

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2521 SJ SB 360

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

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

18
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 representatitve 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.

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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 _____