishonored check or instrument and giving notice in substantially similar form and in the manner provided shall be immune from civil liability and criminal liability if sent in good faith for the giving of such notice and for proceeding under the forms of such notice.

Nothing in the notice provisions impair the Prosecuting Attorney's power to immediately file charges after the check has been returned prior to the sending of the notice.

(4) The check, draft or order bearing an insufficient stamp or no account stamp from the collecting bank shall be received as evidence that there were insufficient funds or no account at trial in any court in this State. Nothing herein shall be deemed to abrogate a defendant's right of cross-examination of banking officials provided notice of intention to cross-examine is given ten (10) days prior to the date of hearing or trial."

When the check is for \$100 or less, a first offense is punishable by a fine of from \$50 to \$500 and/or imprisonment in the county jail for up to 30 days; a second offense, by a fine of from \$100 to \$1,000 and/or imprisonment for up to 90 days; and a third or subsequent offense, by a fine of from \$200 to

\$2,000 and/or imprisonment for up to one year.

Making, uttering, or delivering an instrument drawn on insufficient funds or drawn on nonexistent accounts is a Class B felony if the amount of the instrument is two thousand five hundred dollars (\$2,500.00) or more.

Making, uttering, or delivering an instrument drawn on insufficient funds or drawn on nonexistent accounts is a Class C felony if:

(i) the amount of the instrument is less than two thousand five hundred dollars (\$2,500.00) but more than one hundred dollars (\$100.00);

or

(ii) when more than one (1) instrument has been drawn on insufficient funds or drawn on nonexistent accounts, within a ninety (90) day period, and each check is in an amount less than one hundred dollars (\$100.00), the amount of each check may be added together in a single prosecution to arrive at and be punishable under the one hundred dollars (\$100.00) or more amount.

A court sentencing a person must also order the person to make full restitution. All court costs may be taxed to the convicted defendant.

Prosecutions may be in the county of resident of the drawer or payee or in the court where the bank is located. Prosecution may be initiated by a third party holder in due course.

CALIFORNIA

It is unlawful, with intent to defraud, to willfully make, draw, utter, or deliver any check, draft, or order knowing at the time that the maker or drawer has insufficient funds or credit for full payment of the instrument (and all others) upon presentation, although no express representation is made with reference thereto. Knowledge of insufficient funds is presumed from nonpayment protest.

It is unlawful, with intent to defraud, to knowingly (1) make, pass, utter, or publish; (2) attempt to pass, utter, or publish; or (3) possess with intent to pass, utter, or publish, any fictitious bill, note, or check purporting to be an instrument for the payment of money or property of some bank, corporation, co-partnership, or individual, when in fact there is no such institution or individual.

Violation is punishable by imprisonment in the county jail for up to one year or in the state prison; however, if the total amount of insufficient funds check does not exceed \$200 and the maker has never been convicted of forgery, counterfeiting, passing fictitious instruments, etc., the penalty is up to one year's imprisonment in the county jail.

Any person who issues a bad check and fails to pay the amount of the check in cash to the payee within 30 days following a written demand delivered by certified mail shall be liable to the payee, in addition to the amount of the check, for damages of three times the amount of the check, but in no case less than \$100 or more than \$500. Action to recover the damages may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

In any prosecution involving two or more checks,

drafts, or order, it shall constitute prima facie evidence of the identity of the drawer if:

At the time of the acceptance of the draft or order there is obtained from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. The information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means; and the person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

COLORADO

Any person who knows he has insufficient funds or no account with the bank and who, with intent to defraud, issues a check for a payment of services, wages, labor, property, or any other thing of value, commits "fraud by check."

Fraud by check is a class one petty offense if the check is less than \$50; a class two misdemeanor if it is for \$50 or more but less than \$200, or if the aggregate of two or more checks issued within any 30-day period in the state is that amount. It is a class four felony if the check is for \$200 or more; if the offender is convicted of fraud by check involving issuance of two or more checks within any 30-day period in the state totaling \$200 or more in the aggregate; if the offender has been twice previously convicted of fraud by check; or if the check was drawn on an account which did not exist or which had been closed for 30 days or more before the issuance of the check (regardless of the amount). If deferred prosecution is ordered, the court may require restitution.

It is a class two misdemeanor to open a checking account using false identification or an assumed name for the purpose of issuing fraudulent checks.

It is a class three misdemeanor to issue or pass a check knowing that the issuer has insufficient funds on deposit to pay that check and all others outstanding. "Insufficient funds" means not having a sufficient balance for payment of a check when presented for payment within 30 days after issuance. Except in the case of a postdated check, knowledge of insufficient funds is presumed if the drawer had no account at the time of issuance or had insufficient funds to pay the check on presentation within 30 days after issuance. Violation is punishable by imprisonment for up to six

months and/or by a fine of from \$50 to \$750.

A bank will not be civilly or criminally liable for releasing information on the issuer's account to a law enforcement official investigating or prosecuting a charge.

CONNECTICUT

When payment of a check is refused upon presentation, the offense of issuing a bad check has been committed if the person issuing or passing the check knew that there were insufficient funds to cover it or that there was no account and intended or believed at the time of the issuing or passing that payment would be refused.

An issuer is presumed to have known that a check, other than a postdated check, would not be paid if he had no account at the time it was issued or if payment was refused for insufficient funds upon presentation within 30 days after issuance and he failed to make it good within eight days after receiving notice of the refusal.

An issuer of a bad check is presumed to have received notice of the refusal of the drawee to pay the check if the drawee provides proof of mailing of a notice by certified mail, return receipt requested, to the issuer at his last known address.

Issuing a bad check is a class A misdemeanor punishable by a fine of up to \$1,000 and/or by imprisonment for up to 1 year.

DELAWARE

It is unlawful to issue or pass a check knowing that it will not be honored. It is prima facie evidence of knowledge that a check (other than a postdated check) will not be honored if the issuer had not account at the time of issuance or if payment was refused because of insufficient funds and the issuer failed to pay the amount due within ten days after receiving notice of the refusal.

It is a defense that the accused acted as drawer in a representative or agent capacity, did so as an employee of the principal drawer, and, without personal benefit, merely executed the orders of his employer or superior.

Issuing a bad check is a class A misdemeanor unless the amount of the check is \$300 or more, in which case it is a class E felony. A class A misdemeanor is punishable by up to 2 years' imprisonment and such fine as the court may order.

DISTRICT OF COLUMBIA

It is unlawful to, with intent to defraud, make, draw, utter, or deliver any check, draft, order, or other instrument for the payment of money while knowing that the maker or drawer has insufficient funds or credit for full payment upon presentation.

Failure to pay the amount due and protest fees within five days after receiving written or personal notice that the check has been dishonored because of insufficient funds is prima facie evidence of intent to defraud and knowledge of insufficient funds.

If the check is for under \$100, violation is a misdemeanor punishable by a fine of up to \$1,000 and/or imprisonment for up to one year. For checks of \$100 or more, violation is a felony, and the penalty is a fine of up to \$3,000 and/or from one to three years' imprisonment.

FLORIDA

It is unlawful to make, draw, utter, issue or deliver a check while knowing that the maker or drawer has insufficient funds or credit to pay upon presentation. It is a crime regardless of whether the person receives anything of value in exchange for the check.

The maker or drawer's withdrawal of funds needed to insure payment of the check within a reasonable time is prima facie evidence of knowledge. The making, drawing, uttering, or delivery of a check which is refused by the bank because of lack of funds or credit is prima facie evidence of intent to defraud or knowledge of insufficient funds unless the amount due plus a service charge not exceeding \$10 or 5% of the face amount of the check, whichever is greater, is paid within seven days after receiving written notice of dishonor. Payment of a dishonored check, however, is not a defense or grounds for dismissal of charges.

Notice mailed by certified or registered mail, evidenced by a return receipt, to the address printed on the check or given at the time of issuance is equivalent to notice having been received by the maker or drawer, regardless of whether the notice is returned undelivered. The holder of a worthless check giving notice in substantially this form will be immune from civil liability for giving notice and proceeding under it:

You are hereby notified that a check, numbered \_\_\_\_\_, issued by you on (date), drawn upon (name of bank), and payable to \_\_\_\_\_, has been dishonored. Pursuant to Florida law you have 7 days from receipt of this notice to tender payment of the full amount of such check plus a service charge of \$10 or 5 percent of the face amount of

the check, whichever is greater, the total amount due being \$\_\_\_\_\_ and \_\_\_\_\_ cents. Unless this amount is paid in full within the time specified above, the holder of such check may turn over the dishonored check and all other available information relating to this incident to the State Attorney for criminal prosecution.

No-account checks are presumed to have been issued with intent to defraud, and the notice is not required.

The bank must indicate reasons for refusal on the check or an attachment. Introduction of a marked check is prima facie evidence of its making or utterance, due presentation and proper dishonor.

The law does not apply where the person accepting the check had knowledge or reason to believe that the drawer did not have sufficient funds, and a payee who institutes prosecution under such circumstances will be liable for all costs. The law does not cover postdated checks.

In the prosecution for a bad check, it is prima facie evidence of the identity of the party issuing the check and that he was authorized to draw on the account if the following information is available at the time of issuance: the full name, resident address, home and business phone numbers, place of employment, sex, date of birth, height, and race. The information must either be written on the check itself, or the number of a check cashing identification card issued by the accepting party may be recorded on the check. A card may not be issued until the necessary information has been placed on file by the accepting party. In addition to this information, the party accepting the check must witness the signature or endorsement and must initial the check.

Any person instituting an action which is

dismissed for want of prosecution will be liable for all costs incurred in connection with the action.

If nothing of value is received, violation is a misdemeanor of the second degree punishable by a fine of \$500 or imprisonment for up to 60 days. If something of value is received, violation is a misdemeanor of the first degree punishable by a fine of up to \$1,000 or imprisonment for up to one year if the check is for less than \$50; a third degree felony punishable by a fine of \$5,000 or imprisonment for up to 5 years if the amount is \$50 or more. In a civil action, the prevailing party may recover reasonable attorney's fees plus costs of collection.

The law also makes it unlawful, by act or common scheme, to cash or deposit any item in any bank with intent to defraud. Violation is a third degree felony.

It is unlawful to stop payment on a check with intent to defraud.

GEORGIA

It is criminal issuance of a bad check to make, draw, utter, or deliver a check, draft, or order for payment of money in exchange for a present consideration or wages, while knowing that it will not be honored. "Present consideration" includes an obligation or debt of rent which is past or presently due.

It is prima facie evidence of knowledge if the accused had no account at the time, or if payment is refused for lack of funds upon presentation within 30 days after delivery and the amount due plus a service charge of up to \$5 or 5% of the face amount, whichever is greater, is not paid within 10 days after receipt by the accused of written notice of refusal.

Notice by certified or registered mail, evidenced by return receipt, to the address on the check or given at the time of issuance is equivalent to notice having been received, whether returned undelivered or not. A holder giving notice in substantially this form will be immune from civil liability for giving notice and proceeding under the forms of the notice:

You are hereby notified that a check or instrument numbered \_\_\_\_\_, issued by you on \_\_\_\_\_ date \_\_\_\_\_, drawn upon \_\_\_\_\_ (name of bank) \_\_\_\_\_, and payable to \_\_\_\_\_, has been dishonored. Pursuant to Georgia law, you have 10 days from receipt of this notice to tender payment of the full amount of such check or instrument plus a service charge of \$5.00 or 5 percent of the face amount of the check, whichever is greater, the total amount due being \$\_\_\_\_\_ and \_\_\_\_\_ cents. Unless this amount is paid in full within the specified time above, the holder of such check or instrument may turn over the dishonored check or instrument and all other

available information relating to this incident to the District Attorney or Solicitor for criminal prosecution.

