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**CRIMINAL BAD CHECK PROSECUTION --- WHEN ALL ELSE FAILS**

IMPORTANT INFORMATION: Please read completely before reporting a bad check.

- I. Important Notes Regarding Bad Check Cases
  - A. Use good judgment and common sense in deciding to accept a check. For example, accepting a check passed by a male on a female's account will result in prosecution being declined. Accepting a check that has obviously been altered may also result in prosecution being declined. Remember that when you accept a check from a person, you are loaning that person money based upon their promise to pay.
  - B. **Date of Birth is mandatory.** We cannot begin a criminal case nor issue a warrant without the suspect's date of birth. Photo identification is not required before a case will be prosecuted. However, it is very valuable to have this information.
  - C. State law prohibits the prosecution of bad checks that are over six months old. This six-month statute of limitations period runs from the date the merchant receives Notice of Dishonor.

The earlier a check is turned in for prosecution, the more likely the case can be successfully prosecuted. Delay normally favors the defense, especially in check cases where identification of the check writer is often an issue.
  - D. State law requires that the check writer receive something (present consideration) at the time he or she passes the check to you.
  - E. Post-dated checks typically cannot be prosecuted. See SDCL 22-30A-29
  - F. As a matter of policy, two party checks and counter checks are **not** prosecuted by the State's Attorney's Office.

- G. Also, as a matter of policy, the State's Attorney's Office will only consider prosecuting one check per day (per check writer) from any business or person. When a person writes multiple checks in one day to the same establishment (i.e. a business with video lottery), this should be a red flag.
- H. Misdemeanor NSF & No Account checks written by out-of-state residents or on out-of-state institutions are not normally prosecuted by the State's Attorney's Office. Recognize the difference between a careless record keeper and a professional thief.
- I. Out of State Institutions and/or Residents are normally *not* prosecuted, be extremely cautious when accepting checks from these individuals. Remember, it costs Meade County taxpayers over \$1,500.00 to extradite a suspect from out-of-state. The final amount may be much higher after Court Appointed Attorney fees, expert witness fees, and jury trial costs are tabulated. **That's why all merchants should be hesitant to accept such checks!**

II. When you (the check taker) receive a bad check:

- A. You must send the individual who signed the bad check a Notice to Check Writer by registered or certified mail. You need only attempt to send the letter to the last known address (usually the address provided on the check will be sufficient).

- 1. The contents of the Notice to Check Writer must include the following:

Date, name of issuer, and bank on which drawn, date of check, amount of check, merchant holding check and the following language:

“You are hereby notified that your check described above has been dishonored and is now being held by the above holder for a period of thirty days from the date of the mailing of this notice. Civil liability incurred by the check issuer pursuant to SDCL 57A-3-420 is not a defense to a violation of this chapter. If you do not pay the amount of the check and the costs and expenses provided for by SDCL 57A-3-421 within thirty days of the mailing of this notice of dishonor to you, your check will be delivered to the state's attorney for criminal prosecution for theft, and you will be liable to the holder of the check for an additional civil penalty of an amount equal to twice the amount of the check in addition to the amount of the check and the costs and expenses provided for by SDCL 57A-3-421.”

- B. You must allow the check writer at least 30 days (after the return of the registered/certified mail receipt) to make the check good. You should state in your Notice to Check Writer that if payment is not received within that time frame you will turn the check over to the State's Attorney for prosecution.

III. Registered/Certified Mailings

- A. In the case of certified mailing, when the check writer signs for his mailing, you will receive back a green card. If, however, the check writer fails or refuses to sign for the certified mailing, you will receive back the entire envelope mailed. In either event, retain these items and **DO NOT OPEN** the certified envelope.
- B. In the case of registered mailing, the same applies. Retain whatever is received back from the post office and **DO NOT OPEN** the registered envelope returned to you.

IV. What to bring to the State's Attorney

- A. A copy of the original check and copies of all the attached bank returns.
- B. A copy of the completed Notice to Check Writer form.
- C. The registered/certified mail receipts, envelopes and any other information you received from the post office.
- D. The Certificate of Check Receipt completed by the individual who accepted the check.

V. The State's Attorney's Office Bad Check Procedure

Upon receipt of your bad check, the State's Attorney's Office may send a letter giving the Check Writer one more chance to take care of the check, of which you will receive a copy. If you still do not receive payment from the Check Writer, the State's Attorney's Office may issue a complaint. Thereafter, an Arrest Warrant will be signed by the Magistrate and forwarded to the Sheriff's office for service. If payment or partial payment is made, you must notify the State's Attorney's Office immediately.

VI. Class (and max penalty) of NSF Checks AND Account Closed Checks as of July 1, 2006

- |    |                                |  |
|----|--------------------------------|--|
| 1. | \$.01 -- \$400.00 <sup>1</sup> | Class II Misdemeanor: 30 days/\$500 fine |
| 2. | \$400.01 -- \$1000.00          | Class I Misdemeanor: 1 year/\$2,000 fine |
| 3. | \$1000.01 and over             | Class 4 Felony: 10 years/\$20,000 fine   |

- A. **Forgery:** Dollar amount is irrelevant. All Forgeries are Class 5 Felonies and punishable by a maximum of 5-years in the SDSP and a \$10,000 fine.

