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TO: Ward County Area Businesses and Citizens

FROM: Ward County State's Attorney's office

RE: NSF/No Account Check Prosecution Policy Addendum and Clarification (October, 2013)

The purpose of the State's Attorney's check policy is to comply with State law, Rules of Evidence, and improve efficiency in order to obtain criminal convictions with orders for restitution for the businesses. The offense of Issuing a Check with Non-Sufficient Funds has the following elements which the State must prove beyond a reasonable doubt:

- 1) That the check was written in Ward County
- 2) That the check was presented for payment within 14 days of issuance
- 3) That at the time that the check was presented for payment there were not sufficient funds in the account and
- 4) The defendant was the person who issued the check.

An additional element for an NSF charge, the State must prove beyond a reasonable doubt, is the aggregate amount of the checks for each defendant meeting the level of the offense charged. ie: class B misdemeanor \$100.01-\$500(or the person has had a prior conviction in the last 3 years), class A misdemeanor \$500.01-\$1000.00(or the person has had two prior convictions in the last 3 years), class C felony \$1000.001-beyond(or the person has had three or more prior convictions in the last 5 years). Any aggregate amount \$100.00 or less is an infraction, unless there are prior offenses as set forth above. Once a Criminal Complaint has been filed, the State cannot add checks to the Complaint. The State is unable to obtain an arrest warrant for an infraction level offense. Due to that fact, and recognizing the continuous nature of this offense, in order to effectuate efficiency and assurance that this office can file a complaint that will provide for enforcement of criminal judgments and restitution, as well as assisting in efficiency and avoiding multiple files, the holder, or its agent, of the check or checks for in individual must bring in all checks at the same time.

The crime of Issuing a Check with No-Account has the following elements which the State must prove beyond a reasonable doubt:

- 1) That the check was written in Ward County
- 2) That the check was presented for payment within 14 days of issuance

- 3) That at the time that the check was presented for payment the account was closed or there was no account and
- 4) That the defendant was the person who issued the check.

In regards to "No Account" checks, the lowest level of offense is a class A misdemeanor. Therefore, if the check is returned as "No Account," regardless of the amount, the State will charge as such. However, the requirement that <u>all</u> checks for an individual be turned in at the same time still applies.

In addition to the above elements, other requirements of State law must be followed prior to charges being filed. Those requirements are: 1) Notice of Dishonor was served to the issuer of the check giving the writer of the check 10 days from receipt of the notice to pay the check 2) proof of service of the Notice of Dishonor, this can be accomplished by either certified mail or an Affidavit of Mailing.

The Policy previously issued and in effect January 1, 2012 remains as is with the exceptions that are discussed below. Recapping those requirements:

- 1. ID REQUIRED: The merchant must review a government issued photo ID (ie Driver's License, military or school) of the check writer. The merchant MUST write on the check the ID number and expiration date or date of issuance shown on the ID and the type of ID (driver's license and state of issue, military branch, name of school, etc). The initials of the clerk taking the check must be written on the check. In the case of a non-driver photo ID, the merchant must write the ID issue date and the initials of the person taking the check. It will NOT be sufficient for the merchant merely to ask if everything on the check is correct. It will NOT be sufficient for the merchant to merely review a social security card and report the social security numbers on the face of the check as if it were a driver's license number. Failure to provide this information will result in the non-prosecution of the check. ID numbers are verified by the SAO. If the ID number and/or expiration date do not match the data base(s) researched by the SAO to confirm accuracy, addresses and criminal histories, the check will not be prosecuted. The SAO will decline for prosecution any checks where the ID information reported by the merchant is not valid. Note: Checks must also show current physical address for check writer; NO PO BOXES WILL BE ACCEPTED.
- 2. WRITTEN NOTICE/PROOF OF SERVICE: Before submitting checks to the SAO for prosecution the merchant, or their agents, must prepare a written notice of dishonor for each check to the check writer; this is a requirement of state law. Under this law, the SAO cannot initiate criminal prosecution unless this requirement is met. If the check is drawn on a business account, notice must be served on the check writer, not the business. The notice must, among other things, give the check writer ten (10) days from receipt of the notice to pay the check. The merchant must serve that notice upon the check writer. It is sufficient to serve that notice by mail. The merchant must also provide proof of such service. For the purpose of this policy, proof of service by mail may be made by obtaining your return receipt (certified mail) or by preparing an affidavit of mailing signed by the individual making the mailing.
- 3. PREPARING AFFIDAVIT OF INSUFFICIENT FUNDS OR NO ACCOUNT CHECKS AND FILING WITH SAO: The person who actually accepted the check, whether that is the merchant or the merchant's employee (NO EXCEPTIONS), must complete an affidavit of insufficient funds or no account checks. On the affidavit, the person filing it is swearing that they have looked at an identification verifying the signature and the identity of the individual by either a driver's license (noting the ID number and expiration date) or by an issued identification card (noting date of issue). The individual filing the affidavit acknowledges that the affidavit is a sworn written statement, and making a false statement is a class A Misdemeanor punishable by up to one year incarceration and a fine of up to \$2,000.00, or by losing the service of the State's Attorney's Office