Criminal issuance of a bad check is generally a misdemeanor; however, making, drawing, uttering, or delivering a bad check, draft, or order on a bank of another state is a felony punishable by imprisonment for from one to five years and/or a fine of up to \$1,000. (The prosecutor may seek extradition of any person who flees the state to avoid prosecution).

A person convicted of the offense of criminal issuance of a bad check shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows:

(A) When the check is for less than \$100:

(i) First offense: a fine of not less than \$50.00 nor more than \$100.00 or imprisonment not to exceed 30 days, or both;

(ii) Second offense: a fine of not less than \$100.00 nor more than \$200.00 or imprisonment not to exceed 60 days, or both; and

(iii) Third or subsequent offense: a fine of not less than \$200.00 nor more than \$400.00 or imprisonment not to exceed 12 months, or both;

(B) When the check is for \$100.00 or more but less than \$500.00:

(i) First offense: a fine of not less than \$100.00 nor more than \$200.00 or imprisonment not to exceed 60 days, or both;

(ii) Second offense: a fine of not less than \$200.00 nor more than \$400.00 or imprisonment not to exceed three months, or both; and

(iii) Third or subsequent offense: a fine of

not less than \$400.00 nor more than \$800.00 or imprisonment not to exceed 12 months, or both; or

(C) When more than one check is involved and such checks were drawn within 90 days of one another and each is in an amount less than \$100.00, the amounts of such separate checks may be added together to arrive at and be punishable under subparagraph (B).

Upon conviction of criminal issuance of a bad check, the defendant is required to make restitution and restitution may be made while the defendant is serving a probated or suspended sentence.

An instrument for which the full name, residence address, and home phone number of the person presenting it are available at the time of issuance is prima facie evidence of the identity of the person and that he was authorized to draw on the account. This information may be written on the check itself, or the number of check-cashing identification card may be recorded on the check. An identification card may be issued only after the required information has been placed on file by the party issuing the card. The person receiving the check must witness the signature or endorsement and initial the check.

HAWAII

It is negotiation of a worthless negotiable instrument to intentionally issue or negotiate an instrument knowing that it will not be honored by the maker or drawee.

It is prima facie evidence of knowledge that the check will not be honored if the drawee had no account at the time of negotiation or if payment was refused upon presentation within a reasonable time after negotiation or delivery and the drawer failed to make good within ten days after actual receipt of notice of dishonor.

Negotiation of a worthless instrument is a misdemeanor.

Violation may also be prosecuted as theft committed by worthless negotiable instrument. Prima facie evidence rules are the same as above. The grade of the offense varies with the amount involved.

IDAHO

It is unlawful for any person, acting for himself, as the agent or representative of another, or as an officer of a corporation, willfully and with intent to defraud, to make, draw, utter, or deliver (or to cause to be made, drawn, uttered, or delivered) any check, draft, or order while knowing that the maker or drawer has not funds or has insufficient funds or credit for full payment upon presentation, even though no express representation has been made with reference thereto.

As against the maker or drawer, making, drawing, uttering, or delivering a bad check is prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds.

Violation is punishable by imprisonment in the state prison for up to three years and/or by a fine of up to \$5,000 if the maker has no funds (regardless of the amount of the check) or has insufficient funds to meet a check for \$50 or more. If a check for under \$50 is returned for insufficient funds, the penalty, is imprisonment in the county jail for up to six months and/or a fine of up to \$300 for a first conviction; imprisonment in the county jail for up to one year and/or a fine of up to \$1,000 for a second; and imprisonment in the state prison for up to three years and/or a fine of up to \$5,000 for a third and subsequent convictions. If probation is ordered for violation, the court may, as a condition, require the defendant to make restitution on all checks unpaid at the commencement of the probation in addition to any other terms and conditions for treatment and rehabilitation.

Any person who has acquired rights with respect to a check which is refused may file a complaint regardless of whether he is the payee, holder, or bearer of

the check.

Other sections of the code provide that when a check has been dishonored and has not been paid within 15 days, the holder may send notice of dishonor to the drawer's last known address. The drawer will then be liable for interest at 6% per annum from the date of dishonor and costs of collection of up to \$20 or the face amount, whichever is less. However, if a holder has notified the drawer by posted notice at the point of sale that the drawer will be required to pay a set collection fee if the check is dishonored, the holder is not required to give notice of dishonor and may assess a collection fee of the amount stated in the notice but not to exceed \$10.00. If there is a court action, the court may award reasonable attorney's fees to the holder.

The notice of dishonor must be substantially the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to \_\_\_\_\_ in the amount of \_\_\_\_\_ has not been accepted for payment by \_\_\_\_\_, which is the drawer bank designated on your check. This check is dated \_\_\_\_\_, and it is number, NO. \_\_\_\_\_.

You are CAUTIONED that unless you pay the amount of this check within fifteen (15) days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

(1) Costs of collecting the amount of the check, including any attorney fee which will be set by the court; and

(2) Interest on the amount of the check which shall accrue at the rate of six percent (6%)

per annum from the date of dishonor.

You are advised to make your payment to \_\_\_\_\_  
at the following address: \_\_\_\_\_.

The law also provides for civil action to recover damages. A plaintiff may recover damages in an amount equal to \$100 or triple the amount of the check, whichever is greater. Damages may not exceed by more than \$500 the value of the check and may only be awarded if the plaintiff made written demand of the defendant for payment not less than 10 days before beginning the action and the defendant failed to tender, prior to commencement of the action, an amount of money not less than the amount demanded.

ILLINOIS

It is unlawful for any person with intent to obtain control over property or pay for property, labor or services, to issue or deliver any check or order (upon any real or fictitious depository) knowing that it will not be paid.

Failure to have sufficient funds or credit when the check is issued or delivered is prima facie evidence of knowledge that it will not be paid and of intent to defraud.

Intent to defraud may be presumed where a check which had been dishonored is presented for a second time, at least 7 days after it is first presented and is again dishonored.

Violation is a class A misdemeanor; however, a second or subsequent offense is a class four felony. When the value of property obtained in a single transaction (or separate transactions within a 90-day period) exceeds \$150, the offense is also a class four felony. Separate transactions totaling more than \$150 in a 90-day period, must be alleged in a single charge.

Persons receiving dishonored checks may file civil actions and recover costs of handling such checks including fees and interest.

A person who receives a worthless check may also collect a fee of up to \$10 from the person who issued the check.

All new checking accounts must show the date the account was opened on the face of each check and the check numbers will begin with #101.

INDIANA

It is check deception (a class A misdemeanor) to knowingly or intentionally issue or deliver a check, draft, or order on a bank or other credit institution for payment of or to acquire money or other property while knowing that it will not be paid.

An unpaid and dishonored check with the drawee's refusal to pay and reason marked on, or attached to, it is prima facie evidence that presentment was made and that the check was properly dishonored. The fact that the person issued or delivered a check which was refused by the bank or that he had insufficient funds or no account, is prima facie evidence that he knew the instrument would not be honored.

Prima facie evidence of the identity of the maker will be established if, at the time of acceptance, the following information is recored on the check (or is on file) by the payee: (1) name and residence, business, or mailing address of the maker; and (2) motor vehicle operator's license number, social security number, home phone number, or place of employment.

It is a defense to a charge of check deception if the person whose check was dishonored pays the payee or holder the amount due, together with any service charge or fee not exceeding the greater of \$15 or 5% (but not more than \$250) of the amount due, within 10 days after the date of the mailing of the notice of dishonor.

Notice that a check or draft has not been paid by the financial institution is considered as having been given at the time that the notice was deposited in the regular United States mail, if the notice was addressed to either:

- (1) the address printed on the check or draft; or
- (2) the address given by the person in writing to the payee or holder at the time the check or draft was

issued or delivered.

No civil or criminal liability will be incurred by the payee or holder of a dishonored check who sends such a notice.

No crime is committed when the payee or holder knows that there are insufficient funds or that the check is postdated, or when insufficiency of funds or credit results from an adjustment made to the account by the bank without notice to the account holder.

A person who delivers a check and then stops payment or allows it to be dishonored for lack of funds, no account, or lack of an authorized signature or necessary endorser, will be liable to the holder for interest at 18% per year from the date of execution, court costs, and all other costs of collection including reasonable attorney fees if the responsibility for collection is referred to an attorney who is not a salaried employee of the holder. Where legal action was filed, the holder is entitled to minimum attorney's fees of not less than \$100. The provision does not apply if the maker pays the amount due within ten days after mailing the notice of dishonor.

IOWA

It is theft to make, draw, deliver, or give a check, draft, or order and obtain property or services if the person knows that the instrument will not be paid when presented.

Where the bank refuses payment because of insufficient funds and the maker does not make good within ten days of his receipt of notice from the holder, the court or jury may infer that the maker had knowledge. Notice must be by certified mail or personal service. Where payment is refused because of no account, notice is not required, and the court or jury may infer knowledge.

In an action against the maker to recover payment on a bad check, a successful plaintiff may recover court costs, including reasonable attorney's fees, or an individual's cost of processing a small claims recovery, such as lost time and transportation costs from the maker.

Theft is a simple misdemeanor if the value does not exceed \$50; a serious misdemeanor if it is more than \$50 but not more than \$100; an aggravated misdemeanor if it exceeds \$100 but not \$500; a class D felony for a third or subsequent conviction where the value is more than \$500 but not more than \$5,000; and a class C felony if the value exceeds \$5,000. Thefts attributable to a single scheme or plan may be considered as a single theft and the values aggregated to determine the classification.

KANSAS

Giving a worthless check is making, drawing, issuing, or delivering (or causing or directing the making, drawing, issuance, or delivery of) a check, order, or draft with intent to defraud and knowledge that the maker or drawer has no deposit or credit or has insufficient funds for payment in full upon presentation.

Making, drawing, issuing, or delivering a check which is dishonored by the bank because of insufficient funds is prima facie evidence of intent to defraud and knowledge of insufficient funds, unless payment (including a service charge of up to \$3 per check) is made within seven days after notice (oral or written) that the check has not been paid. Written notice is presumed given when deposited in the mail addressed to the address on the check.

It is a defense to prosecution that the check was postdated or that the payee was informed or knew that the maker did not have sufficient funds.

Giving a worthless check is a class E felony if the amount is \$50 or more; a class A misdemeanor if less than \$50. Habitually giving worthless checks (the giving of a worthless check for less than \$50 by a person who has within the two years immediately preceding been convicted twice of giving worthless checks; or the giving of two or more worthless checks on the same day where each check is for less than \$50, but the total is \$50 or more) is a class D felony.

Filing a complaint or supplying information upon which prosecution for giving a worthless check is commenced with knowledge that the check was postdated or when the payee knew of insufficient funds when he accepted the check is a class A misdemeanor, and a person convicted must pay all costs of prosecution.