VII. Procedure after a criminal Complaint has been signed

- A. If you do accept payment or partial payment, the State's Attorney's Office must be notified immediately.

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<sup>1</sup> \* In determining the degree of theft, the value of the property stolen or attempted to be stolen is the same as the face amount of the insufficient funds check. **Any series of insufficient funds checks within any thirty-day period** may be aggregated in amount to determine the degree of theft of such course of conduct. See SDCL 22-30A-24

- B. If you agree to accept a partial payment in satisfaction of the check, the check will be returned and prosecution declined.

#### VIII. Some Recommendations

- A. Make sure, before requesting prosecution that the check taker can identify the person who wrote and passed the check.
- B. Get as much identifying information about the check writer as possible and write the same down on the check at the time it was passed.
- C. Both a Driver's license number and a social security number are extremely helpful components towards a successful prosecution.
- D. The attempt to write Multiple checks in one day to the same establishment (i.e. a business with video lottery), should be a red flag.
- E. Think like a bank! Remember that when you accept a check from a person, you are loaning that person money based upon their promise and ability to pay.
- F. **Remember, Date of Birth is mandatory if you want us to be able to prosecute.**

## CERTIFICATE OF CHECK RECEIPT

State the name of the person who took the check \_\_\_\_\_

Company/business name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ St \_\_\_\_ Zip \_\_\_\_\_

State owner / manager name \_\_\_\_\_

Phone / Cell number \_\_\_\_\_ E-mail \_\_\_\_\_

Name of person who passed check (**Defendant**) \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ St \_\_\_\_ Zip \_\_\_\_\_

If address is not known, state why you did not ask for address: \_\_\_\_\_

What are the check number(s) \_\_\_\_\_

What is the amount of each check \_\_\_\_\_

Date check was received \_\_\_\_\_ Date check was deposited \_\_\_\_\_

Date holder received Notice of Dishonor from bank \_\_\_\_\_

Why did the bank refuse payment \_\_\_\_\_

Name and address of the bank \_\_\_\_\_

Check writer account number \_\_\_\_\_

Did the Defendant completely fill out the check in front of you \_\_\_\_\_

If not, what was filled out in front of you \_\_\_\_\_

Photo identification presented by the person who passed the check \_\_\_\_\_

If no identification was requested by you, state why not \_\_\_\_\_

**Date of Birth is mandatory** and can be taken from drivers license \_\_\_\_\_

Was the check postdated \_\_\_\_\_ Was the check written in Meade County \_\_\_\_\_

What was the purchase \_\_\_\_\_ Value \_\_\_\_\_

Was any cash given to customer \_\_\_\_\_ How much \_\_\_\_\_

Was the merchandise or money given to the Defendant at the time(s) he gave you the check

\_\_\_\_\_

Did you agree to hold the check until a later date \_\_\_\_\_

Have you made any attempt to collect this check or to contact the person who passed it \_\_\_\_\_

If so, when and how: \_\_\_\_\_

Has the person promised to pay the amount of the check \_\_\_\_\_

If so, when was (s)he to have brought in the money \_\_\_\_\_

Have any payments been made on the check \_\_\_\_\_ If so, how much \_\_\_\_\_

Had the person been drinking \_\_\_\_\_

Did the person sign or endorse the check in your presence \_\_\_\_\_

Are you acquainted with the person who passed the check \_\_\_\_\_

Have you taken checks from this person before \_\_\_\_\_

Were the checks always good \_\_\_\_\_

Will you be able to recognize and identify the person who passed the check when (s)he is brought to Court \_\_\_\_\_

Was there anything about the person or about his/her words or actions which aroused your suspicion at the time of the transaction \_\_\_\_\_

I promise to immediately notify the Sheriff or State's Attorney if the Defendant contacts myself or my company to make payment or arrange for payment of the check. I understand that if my company accepts restitution and fails to notify the Sheriff or State's Attorney, we could be responsible for any and all costs involved in the criminal action if the warrant is dismissed.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(seal)

\_\_\_\_\_  
Notary Public-South Dakota

My Commission Expires:

## NOTICE OF DISHONOR TO CHECK WRITER

Date \_\_\_\_\_

Name of issuer \_\_\_\_\_

Bank on which drawn \_\_\_\_\_

Date of check \_\_\_\_\_

Amount of check \_\_\_\_\_

Holder of the check \_\_\_\_\_

You are hereby notified that your check described above has been dishonored and is now being held by the above holder for a period of thirty days from the date of the mailing of this notice. Civil liability incurred by a check issuer pursuant to SDCL 57A-3-420 is not a defense to a violation of this chapter. If you do not pay the amount of the check and the costs and expenses provided for by SDCL 57A-3-421 within thirty days of the mailing of this notice of dishonor to you, your check will be delivered to the state's attorney for criminal prosecution for theft, and you will be liable to the holder of the check for an additional civil penalty of an amount equal to twice the amount of the check in addition to the amount of the check and the costs and expenses provided for by SDCL 57A-3-421.