for prosecution of NSF/ no account checks. The merchant must then file the following four (4) things with the SAO: 1) The affidavit of insufficient funds or no account checks; 2) the original check(s); 3) a copy of the written notice of dishonor; and 4) proof of service (e.g., affidavit of service by mail or return receipt). Again, if any of these four (4) items is missing, the check cannot be prosecuted. The SAO is a prosecution office-NOT A COLLECTION AGENCY.

An exception to the above ID requirement will be considered for all "mailed" checks. This exception is specifically for checks mailed to holder for such payments on credit, utilities, services provided (not collected at the time service is completed) and rents. Holders of these checks, turned in for prosecution, must provide all the applicable types of documentation within the holder's control: name on the account, all account information, copy of the billing, lease, or contract, copies of any ID that are taken as part of the business transaction entered into with the offender, the name of the person that provided the service, and the name of the records/billing account custodian that would be able to verify the account information and business procedures/practice. The State is still required to prove beyond a reasonable doubt that the person charged on the Complaint is the issuer of the check. The above information will assist in circumstantially proving that element of the offense. The Notice of Dishonor and Proof of Service of the Notice of Dishonor must still be provided.

- 4. STATUTE OF LIMITATIONS: In general, prosecution for all bad checks must be filed with the court by the SAO within one hundred and twenty (120) days after dishonor by the drawee bank. Therefore, it is the policy of the SAO that the merchant or their agent must submit all NSF or Closed Account checks to the SAO no more than eighty days (80) days after dishonor. This time frame will allow the SAO time to review the facts, prepare the necessary papers and timely file any necessary documents with the Court.
- **5. EXCLUSIONS:** The making of a post dated check knowingly received as such, or a check issued on an agreement with the payee that the check not be presented for payment for a specified time, is not a violation of state law and cannot be prosecuted by the SAO. The SAO cannot prosecute two party checks and refer to maker checks because they are neither insufficient funds nor closed account checks. The SAO will not prosecute payroll checks or electronic payments due to evidentiary issues arising with these types of checks. The SAO will not prosecute any partial payment that is subject or pursuant to a civil contract agreement due to the fact that these can be pursued civilly or the merchandise repossessed. The merchants should present to local law enforcement for investigation checks that are returned as forgeries. The merchant should also present to local law enforcement checks that are returned with a "stop payment" stamp, if the merchant feels that payment was stopped to intentionally defraud the merchant. If the check is excluded from criminal prosecution under this section, the merchant might be able to pursue remedies through civil means such as small claims court.
- **6. QUALIFICATIONS:** The check must be presented for payment within **fourteen (14) days** of the date the check was received and must have a bank stamp of NSF or account closed/no account on it. If the check is not stamped in such a manner, prosecution will not be possible.
- 7. JURISDICTION: The SAO will only accept checks that are written in Ward County and passed by persons living in North Dakota. The SAO will not accept checks issued by people living in Canada. Furthermore, the SAO reserves the right to decline prosecution of any insufficient funds or closed account check where the bank or the depository upon which the check is drawn is located in another state or country as a reasonable exercise of prosecutorial discretion in allocating limited prosecutorial resources.
- **8. PAYMENT/ NOTICE:** In order to avoid wrongful arrests of individuals and limit unnecessary work the SAO will now require that once a check is turned over to the SAO for prosecution that the merchant or agencies hired to collect funds not accept payments on the check but rather that the individual be referred

to the SAO to make payment. Merchants or agencies hired to collect funds are also notified that any partial payments accepted for a bad check will render the check non-prosecutable by the SAO because we would consider the matter civil in nature. An individual can pay the check prior to the charging of the case with the District Court, but only through the States Attorney's Office.