KENTUCKY

It is theft by deception to obtain property of another with intent to deprive him of it by intentionally issuing or passing a check or similar sight order knowing that it will not be honored by the drawee. A similar law covers theft of labor already rendered.

Knowledge is presumed (except for postdated checks) if (1) the issuer had no account at the time of issuance, or (2) payment was refused upon presentation within 30 days after issuance and the issuer failed to make payment within ten days after receiving notice of that refusal.

Theft by deception is a class A misdemeanor punishable by imprisonment of up to 12 months and a fine of up to \$500 unless the value of the property is \$100 or more, in which case it is a class D felony punishable by imprisonment for from one to five years and/or a fine of up to \$10,000, or double the offender's gain, whichever is greater.

LOUISIANA

It is unlawful to issue, with intent to defraud and in exchange for anything of value, whether or not the exchange is contemporaneous, any check, draft, or order while knowing that there is insufficient credit for payment in full upon presentation. The provision does not apply to payments on installment contracts or open accounts.

Parties to a consumer credit transaction may contract for an additional charge to be assessed against the consumer's account where that consumer tenders a check in payment of the account and the check is returned due to insufficient funds. The additional charge shall be 5% of the amount of the check up to a maximum of \$15. This charge is an addition to any delinquency charges which may be assessed under the provisions of R.S. 9:3525.

Failure to pay the amount due within ten days after written notice that the check has been dishonored has been deposited by certified mail to the address on the check or to the last known address on bank records, or within ten days after delivery or personal tender of the written notice to the issuer by the payee or his agent, is presumptive evidence of intent to defraud.

If the check is for less than \$100, the penalty is a fine of up to \$500 and/or imprisonment for up to six months. If the offender has been convicted of issuing a worthless check two or more times previously, he will be fined up to \$1,000 and/or be imprisoned for up to two years upon subsequent convictions. If the check is for \$100 but less than \$500, the penalty is imprisonment for up to two years and/or a fine of up to \$2,500. If the amount of the check is \$500 or more, the penalty is imprisonment for up to ten years and/or a fine of up to \$3,000. When two or more worthless

checks have been issued within a 180 day period, the aggregate of the amount of all the worthless checks issued within that 180 day period shall determine the grade of the offense. In addition to other penalties, the court may order restitution.

When the drawer of a check dishonored for insufficient funds fails to pay within 60 days after receipt of written demand for payment, he may be liable for reasonable attorney's fees for prosecution and collection if judgment is rendered against him. Written demand for payment must correctly state the amount owed and include a copy of the check.

When a peace officer has reasonable grounds to believe a person has committed the offense of issuing worthless checks, he may give a written summons instead of making an arrest if:

(1) He has reasonable grounds to believe that the person will appear upon summons, and

(2) He has no reasonable grounds to believe that the person will cause injury to himself or another or damage to property unless immediately arrested.

In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.

MAINE

It is negotiating a worthless instrument to intentionally issue or negotiate such an instrument knowing that it will not be honored.

Knowledge will be presumed if the drawer had no account at the time of negotiation or if payment is refused upon presentation within a reasonable time and the drawer fails to make good within five days after receipt of notice of dishonor.

Notice may be given in any reasonable manner and may be oral or written. It must identify the instrument and state that it has been dishonored. Written notice is considered given when sent even if it is not received.

Issuing a bad check is a Class B crime if the face value of the negotiable instrument exceeds \$5,000; a Class C crime if: (1) The face value of the negotiable instrument exceeds \$1,000 but does not exceed \$5,000; or (2) the actor has 2 prior convictions for any combination of theft, a violation of section 702, 703 or this section, or attempts thereat. Determination of whether a conviction constitutes a prior conviction for purposes of this subsection shall be pursuant to section 362, subsection 3, paragraph C; a Class D crime if the face value of the negotiable instrument exceeds \$500 but does not exceed \$1,000; or a Class E crime if the face value of the negotiable instrument does not exceed \$500.

Amounts of face value of negotiable instruments involved in violations of this section committed pursuant to one scheme or course of conduct, whether the instruments were issued or negotiated to the same person or several persons, may be aggregated to charge a single violation of this section of appropriate class. Subject to the requirement that the conduct of

the defense shall not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregated count be considered as separate violations of this section. No aggregated count of violations of this section may be deemed duplicitous because of such an order and no election may be required. Prosecution may be brought in any venue in which one of the violations of this section which have been aggregated was committed.

MARYLAND

A person is guilty of obtaining property or services by bad check when:

- (1) (1) He obtains property or services by uttering, as a drawer or representative drawer, or passing a check knowing that there are insufficient funds (no account, no funds, or funds in an amount less than required to cover the check) to cover it and all others outstanding,
  - (b) He believes or intends that payment will be refused upon presentation, and
  - (c) Payment is refused; or
- (2) He obtains property or services by passing a check knowing the drawer has insufficient funds with the drawee to cover it and other outstanding checks and
  - (a) he intends or believes at the time the check is passed that payment will be refused; and
  - (b) payment is refused.
- (3) (a) He obtains property or services by uttering, as a drawer or representative drawer, a check knowing that he or his principal, at the time of utterance, intends, without payee consent, to stop payment on the check or cause its dishonor, or by passing a check knowing that payment has been stopped or that it will be dishonored, and
  - (b) Payment is refused upon presentation.

(4) (4) He obtains property or services by passing a check knowing that payment has been stopped or countermanded, or the drawer will disregard or dishonor or refuse to recognize the check and payment is refused upon presentation. "Check" includes any check, draft, or other negotiable instrument that is not postdated.

When the drawer has insufficient funds to cover the check and others outstanding at the time of utterance, the drawer or representative drawer is presumed to know of the insufficiency. A subscribing or representative drawer of a dishonored check is presumed to have intended or believed that the check would be dishonored if the drawer (1) had no account at the time of utterance or (2) had insufficient funds at the time of utterance, the check was presented for payment not more than 30 days after utterance, and the drawer had insufficient funds at the time of presentation.

Dishonor, lack of an account and insufficiency at the time of presentation and utterance may be proved by introduction of a notice of protest or a certificate under oath of a representative of the bank. The fact that the drawer or representative drawer, without consent of the payee, stopped payment or otherwise caused dishonor of the check without returning the property obtained is presumptive evidence of intent to stop payment or cause dishonor at the time of utterance.

A person convicted of obtaining property or services valued at less than \$300 by bad check is guilty of a misdemeanor punishable by a fine of up to \$100 and/or imprisonment of up to 18 months. Where the value is \$300 or more, violation is a felony punishable by a fine of up to \$1,000 and/or imprisonment for up to

15 years. In addition to these penalties, the court may order restitution of the property or of the value of the property or services.

The obtaining of property or services by uttering or passing a bad check, when the uttering or passing is not accompanied by any false representations other than a false representation that there are sufficient funds with the drawee to cover the check, may not be prosecuted as "theft" or under any other section of the bad check law if the person who obtains the property services makes the check good within ten days of dishonor and no prosecution shall be commenced until the expiration of a ten day period.

A person who obtains property or services by uttering a bad check may be immediately prosecuted under "theft" provisions, or any other section of the bad check law if the person uttering the check was the drawer and did not have an account with the drawee at the time of utterance.

Holders of retail installment sales agreements may charge a fee of up to \$5 if payment is made with a check that is dishonored on the second presentment.

MASSACHUSETTS

It is a crime to make, draw, utter, or deliver a check, draft, or order with intent to defraud and knowledge that the maker or drawer has insufficient funds or credit for payment, even though no express representation is made in reference thereto.

As against the maker or drawer, making, drawing, uttering, or delivering a check which is refused is prima facie evidence of intent and knowledge unless he pays the check with costs and protest fees within two days after receiving notice that it was dishonored.

Violation is punishable as attempted larceny; if money, property, or services are obtained, the offense is larceny.

MICHIGAN

The law provides that whoever issues a check or other order which, at the time of issuance, he intends will not be paid, is guilty of a misdemeanor. Restitution may be ordered by the court.

Evidence sufficient to sustain a finding of intent includes proof: (1) that there was no account at the time of issuance; (2) of insufficient funds at the time of issuance and failure to pay within five business days after mailing of notice of dishonor; or (3) of insufficient funds when presentment was made within a reasonable time and failure to pay within five business days after mailing of notice of dishonor.

Notice of dishonor must be sent by certified mail, return receipt requested, to the address of record. Refusal to accept notice is not a defense that it was not received.

If the check has been protested, the notice of protest is admissible as proof of presentation, non-payment, and protest and will sustain a finding of lack of funds.

The law does not apply to postdated checks or to checks given for a past consideration, except payroll checks or checks issued to an employee benefit fund.

Separate sections relating to theft make it unlawful to obtain possession or custody of, or title to, property by intentionally deceiving a person with a representation which is known to be false, is made with intent to defraud, and which does defraud. "False representation" includes the issuance of a check, draft, or order for the payment of money or the delivery of property while the issuer knows that he is not entitled to draw upon the bank therefore or to order the payment or delivery thereof.

If the value of the property unlawfully obtained

## MINNESOTA

The law provides that whoever issues a check or other order which, at the time of issuance, he intends will not be paid, is guilty of a misdemeanor. Restitution may be ordered by the court.

Evidence sufficient to sustain a finding of intent includes proof: (1) that there was no account at the time of issuance; (2) of insufficient funds at the time of issuance and failure to pay within five business days after mailing of notice of dishonor; or (3) of insufficient funds when presentment was made within a reasonable time and failure to pay within five business days after mailing of notice of dishonor.

Notice of dishonor must be sent by certified mail, return receipt requested to the address of record. Refusal to accept notice is not a defense that it was not received.

If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest and will sustain a finding of lack of funds.

The law does not apply to postdated checks or to checks given for a past consideration, except payroll checks or checks issued to an employee benefit fund.

Separate sections relating to theft make it unlawful to obtain possession or custody of, or title to, property by intentionally deceiving a person with a representation which is known to be false, is made with intent to defraud, and which does defraud. "False representation" includes the issuance of a check, draft, or order for the payment of money or the delivery of property while the issuer knows that he is not entitled to draw upon the bank therefor or to order the payment or delivery thereof.

If the value of the property unlawfully obtained is \$100 or less, the penalty is imprisonment for up to 90 days or a fine of up to \$100; if the value is over \$100 but less than \$2,500, imprisonment for up to five years and/or a fine of up to \$5,000; or, if the value is over \$2,500, imprisonment for up to ten years and/or a fine of up to \$10,000. The value of money or property obtained in a six-month period may be aggregated to determine the sentence.

MISSISSIPPI

It is unlawful for a person, with fraudulent intent, to make, draw, utter, issue, or deliver a check, draft, or other order to obtain money, any thing of value, or services while knowing that the maker or drawer has insufficient funds or credit to pay that check and all others outstanding.

Making, drawing, issuing, uttering, or delivering a check which is refused by the bank is prima facie evidence of intent to defraud and knowledge of insufficient funds or credit to pay that check and all others outstanding.

Making, drawing, issuing, uttering, or delivering a check which is refused by the bank is prima facie evidence of intent to defraud and knowledge of insufficient funds if the maker has not paid the holder the full amount of the check within 15 days after receiving notice of nonpayment.

The form of the notice shall be substantially as follows:

"This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft or order numbered \_\_\_\_, apparently issued by you on \_\_\_\_ (date), drawn upon \_\_\_\_ (name of bank), and payable to \_\_\_\_, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, plus a service charge of Ten Dollars (\$10.00), the total amount due being \$\_\_\_\_. Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument and all other available information relating to this incident to the proper authorities for criminal

prosecution."

Notice is not required if the bank is not in Mississippi or if the drawer is a nonresident, has left the state, or had no account at the time of issuance or dishonor.

If the notice is mailed by certified or registered mail and returned undelivered to the sender after such notice was mailed within a reasonable time of dishonor to the address printed on the check, draft or order, or to the address given by the accused at the time of issuance of the instrument, such return shall be prima facie evidence of the maker's or drawer's intent to defraud.

If there is prima facie evidence of fraudulent intent and notice is given (if required), one causing arrest of the drawer will not be criminally or civilly liable for false arrest or false imprisonment.

The bank must designate reasons for refusal on the check or an attachment to it. Introduction in evidence of an unpaid and dishonored check with refusal to pay and reasons therefore so marked is prima facie evidence of the making or uttering of the check, its dishonor, and that it was properly dishonored for the reasons stated.

To establish prima facie evidence of the identity of the party presenting the check, draft or order, the following information regarding identity shall be requested by the party receiving the instrument: the presenter's name, residence address and home phone number. The information may be provided in the following manner:

(a) The information may be recorded upon the check, draft or order itself; or

(b) The number of a check-cashing identification card issued by the receiving party may be recorded on the check, draft or order. Such check-cashing

identification card shall be issued only after the information required in this subsection has been placed on file by the receiving party.

In addition to this information, the party receiving the check, draft or order shall witness the signature or endorsement of the party presenting the instrument and the receiving party shall initial the instrument.

Where the check was for less than \$100, a first offense is punishable by a fine of \$25 to \$500 and/or imprisonment in the county jail for from five days to six months; a second offense is a felony punishable by a fine of \$50 to \$1,000 and/or imprisonment in the county jail for from 30 days to one year. Where the check was for \$100 or more, the first or second offense is a felony punishable by a fine of from \$100 to \$1,000 and/or imprisonment in the penitentiary for up to three years. A third or subsequent offense is a felony, no matter what the amount of the check, and the penalty is imprisonment in the penitentiary for from one to five years. Each making, drawing, issuing, uttering, or delivering is a separate offense.

A person convicted of issuing a worthless check in payment of a preexisting debt or as a payment on a past due account may not be imprisoned but may be fined an amount applicable in other convictions for issuing a worthless check.

Retailers may impose a service charge of \$10.00 for a bad check. The charge may be imposed wherer the check is not paid by the drawer within 15 days of receiving the notice of dishonor.

In a civil action on a bad check the payee or endorser may recover, in addition to the amount of the check, an amount equal to the full amount of a check for up to \$25; 50% of the amount of a check for \$25 to \$200 (but the recovery may not be less than \$25 nor

more than \$50); or 25% of the amount of a check for  
over \$200.

MISSOURI

A person commits a crime of passing a bad check when, with purpose to defraud, he issues or passes a check or similar sight order knowing that it will not be paid or that there is no such drawee.

It is prima facie evidence of purpose to defraud and knowledge that the instrument would not be paid if the issuer had no account with the drawee or if there was no such drawee at the time of issuance. If the issuer had an account, failure to pay the check within ten days after written notice of dishonor is prima facie evidence of purpose and knowledge. "Notice" is defined as notice deposited as first class mail addressed to the issuer at his address as it appears on the check or to his last known address.

The face amounts of any bad checks passed pursuant to one course of conduct within any ten-day period may be aggregated in determining the grade of the offense. Passing bad checks is a class A misdemeanor, unless the face or aggregated amount is \$150 or more or there was no account or no such drawee at the time the check was issued, in which case the crime is a class D felony.

MONTANA

It is an offense to issue or deliver a check order to obtain control over or secure property, or services while knowing that it will not be paid.

If the issuer has an account with the bank, failure to make the check good within five days after written notice of nonpayment has been received by the bank is prima facie evidence of knowledge that it would not be paid.

The penalty is a fine of up to \$500 and/or imprisonment for up to six months in the county jail if the act is part of a common scheme or if the value of the property obtained, or attempted to be obtained, exceeds \$100. If the value of the property obtained, or attempted to be obtained, exceeds \$1,000 the penalty is imprisonment in the state prison for up to ten years.

NEBRASKA

Obtaining property, services, or present value by issuing or passing a check with knowledge that there is no account, or, if there is an account, that there are insufficient funds for payment upon presentation is issuing a bad check.

An issuer who has an account with the bank will be presumed to have known that he had insufficient funds if, within 30 days after issuance, he was notified of the bank's refusal and he failed to make the check good within ten days after that notice, or, in the absence of such notice, he has not made good within ten days after notice of dishonor was sent to his last known address by the county attorney or his deputy. Upon request of the check's depositor and payment of \$7 per check, the county attorney must mail such a notice.

Issuing a bad check is a class III felony if the amount of the check is \$1,000 or more; class IV felony if the amount is \$300 or more but less than \$1,000; a class I misdemeanor if the amount is \$75 or more but less than \$300; and a class II misdemeanor if the amount is less than \$75. A second or subsequent misdemeanor is a class IV felony. Otherwise, issuing or passing a check (without obtaining anything of value) knowing that there is no account or insufficient funds is a class II misdemeanor.

A convicted person may be ordered to make restitution for the value of the check and costs of filing. The fact that restitution has been made and costs paid will be a mitigating factor in imposition of other penalties.

NEVADA

It is unlawful to, willfully and with intent to defraud, draw or pass a check or draft to obtain money or delivery of valuable property or services, drawn upon any real or fictitious bank, person, etc., when there is insufficient money, property, or credit with the drawee to make payment in full upon presentation.

In a criminal action for issuance of a check against insufficient or no funds with intent to defraud, intent and knowledge of insufficient funds are presumed if the instrument is drawn on an account which does not exist; payment is refused upon presentation in the usual course of business, unless within ten days after receiving notice of dishonor from the drawee or holder, the drawer pays the full amount due plus any handling charges; or notice of refusal of payment sent to the drawer by registered or certified mail at an address printed or written on the check is returned for nondelivery.

A notice in bold-face type in substantially the following form must be conspicuously posted in every retail store and bank:

The issuance of a check or draft without funds or with intent to defraud is punishable by imprisonment in the county jail for not more than 6 months, or by a fine of not more than \$500, or by both fine and imprisonment, and the issuance of such a check or draft in an amount of \$100 or more or by a person who previously has been convicted three times of this or a similar offense is punishable by imprisonment in the state prison for not less than 1 year nor more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

Notices are supplied at cost by the Superintendent of the State Printing and Records Division. Failure to post is not a defense to a charge of issuing a bad check.

A complainant who initiates a criminal action and then refuses to testify will be presumed to have acted maliciously and without probable cause.

Violation is a misdemeanor if the instrument (or a series of instruments passed in the state during a 90-day period) is for less than \$100. If the amount is \$100 or more or if the person has been previously convicted three times of a misdemeanor for issuing bad checks or for any similar offense in any jurisdiction, violation is a felony punishable by imprisonment for not less than one year nor more than ten years and/or by a fine of not more than \$10,000. A person who willfully issues a bad check for the payment of wages in excess of \$100 is guilty of a gross misdemeanor.

NEW HAMPSHIRE

A person is guilty of issuing a bad check if he issues or passes a check for the payment of money knowing or believing that it will not be paid and payment is refused by the drawee.

A person who issues a check which is dishonored is presumed to have known that it would not be paid if he had no account at the time of issuance.

Payment of the amount of the check with costs and protest fees within ten days after having received notice that payment was refused is an affirmative defense.

The crime of issuing a bad check is a misdemeanor; a class B felony if the face amount is more than \$500 but not more than \$1,000; and a class A felony if the face amount exceeds \$1,000. Face amounts involved in issuance of bad checks committed pursuant to one scheme or course of conduct may be aggregated in determining the grade of the offense.

In addition to any other sentence the court shall, if restitution is authorized by RSA 651:63, order a person convicted of issuing a bad check to make restitution to the person to whom the check was due. The restitution shall include the amount of the check and may include all reasonable costs and attorney's fees.

Any person who makes, draw, utters, or delivers any check, draft, or order knowing that the maker or drawer has insufficient funds or credit for payment is liable to the person injured thereby if the check is not paid in full upon presentation.

A person who willfully and with intent to defraud makes, draws, or issues any check to obtain money, merchandise, property, or anything of value or to pay for service, wages, salary, or rent will be liable for

the amount of the check, interest, court costs, and reasonable costs of collection in a civil action if the check is dishonored because of no account or insufficient funds.

In a civil action it is prima facie evidence of willfulness and intent to defraud (1) if, at the time of issuance or presentment within a reasonable time, there was no account or there were insufficient funds; and (2) the check was not paid within ten days after receipt of notice of nonpayment. Notice of nonpayment may be given in person or in writing. If written, it is presumed to have been given when properly mailed by certified or registered mail, return receipt requested, and addressed to the issuer at the address on the check or his last known address.

NEW JERSEY

A person who issues or passes a check or similar sight order knowing that it will not be honored commits a disorderly persons offense.

An issuer is presumed to know that a check (other than a postdated check) will not be paid if he had no account at the time of issuance or if payment was refused upon presentation within 30 days after issue and he failed to make good within ten days after receiving notice of refusal.

A disorderly persons offense is punishable by a fine of up to \$1,000 and/or up to six months' imprisonment. The offense may be prosecuted as theft by means of a bad check in some instances where property is obtained, in which case the penalty is dependent upon the amount of the check. Amounts may be aggregated in determining the grade of the offense.

NEW MEXICO

It is unlawful to issue in exchange for anything of value, with intent to defraud, any check, draft, or order for the payment of money while knowing that there are insufficient funds for full payment upon presentation. The law does not apply to postdated checks or in instances where the holder knew or had reason to believe that the check was not good.

It is prima facie evidence of intent to defraud and knowledge of insufficient funds if the maker or drawer had no account or if he had insufficient funds and failed to pay the amount due, plus costs and protest fees, within ten days after notice to him that the check has been dishonored because of insufficient funds or credit.

Notice may be given in person or in writing. Written notice is presumed to have been given when deposited as certified mail to the address on the check.

Anyone initiating an action is liable for costs if the case is dismissed at his request or because of his failure to prosecute.

Violation is punishable by imprisonment in the county jail for up to 30 days and/or a fine of up to \$100 when the amount of the check (or the total amount of a number of checks) is less than \$25. If the amount is \$25 or more, violation is punishable by imprisonment for one to three years in the state prison and/or a fine of up to \$1,000.

NEW YORK

A person is guilty of issuing a bad check when he passes a check or, as drawer or representative drawer, he utters a check knowing that there are insufficient funds to cover it, he intends or believes that payment will be refused, and payment is refused upon presentation.

If the drawer had insufficient funds at the time of utterance, it is presumed that the subscribing or representative drawer know of the insufficiency. The drawer (subscribing or representative) of a dishonored check is presumed to have intended or believed that it would be dishonored if the drawer had no account at the time of utterance; or if the drawer had insufficient funds at the time of uttering, the check was presented for payment within 30 days after utterance, and the drawer had insufficient funds at the time of uttering, the check was presented for payment within 30 days after utterance, and the drawer had insufficient funds at the time of presentation. Evidence that the check was protested is presumptive evidence of dishonor and insufficiency of funds at the time of presentation.