Copies of a notice of dishonor, an affidavit of nonsufficient funds checks/no account checks and a notice of ID requirement for use by merchants when necessary to answer customers' questions regarding identification are attached and may be copied for your use.

Please note, the above requirements are only for checks which merchants choose to turn over to the State's Attorney's Office for prosecution. If the merchant chooses not to follow the above requirements when taking a check for payment, that is entirely the merchant's decision. If the check gets returned to the merchant dishonored, the merchant can still pursue the matter civilly without the above requirements being followed.

Sincerely,

Rozanna C. Larson State's Attorney

RCL/jk

Office of State's Attorney

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VICTIM/WITNESS COORDINATOR
KAREN PFEIFER

June 2009

Re: Notice of ID Requirement for Checks

To Whom It May Concern:

To assist law enforcement's efforts, the Ward County State's Attorney's Office requests area merchants verify photographic identification (ID) of anyone submitting a check for payment to that merchant. It further requests the merchant to write certain ID information on the check. These steps provide a measure of protection for everyone that both writes and accepts checks, and assists our office with the prosecution of "bad checks."

Please extend your cooperation to Ward County merchants when they ask for your ID. Thank you.

Yours truly,

Rozanna C. Larson Ward County State's Attorney

NOTICE OF DISHONOR

DATE:		
NAME OF ISSUER:		
STREET ADDRESS:		
CITY AND STATE:		ZIP
You are, according	to law, notified that	a check made payable to
(holder)	dated(date of chec	and drawn on the
(bank name)	Bank of	in the amount in the amount
of \$h	as been returned unp	aid because of (non-sufficient
funds) or (closed/no acco		
Within ten days from	om the receipt of this	Notice of Dishonor, you
must pay or tender to	holder or agent or representative	sufficient moneys
To pay such check in full a	and any collection fe	es or costs not to exceed
Address to send payment:		

COUNTY OF WARD	No	ORTHWEST JUDICIAL DISTRICT
State of North Dakota,	,:cc)	A PUNITE A VINCE
Plain		AFFIDAVIT OF INSUFFICIENT FUNDS
vs.)	OR NO ACCOUNT CHECK(S)
)	
Defendant (check writer)	·)	
Defendant (check writer)	.)	
		pose and state that on(date of check)
-	ok check, PRINT your name legibly)	(date of check)
check #f	rom (check writer)	, which was drawn on th
(bank)	(oncok whol)	
This check was returned did not have an account.	ed by the bank because th	e drawer either did not have sufficient funds of
identity of the individual ei	rs that: Affiant looked a ther by a driver's license ed identification card (date	t an identification verifying the signature and expiration date of issue;
Affiant made no agree	ment with the check writer	to hold the check;
Affiant did not agree to	accept this check as a pos	-dated check;
Affiant's basis for k	nowing the above is that	the affiant is the fo
(business name)	and doore to that	(your title)
talse statement is a Class A N up to \$2,000, or by losing th	Iisdemeanor punishable l	is a sworn written statement, and making a by up to one year incarceration and a fine of attorney's Office for prosecution of NSF/No
Account Checks.		
Dated this	ay) day of(month)	(NOOT)
·	(month)	(year)
	(your signature)	Affiant
***************************************	(business name)	
	(business address)	
	(city, state, zip)	
**************************************	(business phone number)	
Subscribed and sworn to before	me this day of	· · · · · · · · · · · · · · · · · · ·

STATE OF NORTH DAKOTA IN DISTRICT COURT **COUNTY OF WARD** NORTHWEST JUDICIAL DISTRICT State of North Dakota, Plaintiff, AFFIDAVIT OF SERVICE BY MAIL vs. Defendant _____, being first duly sworn, deposes and says: That she is a citizen of the United States of America, over the age of twenty-one years; that on the ___ day of _____, 20__, this Affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following document in the above entitled action: NOTICE OF DISHONOR That said envelope was addressed to the following person at his address as follows:

Subscribed and sworn to before me this ____ day of _____, 20 .

Notary Public