It is an affirmative defense that full payment of the check was made within ten days after dishonor or that the defendant acted as a representative drawer and, without personal benefit, merely executed the orders of his employer or superior.

Issuance of a bad check is a class B misdemeanor. Issuance of a bad check may be prosecuted as larceny if it involves wrongful taking or obtaining of another's property with intent to deprive him of the property or appropriate it to himself or a third person. The penalties are dependent on the amount taken.

NORTH CAROLINA

Obtaining property in return for a worthless check is, with intent to defraud, obtaining money, credit, or anything of value by check, draft, or order on a bank, person, or other institution which is not indebted to the drawer, or where he has not provided for payment of the check, if the check is not paid upon presentation.

The giving of such a check is prima facie evidence of intent to cheat or defraud.

Violation is a misdemeanor punishable by fine and/or imprisonment at the discretion of the court.

Other sections make it unlawful to (1) draw, make, utter, or issue and deliver any check or draft while knowing that the maker or drawer has insufficient funds or credit for payment upon presentation; or (2) solicit or aid and abet another to draw, make, utter, or issue and deliver a check or draft while being informed, knowing, or having reasonable grounds for believing that the maker or drawer has insufficient funds or credit for payment upon presentation.

Violation is a misdemeanor. If the amount of the check or draft is not over \$50, punishment is a fine of up to \$50 or imprisonment for up to 30 days. If the amount is over \$50, punishment is a fine of up to \$500 and/or imprisonment for up to six months. Fourth and subsequent convictions are punishable as general misdemeanors at the discretion of the court. If the check or draft is drawn on a nonexistent account, the penalty is a fine of up to \$1,00 and/or imprisonment for not more than two years. If the check is on an account that was closed by the drawer prior to the time the check was drawn, the penalty is a fine of up to \$400 and/or imprisonment for up to five months.

In imposing a sentence other than an active prison sentence, the judge shall consider and may require

restitution to the victim for the amount of the check. Each prosecuting witness is entitled to a witness fee taxed as part of the costs assessed to the defendant.

Magistrates may accept written appearances, waivers of trial, and guilty pleas and enter judgments on checks up to \$400 where restitution is made. On checks over \$400 or on a fourth or subsequent offense, the case must go to trial; however, a magistrate may hear and enter judgment as the chief district judge directs in all worthless check cases where the amount of the check is \$400 or less. A magistrate may not impose a prison sentence longer than 30 days.

In a civil action by the holder to recover the amount of a bad check, if the plaintiff prevails, the defendant will be assessed \$10 to cover the costs of processing the check and will be required to pay attorney's fees if the plaintiff mailed written notice to him at least ten days prior to instituting the action and the defendant failed to deliver payment or evidence of bank error within ten days of the mailing of the notice.

A processing fee not to exceed \$10 may be charged for checks on which payment has been refused because of insufficient funds or because the drawer did not have an account at the bank if at the time the consumer presented the check a sign was conspicuously posted in the immediate vicinity of each cash register. The sign, which must be no smaller than 8 x 11 inches, must have been in plain view of anyone paying for goods or services by check and must have stated the amount of the fee that would be charged for returned checks. If a collection agency collects or seeks to collect a check, the drawer is not required to pay a fee unless the fee is expressly authorized by the agreement creating the debt.

In order to establish prima facie evidence that

the person charged with drawing, making, uttering, or issuing a worthless check was in fact the identified check passer, the conditions outlined below must be met:

- (1) The check was delivered to a "check taker," which is defined as a natural person who is an acceptor, or an employee or agent of a acceptor, of a check or draft in a face-to-face transaction.
- (2) The name and mailing address of the check passer are written or printed on the check.
- (3) The check taker identifies the check passer at the time of acceptance by means of a North Carolina driver's license, a special i.d. card, or other reliable, serially numbered i.d. card, containing the photo and mailing address of the person in question.
- (4) The license or i.d. card number appears on the check.
- (5) After dishonor by the bank, the acceptor sends the check passer a certified letter to the address on the check identifying the check, setting forth the circumstances of dishonor, and requesting rectification of any error within ten days.
- (6) The acceptor files an affidavit with a judicial official before issuance of the first process or pleading.
- (7) The affidavit must:
  - (a) State the facts surrounding acceptance of the check;
  - (b) indicate that at least 15 days have elapsed since the mailing of the letter and that the check passer

has failed to rectify any error;  
and

- (c) have attached a copy of the letter of notice, the receipt (or a copy) certifying mailing of the letter, and the check (or a copy) including any stamp, marking, or attachment indicating the reason for dishonor.

If the check is delivered by mail (or other than in person), the prima facie evidence rule will apply only if:

- (1) The check is delivered by mail or by some person or instrumentality other than the check passer.
- (2) The name and mailing address of the passer are recorded on the check.
- (3) The acceptor has previously identified the passer when he opened the account, established the course of dealing, or initiated the contract or lease, by North Carolina driver's license, a special i.d. card, or other reliable, serially numbered i.d. card containing a photograph and mailing address of the person in question, and has obtained and retained his signature in the account file.
- (4) The acceptor compares the name, address, and signature on the check with the information on file and notes that the information corresponds and that the signature appears genuine.
- (5) After dishonor, the acceptor sends the passer a certified letter by certified mail to the address on the check identifying the check, setting forth the circumstances of dishonor, and requesting

rectification of any error within ten days.

- (6) The acceptor files an affidavit with a judicial official.
- (7) The affidavit includes the same information as required when the check is delivered to a check taker (see above).

If the bank dishonors the check and returns it in the regular course of business stamped or with an attachment indicating reasons for dishonor, the check may be introduced in evidence and will constitute prima facie evidence of the fact of dishonor if the conditions of (5) through (7) have been met. The fact that the check was returned dishonored may be received as evidence that the passer had no credit with the bank for payment of the check.

NORTH DAKOTA

Relating to checks dishonored because of insufficient funds, the law provides that it is illegal for a person (for himself, as the agent or representative of another, or as an officer or member of a firm, company, co-partnership, or corporation) to make, draw, utter, or deliver any check, draft, or order for the payment of money, if at time of the making, drawing, uttering, delivery, or presentation of payment (if made within one week after original delivery), there are insufficient funds or credit to meet the instrument in full upon presentation.

Violation is a class B misdemeanor. The maker is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder. The criminal complaint must be executed not more than 90 days after the dishonor. Failure to execute a complaint within that time bars the criminal charge.

An agent acting for the receiver of a check may present the check to the state's attorney for prosecution if the issuer does not pay to the holder sufficient monies to pay the check within 10 days of the receipt of the notice of dishonor.

The making of a postdated check which is knowingly received as such, or of a check issued with agreement that it will not be presented for payment for a specified time, is not a violation.

Notice of dishonor in substantially the following form must be sent by the holder prior to instituting criminal proceedings:

Notice of Dishonored Check

Date \_\_\_\_\_

Name of Issuer \_\_\_\_\_

Street Address \_\_\_\_\_

City and State \_\_\_\_\_

You are according to law hereby notified that a check dated \_\_\_\_\_, 19\_\_ , drawn on the \_\_\_\_\_

Bank of \_\_\_\_\_ in the amount of \_\_\_\_\_

has been returned unpaid with the notation the payment

has been refused because of nonsufficient funds.

Within ten days from the receipt of this notice, you

must pay or tender to \_\_\_\_\_ (Holder)

sufficient monies to pay such instrument in full and any collection fees or costs not in excess of ten dollars.

Payment to holder of the face amount of the instrument, plus any collection fees or costs, not exceeding the additional sum of ten dollars, shall constitute a defense to a criminal charge brought hereunder if paid within ten days from receipt of this notice of dishonor. If payment of the above amounts is not made within ten days from receipt of this notice of dishonor, a civil penalty of the lesser of one hundred dollars or three times the amount of the instrument will be assessed. The notice may also contain a recital of the penal provisions and the possibility of a civil action.

In a case of a check or draft dishonored because the maker had no account the law provides that any person who issues a check, draft, or order, and, at the time of issuance, does not have an account with the bank is guilty of a class A misdemeanor.

It is a class C felony for a person, for himself or as the agent or representative of another, to issue draw, utter, or deliver any instrument a check if the drawer:

- (1) with intent to defraud, has no account at the time of issuance; OR
- (2) with intent to defraud, has insufficient funds at the time of issuance or presentment

within one week of original delivery (a criminal complaint must be executed within 90 days after the drawer receives notice of nonpayment from the holder); AND

- (3) has been previously convicted of issuing an instrument without an account or sufficient funds.

The fact of refusal for insufficient funds or no account is prima facie evidence of intent to defraud unless the drawer makes good within 30 days after he receives written notice of nonpayment by certified mail or personal service. The notice is the same as the one printed above except that the reason for refusal section states "because the drawer does not have an account."

OHIO

No person, with intent to defraud, may issue or transfer, or cause issuance or transfer of, any check or other negotiable instrument knowing that it will be dishonored.

A person who issues or transfers a check is presumed to know that it will be dishonored if he had no account at the time of issue or stated date (whichever is later), or if the check is dishonored on presentment within 30 days of issue or the stated date (whichever is later) and he does not pay the amount due within ten days after receiving notice of the dishonor.

Violation is a first degree misdemeanor if the check is for less than \$150. If it is for \$150 or more or if the offender has a previous conviction of a theft offense, the violation is a fourth degree felony.

OKLAHOMA

It is unlawful to obtain or attempt to obtain money, property, or anything of value with intent to defraud by means of any false or bogus check or other instrument. The term "false or bogus check" includes checks which are not honored because of insufficient funds or because drawn on a closed or nonexistent account when given in exchange for money or anything of value.

Making, drawing, uttering, or delivering a check, draft, or order, payment of which is refused by the drawee, is prima facie evidence of the maker's or drawer's intent to defraud and knowledge of insufficient funds or credit, unless the maker or drawer pays the amount due, together with protest fees, within five days from the date the check is presented for payment, provided the check is presented for payment within 30 days after delivery and acceptance.

If the check is for \$20 or less, violation is a misdemeanor punishable by a fine of up to \$1,000 and/or by imprisonment in the county jail for up to one year. If the check is for more than \$20 or if a number of checks in a common scheme to defraud total more than \$20, violation is a felony punishable by a fine of up to \$5,000 and/or by imprisonment in the state prison for from one to ten years.

OREGON

A person commits the crime of negotiating a bad check if he makes, draws, or utters a check or similar sight order for the payment of money knowing that it will not be honored by the drawee.

Unless the check is postdated, it is prima facie evidence of knowledge that the check would not be honored if the drawer had no account with the drawee at the time the check was drawn or uttered, or if payment is refused for lack of funds upon presentation within 30 days after utterance and the drawer fails to make good within ten days after receiving notice of refusal.

Negotiating a bad check is a class A misdemeanor. Violation is a class C felony if it is established beyond a reasonable doubt that the person has been convicted in the state, within the preceding five years, of the crime of negotiating a bad check or of theft by deception by means of bad check.

Negotiating a bad check may be prosecuted as theft by deception committed by means of a bad check if property or services are obtained. Provisions relating to prima facie evidence are the same as above. Penalties are dependent on the value of the property.

A prevailing plaintiff in a civil action may recover reasonable attorney's fees provided the court finds that he made written demand at least ten days before commencing action and that the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount not less than the damages awarded.

PENNSYLVANIA

It is unlawful to issue or pass any check or order for the payment of money while knowing that it will not be honored.

The issuer is presumed to have known that a check, other than a postdated check, would not be paid if he had no account at the time of issuance or if payment was refused for lack of funds upon presentation within 30 days after issue and he fails to make the check good within ten days after receiving notice of the refusal.

If the amount of the check does not exceed \$200, violation is a summary offense punishable by a fine of up to \$300 and/or imprisonment for up to 90 days; if the amount exceeds \$200, violation is a second degree misdemeanor punishable by a fine of up to \$5,000 and/or imprisonment for up to two years.

RHODE ISLAND

It is unlawful for any person, with intent to defraud, to make, draw, utter, or deliver any check, draft, or other written order knowing at the time that the maker or drawer has insufficient funds or credit for payment in full upon presentation.

It is also unlawful to buy an item, pay by check, take possession of the item, and then stop payment. It is not a violation, however, if the item is returned to the vendor within two business days of the filing of the stop-payment order.

As against the maker or drawer, making, drawing, uttering, or delivering a check which is refused by the drawee because of insufficient funds or a stop-payment order is prima facie evidence of intent to defraud unless the amount due is paid within 15 business days after receipt of verbal or written notice that the check has been dishonored. If the check has not been paid within two business days of receipt of the notice (as evidence by the return receipt or return of the notice undelivered), the payee may notify the Attorney General who will prosecute violations within ten business days of such notice.

If the amount of the check is not more than \$100, violation is punishable by a fine of up to \$500 and/or imprisonment for up to one year. If the amount of the check is over \$100, violation is punishable by a fine of up to \$1,000 and/or imprisonment for up to one year.

SOUTH CAROLINA

It is unlawful for any person, with intent to defraud, in his own name or in any other capacity, to draw, make, utter, issue, or deliver any check, draft, or other written order (whether given for money, services, or anything of value) when, at the time, the maker does not have an account or does not have sufficient funds to pay the check upon presentation, or when the check has an incorrect or insufficient signature for payment upon presentation.

It is unlawful to induce, solicit, or aid and abet any other person to draw, make, utter, issue, or deliver any check, draft, or other written order while being informed, knowing, or having reasonable cause for believing that the maker has no account or insufficient funds for payment upon presentation.

To establish prima facie evidence of the identity of the party issuing the check and that he was authorized to draw upon the account, the full name, residence address, and home telephone number of the person presenting the check must be obtained. The information may be recorded on the check or the number of a check-cashing identification card issued by the receiver after the required information is on file may be used. In addition, the party receiving the check must witness the signature or endorsement and initial the check.

Before the drawee refuses to pay any check upon presentation, it must write or stamp on the check or an attachment the reasons for the dishonor. Introduction of an unpaid and dishonored check marked with the drawee's reasons for refusal is prima facie evidence of the making of the check, due presentation, and proper dishonor.

As against the maker or drawer, the withdrawing of funds necessary to insure payment upon presentation

within ten days after negotiation, or the drawing of a check, payment of which is refused by the drawee, is prima facie evidence of knowledge of insufficient funds in or credit with the bank, unless the payee, at the time of accepting the check, knew or had reason to believe that there were insufficient funds, in which case the payee instituting the prosecution would be assessed all costs.

It is prima facie evidence of fraudulent intent if the check is not paid because of no account or insufficient funds or an incorrect or insufficient signature, or the maker fails to pay the amount due plus a service charge of \$5 within 15 days after written notice has been sent by certified mail to the address on the check or given at the time of acceptance or provided on the i.d. card. A certificate by the payee that the notice has been sent as required is presumptive proof that the requirements have been met, regardless of the fact that the notice may not have been received.

There will be a presumption that the prosecution was instituted for reasonable and probable cause and the person instituting it will be immune from civil liability for the giving of notice in substantially the following form to the person and the bank if 15 days elapse before criminal proceedings are instituted:

You are hereby notified that a check or instrument, numbered \_\_\_\_\_, issued by you on \_\_\_\_\_ (date), drawn upon \_\_\_\_\_ (name of the bank), and payable to \_\_\_\_\_, has been dishonored. Pursuant to South Carolina law, you have fifteen days from the date this notice was mailed to tender payment of the full amount of such check or instrument plus a service charge of five dollars, the total amount due being \_\_\_\_\_ and \_\_\_\_\_ cents. Unless this

amount is paid in full within the specified time above, the holder of such check or instrument may turn over the dishonored check or instrument and all other available information relating to this incident to the solicitor or other appropriate officer for criminal prosecution.

Provisions do not apply to a postdated check; to a check given in full or partial payment of a preexisting debt; to a check given where the payee knows, has been expressly notified, or has reason to believe that the drawer did not have an account or did not have sufficient funds to insure payment; or to any check which has not been deposited within ten days of the date it was given to the payee.

Any court (including a magistrate's court) may dismiss a case for want of prosecution. When prosecutions are initiated, the party applying for the warrant will be liable for reasonable administrative costs of up to \$20 if the case is dismissed for want of prosecution. Unless waived by the court, the party applying for a warrant must notify the court no less than 24 hours before the time set for trial if full restitution has been made. This notice will relieve the party of responsibility to prosecute. Any court may dismiss a prosecution on proof of restitution and payment by the defendant of all administrative costs (up to \$20) submitted prior to the date set for trial after issuance of the warrant; however, after prosecution is initiated, payment of the dishonored check will not constitute a defense or ground for dismissal, but may be considered in mitigation of the sentence.

It is unlawful, with intent to defraud, to stop payment on a check given to obtain money, credit, goods, or services which were as represented at the time of issuance. The provision is inapplicable to postdated checks or when the payee or holder knew or

had reason to believe there were insufficient funds.

If the check is for \$200 or less, the magistrate's court has exclusive jurisdiction; however, a municipality may, by ordinance, adopt provisions of the law as a municipal offense and authorize its municipal court to try violations. A first conviction is punishable by a fine of from \$200 or imprisonment for up to 30 days; a second conviction by a fine of \$200 or imprisonment from 30 days; a third or subsequent conviction by imprisonment for 30 days. Where the amount of the check exceeds \$200, the Court of General Sessions (or any court with concurrent jurisdiction) has jurisdiction, and a first conviction is punishable by a fine of from \$200 and/or imprisonment for up to one year; a second by a fine from \$300 to \$1,000 and/or imprisonment for up to two years; and a third or subsequent conviction by a fine from \$500 to \$2,000 and imprisonment for from 30 days to ten years.

After a conviction or plea for drawing and uttering a fraudulent check and the defendant is charged or fined, he must be required to pay reasonable court costs (up to \$20). For a first offense for drawing or uttering a bad check, the court must suspend the sentence upon a showing of satisfactory proof of restitution and payment by the defendant of court costs (up to \$20). For second and subsequent convictions, suspension is discretionary.

After a first offense conviction for drawing or uttering a bad check, the defendant may apply for expunging of the records after one year if no other conviction has occurred. The record may be expunged only one time.

A first offense prosecution or a second offense resulting in conviction must be reported by the court to the Communications and Records Division of the Law Enforcement Division, which will keep records of

convictions.

Any county council may establish a check clearing house to collect and distribute information on initiation and disposition of cases involving fraudulent checks. Magistrates would report upon issuance of an arrest warrant and upon arrest, and the clearinghouse would report pertinent information to magistrates. Records would be public, and interested parties could obtain information upon request.

SOUTH DAKOTA

It is unlawful for any person (for himself or as the agent or representative of another), for present consideration and with intent to defraud, to pass a check knowing at the time that there are insufficient funds for the payment of it and all others outstanding in full upon presentation (even though no express representation is made with reference thereto) or that there is no account. "Present consideration" includes goods which are delivered or constructively delivered, and services which are completed in seven days, exclusive of the date of delivery or completion and of Sundays and holidays, before or after payment.

Passing an insufficient funds check, is prima facie evidence of the maker's or drawer's knowledge of insufficient funds.

The holder of an insufficient funds check, before presenting it for prosecution, must service notice of dishonor on the writer by registered or certified mail, return receipt requested. The notice should be substantially as follows:

Date \_\_\_\_\_  
 Name of issuer \_\_\_\_\_  
 bank on which drawn \_\_\_\_\_  
 Date of check \_\_\_\_\_  
 Amount of check \_\_\_\_\_  
 Merchant holding check \_\_\_\_\_

You are hereby notified that your check described above has been dishonored and is now being held by the above merchant for a period of five days from the above date.

After at least five days after the return of the receipt, the check (with attached bank return), a copy of the dishonor notice, and return receipt may be given to the state's attorney for prosecution. The five-day period need not be observed if the notice is returned undelivered or if the state's attorney finds there is reasonable cause to believe that the writer intends to leave the jurisdiction. The service of dishonor notice is not an element of the crime of passing a check against insufficient funds or an element of proof or a defense to any prosecution.

The making of a postdated or hold check, knowingly received as such, or a check issued under an agreement that it would not be presented for payment for a specified time, is not a violation. It is a defense to passing a no-account check if the account was closed without the knowledge of the person who passed the check. Evidence that the bank mailed a notice by certified or registered mail to the person in whose name the account was listed at the last address in the bank's records is prima facie proof that the actor had knowledge that the account was closed.

Criminal prosecution for an insufficient funds or no-account check must be commenced within six months after the holder received notice of dishonor. Failure to prosecute within that period bars criminal prosecution.

Passing a check of \$100 or less against insufficient funds is a class two misdemeanor punishable by a fine of up to \$100 and/or imprisonment for up to 30 days. The passing of an insufficient funds check (or series of checks within a 30-day period) for \$200 or less but more than \$100 is a class one misdemeanor punishable by imprisonment for up to one year and/or a fine of \$1,000. Passing a check or series for more than \$200 is a class six felony punishable by up to two

years' imprisonment and/or a fine of up to \$2,000 where there was no account, passing a check is a class five felony punishable by five years' imprisonment in the penitentiary and/or a fine of \$5,000. Under some circumstances, when the defendant has been convicted on one or two prior felonies, the class of the felony may be increased one degree, and after three or more prior felonies, another is a class one felony punishable by life imprisonment and a fine of up to \$25,000.

If a person is presented a check as payment by another person and the check is returned unpaid by the institution holding the account upon which the check is drawn because of insufficient funds in the account to pay the check, or because no account exists, the person accepting the check or his designee, whomever bears the cost of collection, may collect from the person issuing the check a service charge, in addition to the amount for which the check was drafted. The service charge is not subject to other provisions of law regulating interest rates or finance charges. The maximum service charge on an insufficient funds check or a no account check is twenty dollars.

TENNESSEE

It is unlawful for any person, with fraudulent intent, to make, draw, issue, utter, or deliver a check, draft, or order for the payment of money for the purpose of obtaining money, credit, services, or any article of value while knowing that the maker or drawer has insufficient funds to pay it and all others outstanding in full.

As against the maker or drawer, making, drawing, uttering, or delivering of a check, draft, or order, payment of which is refused, is prima facie evidence that the maker or drawer had intent to defraud and knowledge of insufficient funds, provided he has not paid the amount due within ten days after receiving personal or written notice of refusal. Written notice is presumed to have been given when mailed to the address on the check or last known address. Notice is not required if the bank is not located in the state or if the drawer is not a resident of the state, has left the state at the time of dishonor, or did not have an account with the drawee at the time the check was issued or dishonored.

Before refusing to pay, the bank must indicate the reasons for dishonor on the check or attachment. Introduction of an unpaid and dishonored check so marked is prima facie evidence of making or uttering and proper dishonor.

When the check is for an amount not exceeding \$100, violation is a misdemeanor punishable by imprisonment in the county jail for up to 11 months and 29 days and/or by a fine of up to \$500. When the amount of the check (or the combined amounts of more than one check) is more than \$100, violation is punishable by imprisonment in the penitentiary for from three to ten years. In addition to other punishments,

the court must require a convicted person to pay the holder of the check the amount due thereon.

TEXAS

It is theft by check to obtain property or services by issuing or passing a check or sight order for payment of money knowing that the issuer does not have sufficient funds for payment in full of it and all others outstanding.

The issuer's intent is presumed (except as to a postdated check) if he had no account with the bank at the time of issuance or if payment was refused because of insufficient funds on presentation within 30 days after issuance and the issuer failed to make payment within ten days after receiving notice of refusal. Notice may be any kind of actual notice or notice in writing sent by registered or certified mail, return receipt requested, or by telegram, report of delivery requested, and addressed to the address on the check, the bank's records, or the records of the person to whom the check was issued or passed. If written notice is given, it is presumed received no later than five days after it was sent.

Violation is a class C misdemeanor if the value is less than \$20; a class B misdemeanor if the value is \$20 but less than \$200 or the value is less than \$20 but the defendant has been previously convicted of any grade of theft; a class A misdemeanor if the value is \$200 but less than \$750; a third degree felony if the value is \$750 but less than \$20,000; and a second degree felony if the value is \$20,000 or more. Provision is made for repeat offenders. Amounts obtained pursuant to one scheme may be aggregated to determine the grade of the offense.

Another section of the penal code makes it an offense to issue or pass a check knowing that there are insufficient funds for full payment, regardless of the purpose for which the check was issued. Knowledge is

presumed if there was no account at the time of issuance or if payment was refused because of insufficient funds on presentation within 30 days and the issuer did not make good within ten days after receipt of notice. "Notice" may be notice in writing sent, by registered or certified mail, return receipt requested, or by telegram, report delivery requested, to the issuer at the address on the check, the bank's records, or the records of the person to whom the check was issued or passed. Notice is presumed received no later than five days after sent. Violation is a class C misdemeanor.

A county, district, or criminal district attorney may collect a fee if his office collects or processes a bad check. The fee, which is collected from any person who is a party to the offense, may not exceed \$5 if the face amount is up to \$10; \$10 if it exceeds \$10 but not \$100; \$30 if it exceeds \$100 but not \$300; \$50 if it exceeds \$300 but not \$500; and \$75 if it is more than \$500.

The Texas Credit Commissioner has taken the position that merchants cannot make a charge for returned checks given in payment of an account, however, such a charge is allowed for checks given for a cash sale.

A person charged with an offense under the bad check law may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court, by certified checks, cashiers checks, or money order only, payable to the person that received the bad checks.

UTAH

A person who makes, draws, signs, or issues any check, draft, or order (whether as a corporate agent or otherwise) to obtain money, merchandise, property, or any other thing of value or to pay for services, wages, salary, or rent, will be liable to the holder for the amount, interest, and costs of collection if the instrument is not honored upon presentation and is marked "refer to maker" or if the account does not exist, has been closed, or contains insufficient funds for payment in full.

The holder of a dishonored check may give written or verbal notice to the maker, drawer, signer, or issuer and impose a service charge of up to \$5. Prior to filing an action, the holder must give the person written notice of intent to file a civil action and allow him seven days from the date the notice was mailed to tender payment in full plus the service charge.

"Notice" is personal or written notice to the person making, drawing, or issuing the instrument. Written notice is conclusively presumed to have been given when mailed, postage prepaid, by certified or registered mail, return receipt requested, to the signer at the address on the check or his last known address. The notice must take the following form:

Date \_\_\_\_\_

To \_\_\_\_\_

You are hereby notified that check(s) described below issued by you has been returned to us unpaid.

Check dated \_\_\_\_\_

Check number \_\_\_\_\_

Originating bank \_\_\_\_\_

Amount \_\_\_\_\_

Reason for dishonor (marked on check) \_\_\_\_\_

The foregoing check together with a service charge of \$5 must be paid to the undersigned within seven days from the date of this notice in accordance with Section 7-15-1, Utah Code Annotated 1953, or appropriate civil legal action may be filed against you for the amount due and owing together with service charges, interest, court costs, and attorney fees as provided by law.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated 1953: Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check or draft. The foregoing civil action does not preclude the right to prosecute under the criminal code of the State of Utah.

(Signed) \_\_\_\_\_

Name of Holder \_\_\_\_\_

Address of Holder \_\_\_\_\_

Telephone Number \_\_\_\_\_

A person who issues a check or draft for which payment is refused is presumed to have known the check would not be paid if he had no account at the time of issue.

A person is guilty of issuing a bad check or draft if he fails to make good and actual payment to the payee in the amount of the refused check or draft within 14 days of his receiving actual notice of the check or draft's nonpayment.

Violation is a class B misdemeanor if the check or draft (or series of checks or drafts made or drawn in

the state within a six-month period) amounts to no more than \$200; a class A misdemeanor if the amount exceeds \$200 but not \$300; a third degree felony if the amount exceeds \$300 but not \$1,000; and a second degree felony if the amount exceeds \$1,000.

The following requirement was enacted in the 1983 legislature and became effective on May 9, 1983.

Every check, draft, order, or other like instrument printed for a customer of any institution issuing transaction accounts in the state as part of a series shall have on its face the name and address of the account holder, the month and year the account was opened, and the number of the check, draft, order, or other like instrument in unbroken, sequential, numerical order, beginning with the number 101, except for initial deposits to open a new account or in case of lost or stolen checks when a limited supply of unnumbered counterchecks may be issued. Any person who violates this requirement is guilty of a class C misdemeanor.

VERMONT

One who makes, draws, utters, or delivers a check, draft, or order with knowledge of insufficient funds for full payment upon presentation will be liable to the holder for the face amount, interest, and collection costs (including reasonable attorney's fees) if the instrument is not paid in full upon presentation.

It is prima facie evidence of the knowledge of the maker or drawer if his check is refused for insufficient funds unless he pays the check, costs, and protest fees within eight days after receiving notice of nonpayment.

The criminal law prohibits issuing or passing a check or similar sight order knowing that it will not be honored.

The issuer is presumed to know that a check (other than a postdated one) will not be paid if he had no account at the time of issuance or if payment was refused for lack of funds upon presentation within 30 days after issue and the issuer failed to make good within ten days after receiving notice.

Violation is punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

Designedly, by false pretenses or false token and with intent to defraud, obtaining money, property, or discharge from obligation is punishable by imprisonment for up to ten years and a fine of up to \$1,000 if the value obtained exceeds \$25. This statute is sometimes used to prosecute a person who makes a minimum deposit to secure checks and then willfully writes check in excess of the deposit.

VIRGINIA

A section in the criminal code makes it unlawful for any person, with intent to defraud, to make, draw, utter, or deliver any check, draft, or order knowing at the time that the maker or drawer has insufficient funds in, or credit with, the bank for payment, although no express representation is made in reference thereto. Any person making, drawing, uttering, or delivering such an instrument as present consideration for goods or services will be guilty under this section.

Making, drawing, uttering, or delivering a check that is refused for lack of funds is prima facie evidence of intent to defraud and knowledge of insufficient funds unless the amount due plus interest and protest fees is paid within five days after the maker or drawer receives written notice that the check has been dishonored. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address is equivalent to notice having been received. If the check has an address printed or written on its face, notice by certified or registered mail (with or without return receipt requested) to that address is equivalent to notice having been received by the maker or drawer, whether or not returned undelivered. The maker or drawer of a no-account check is presumed to have had intent to defraud, and the five-day notice is not required.

Anyone causing arrest or prosecution will be deemed to have acted with reasonable or probable cause in any damage suit against him if the check was refused and he waited five days after notice of protest without the amount due being paid before bringing action.

Notation attached to or stamped on a refused check by the bank is prima facie evidence that the notation

is correct.

Identity may be established by introducing the unpaid or dishonored check bearing the notation of the full name, residence address, home telephone number and either the driver's license, social security number or credit account identification number of the person who delivered the check, the cashing party or its representative, and bearing the initials of the representative of the payee or charging party to whom the check was delivered.

Evidence consisting of a composite photograph of the check and of the person delivering the check and of other documentation identifying that person such as driver's license, social security card, or credit card, taken together at the time the check was delivered by the person to the payee may also be introduced.

Where the check had a value of \$200 or more, the issuer shall be guilty of a class 6 felony. Where the value of the check is less than \$200, the issuer shall be guilty of a class 1 misdemeanor.

In a civil action on a bad check, the court must award a prevailing plaintiff \$10 for costs of processing the returned check and the base wage of one employee for the time actually spent as a witness, in addition to the amount due for the check. The total amount allowable may not exceed \$250 (excluding restitution for the amount of the check). The award of costs is contingent upon a finding that the plaintiff complied with notice requirements and that the defendant failed to deliver payment or evidence of a bank error to the plaintiff within five days after receipt of notice.

Where a civil action is brought with regard to a bad check, the holder or his agent shall be entitled to claim legal interest from the date of the check, the protest or bad check return fee, if any, charged to the

holder by his bank and the processing charge, if any, not to exceed \$10, as is normally charged by the holder of the check on account of bad checks.

All checks, drafts, or similar negotiable or non-negotiable instruments drawn against funds held by a financial institution located in Virginia in a consumer deposit account opened after December 31, 1981 shall clearly display on the face of the instrument the month and year in which the account was opened. This requirement does not apply to temporary checks, drafts, or similar negotiable or non-negotiable instruments or orders of withdrawal or to a consumer's deposit account where the applicant either demonstrates through the production of monthly statements or represents in a writing which states it has been made under penalty of perjury that, for the twelve months immediately preceding his application, he has had an account at the same or another financial institution.

WASHINGTON

It is unlawful for any person, with intent to defraud, to make, draw, utter, or deliver a check or draft while knowing that there are insufficient funds in or credit with, the bank to meet the check in full upon its presentation.

Uttering or delivering of such a check without sufficient funds or credit is prima facie evidence of intent to defraud.

It is also illegal to, with intent to defraud, make, draw, utter, or deliver a check and then issue a stop-payment order and fail to pay or arrange a settlement (agreed upon by the holder) within 30 days of issuance.

Violation is unlawful issuance of a bank check punishable as a gross misdemeanor or, if the amount is greater than \$250, a class C felony. When a series of transactions are part of a common scheme or plan, they may be aggregated for purposes of determining the penalty.

When a check has been dishonored and has not been paid within 15 days after the holder sends notice to the drawer at his last known address, the drawer will be liable for interest at 12% and collection costs of up to \$20 or the face amount of the check, whichever is less. In addition, in the event of a court action, after notice and expiration of 15 days, the court must award reasonable attorney's fees to the holder.

Notice of dishonor in substantially the following form must be sent by certified mail:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to \_\_\_\_\_ in the amount of \_\_\_\_\_ has not been

accepted for payment by \_\_\_\_\_; which is the drawee bank designated on your check. This check is dated \_\_\_\_\_, and is numbered, No. \_\_\_\_\_.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

- (1) costs of collecting the amount of the check, including attorney's fees which will be set by the court; and
- (2) interest on the amount of the check which shall accrue at the rate of twelve per cent per annum from the date of dishonor.

You are advised to make your payment to \_\_\_\_\_ at the following address: \_\_\_\_\_.

No interest, costs, and attorney's fees may be recovered where the holder or his agent has demanded interest or costs in excess of those provided by law or prior to the expiration of the 15-day period, or has demanded attorney's fees either without their having been set by the court or before expiration of the 15-day period.

WEST VIRGINIA

The law defines two offenses: "obtaining property in return for a worthless check" and "issuing worthless checks."

The first of these is defined as obtaining money, services, goods, or other property or thing of value by check, draft, or order while knowing at the time of the making, drawing, issuing, uttering, or delivering that there are insufficient funds or credit for payment upon presentation. (An officer or agent who acts on behalf of a corporation will be liable to the same extent as though the instrument were his if he knows that there are insufficient funds.)

If the check is for less than \$200, obtaining property in return for a worthless check is a misdemeanor punishable by a fine of up to \$200 and/or imprisonment for up to six months. If the amount is \$200, or more, the violation is a felony punishable by a fine of up to \$500 and/or imprisonment for from one to five years. Payment of the check is not a defense or grounds for dismissal.

Issuing worthless checks is making, drawing, issuing, uttering, or delivering any check, draft, or order knowing or having reason to know that there are not sufficient funds or credit to pay upon presentation. (An officer or agent who acts on behalf of a corporation will be subject to penalties to the same extent as though the instrument were his own.)

Issuing a worthless check is a misdemeanor punishable by a fine of up to \$100 and/or imprisonment for up to 10 days. Payment of a dishonored check plus authorized charges or costs is a defense or grounds for dismissal of charges.

Sections on obtaining property in return for worthless checks and issuance of worthless checks do

not apply to postdated checks or when the payee or holder knew, was expressly notified prior to acceptance, or had reason to believe that the drawer did not have sufficient funds. Provisions on issuance of worthless checks also do not apply when the insufficiency of funds or credit is caused by an adjustment to the drawer's account by the bank without notice to the drawer or is caused by dishonor of an instrument deposited by him in the account, unless he had knowledge or reason to believe that the instrument would be dishonored.

The bank must indicate reasons for dishonor on the check or an attachment. Introduction of such a check is prima facie evidence of the making or uttering, presentation, and proper dishonor of the check; the maker or drawer's withdrawal of funds to insure payment upon presentation within a reasonable time; and knowledge of insufficient funds.

In a prosecution of obtaining property in return for a worthless check, the making, drawing, uttering, or delivery of a check refused for lack of funds or credit is prima facie evidence that the drawer had knowledge unless the check plus charges or costs is paid. In a prosecution for issuing a worthless check, it is prima facie evidence of the identity of the drawer if, at the time of acceptance, the acceptor obtained the person's name; residence, business, or mailing address; and either a valid motor vehicle operator's number or the drawer's home or work phone number or place of employment. The information may be recorded on the check or a check cashing identification number under which the information is filed may be used. Providing false information at the time a check is presented or to obtain a check cashing identification card or similar privilege is a misdemeanor punishable by a fine of up to \$200 and/or



to the magistrate court of the county where venue lies. The law includes the following form to be used to file a complaint for warrant:

State of West Virginia

County of \_\_\_\_\_, to wit:

\_\_\_\_\_, upon oath complains that:

(a) Within one year past, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, in the county aforesaid (Maker) did unlawfully issue and deliver unto \_\_\_\_ his certain check of the words and figures as follows:

\_\_\_\_\_, 19\_\_ No. \_\_

(Name of Bank)

Pay to the Order of \_\_\_\_\_ Dollars

For \_\_\_\_\_ \$ \_\_\_\_\_

he the said \_\_\_\_\_ did not have funds on deposit in and credit with said bank with which to pay same upon presentation against the peace and dignity of the State of West Virginia and he the said \_\_\_\_\_ therefore prays a warrant issue and the said (Maker) may be apprehended and held to answer the said warrant and felt within relation thereto according to the law.

(b) At the time said check was delivered and before the same was accepted there was either on the check or on a card in the possession of complainant the following information regarding the identity of aforesaid maker:

- (1) Name \_\_\_\_\_
- (2) Residence address \_\_\_\_\_
- (3) Business address \_\_\_\_\_
- (4) Mailing address \_\_\_\_\_
- (5) Motor vehicle operator's number \_\_\_\_\_
- (6) Home phone \_\_\_\_\_
- (7) Work phone \_\_\_\_\_

(8) Place of employment \_\_\_\_\_

That since the time the check was delivered complainant has ascertained to the best of his knowledge and belief the following facts concerning the maker of said check:

Full name \_\_\_\_\_

Home address \_\_\_\_\_

Home phone no. \_\_\_\_\_ Business phone no. \_\_\_\_\_

Place of employment \_\_\_\_\_

Race \_\_\_\_\_ Sex \_\_\_\_\_ Height \_\_\_\_\_

Date of birth \_\_\_\_\_ (Day) \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)

\_\_\_\_\_, Complainant

\_\_\_\_\_, (Address) \_\_\_\_\_, (Phone No.) \_\_\_\_\_

Taken, subscribed and sworn to before me,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
My commission expires the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_.

Failure to supply the information indicated in part (b) of the form will not affect the sufficiency of the complaint.

After receipt of a complaint for warrant for obtaining property with a worthless check or issuing a worthless check, the magistrate court will issue warrant; however, no warrant may issue for a misdemeanor offense unless the payee or holder or the magistrate has sent notice to the drawer. A return receipt indicating that the notice was mailed to the drawer by certified mail or the mailed notice itself if it was not received or was refused by the drawer is proof that notice was sent by the payee or holder.

If the magistrate receives a complaint for a misdemeanor warrant unaccompanied by proof that notice was sent by the payee or holder, the court will mail a

notice to the drawer and impose additional court costs of \$10. The notice gives the drawer ten days to make payment of the check and costs to the court before the warrant will issue. At any time prior to trial, the drawer of an instrument against whom a warrant has been issued may pay the court the amount due and court costs which would be assessed if he were found guilty.

The person initiating prosecution will be liable for court costs if he accepts payment after filing the complaint; the payee or holder had reason to believe that the check would be dishonored; the check was postdated; or if the matter is dismissed for failure to prosecute.

As of July 1, 1983 a procedure for preparing a cumulative list of all check warrants issued by the magistrate of each county was created. Magistrates refer to this list when receiving a complaint for warrant. If the person named in the complaint has had 2 or more worthless check warrants issued against him in the time period covered by the lists a special notice is sent to the prosecuting attorney who then makes written recommendations to the magistrate court regarding issuing of certain warrants or stating that the case should be presented to the grand jury. The court then advises the complainant of the prosecutor's recommendation, stating that it is advisory only, and ask the complainant to advise the court as to how he desires to proceed.

Beginning on the first day of July, 1983, all checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal which are thereafter printed to be used for drawing against funds held in a consumer deposit account by a supervised financial organization located in the state of West Virginia shall have clearly printed on the face thereof the words "Account opened" and a six-digit combination

of numbers and letters as follows:

(1) In the case of a consumer deposit account which has been open for less than one year, the first two digits, running from 01 through 12, shall numerically identify the month the account was opened, the third and fourth digits, running from 01 through 31, shall identify the day of the month the account was opened, and the fifth and sixth digits shall be the last two numbers of the year in which the account was opened.

(2) In the case of a consumer deposit account which has been open for one year or more, the six digits shall be "OneYr+": **Provided**, That a new account or an account which has been open for less than one year may be treated as an account which has been open for one year or more when a person authorized to draw against funds in the account shall demonstrate to the supervised financial organization through the production of account statements that he has had a demand or other similar deposit account or share account at the same or another financial institution for twelve months immediately preceding his request for printed checks.

WISCONSIN

It is unlawful to issue a check or other order with intent that it not be paid.

The law does not apply to postdated checks or checks given for past consideration (except payroll checks).

It is prima facie evidence of intent not to pay if, at the time of issuance, the maker did not have an account with the drawee or, at the time of issuance or presentment (within a reasonable time) he did not have sufficient funds to meet the check and failed to pay within five days after receiving notice of dishonor.

Violation is a class A misdemeanor punishable by a fine of up to \$10,000 and/or imprisonment for up to nine months if the amount is less than \$500. Issuance of a check (or series of checks within a 15-day period) for \$500 or more is a class E felony punishable by a fine of up to \$10,000 and/or imprisonment for up to two years.

With respect to mechanic's liens, it is prima facie evidence of intent to defraud if, upon the removal of property, the person removing it issues a stop-payment order on his check, unless the product has been improperly repaired or serviced.

A person who commits fraud by check will be liable to the holder for the amount of the check plus interest, costs of collection, and reasonable collection fees. Once a warrant has been issued against a drawer, the bank will not be civilly or criminally liable for releasing information on the account to law enforcement officers.

If the check is for less than \$200, the crime is a misdemeanor punishable by a fine of up to \$750 and/or imprisonment in the county jail for up to six months. If the check is for \$200 or more or if the offender is convicted for fraud by check involving two or more checks within any sixty-day period in the state totaling \$200 or more in the aggregate, violation is a felony punishable by a fine of up to \$1,500 and/or imprisonment in the state penitentiary for up to three years.

WYOMING

It is fraud by check to issue a check with intent to defraud or deceive and to obtain money, property, or other thing of value if the check is not paid because of insufficient funds or no account, unless the check is paid by the maker within ten days of receiving notice of dishonor sent to the address on the check. Any of the following is prima facie evidence of intent that a check not be paid: (1) no account at the time of issuance; (2) insufficient funds at the time of issuance and failure to pay within ten days after receipt of notice.

Any person with acquired rights to a bad check may file a complaint regardless of whether he is the payee, holder, or bearer. If deferred prosecution or probation is ordered, the court may require the defendant to make restitution in addition to other terms appropriate for treatment or rehabilitation.

A drawee will not be civilly or criminally liable for releasing the following information on the drawer's account upon written request from any payee or holder of a dishonored check: (1) the status of the account and whether there were sufficient funds or credit at the time of issuance or presentation for payment; and (2) the current home and business addresses and telephone numbers of the drawer. The drawee may also release the following information to a law enforcement or prosecuting official investigating a complaint: (1) documents relating to the opening of the account; (2) correspondence between the drawer and drawee relating to status of the account; (3) periodic statements delivered for the two periods prior to and subsequent to the issuance of the check; and (4) the current home and business addresses and telephone numbers of the drawer.

is \$100 or less, the penalty is imprisonment for up to 90 days or a fine of up to \$100; if the value is over \$100 but less than \$2,500, imprisonment is for up to five years and/or a fine of up to \$5,000; or, if the value is over \$2,500, imprisonment is for up to ten years and/or a fine of up to \$10,000. The value of money or property obtained in a six-month period may be aggregated to determine the sentence.