

Dear Merchant:

We want you to know we remain dedicated to actively pursuing those who intentionally defraud you by writing what they know to be a worthless check. We understand the obstacle these bad check writers pose to commerce and we want to do everything allowed by law to put them out of business.

Recent court decisions may require this office to go to trial on check cases on a more regular basis. We have no problems with this but to do so effectively we will need some help from the merchants. Like victims in other crimes, your cooperation is essential for us to succeed in court.

In order to effectively process the worthless check charges, we require merchants to fill one affidavit per check. The first part of our affidavit deals with the information gathered when the check is initially received by the merchant. It must be filled out and signed by the person who actually accepted the check. It is not acceptable for a manager or collection agency to sign this portion. The reasoning is quite simple. The person who accepts the check is our only witness and consequently may have to testify as to the correctness of the information he/she provides on the affidavit. By signing the affidavit, they are certifying that the information it contains is correct. If this person is no longer an employee, please note this on the signature line of the affidavit.

The second part of the affidavit is to be filled out only if a notice was sent. If the worthless check is stamped NSF, you are required by law to send a certified letter giving them ten (10) working days to make restitution. The person who sends out this notice must fill out the second part of the affidavit.

In order to curtail the problem worthless check's pose, we need your cooperation. Many worthless check cases could be avoided by careful screening. We suggest that your employee's follow these simple instructions:

- 1. Request a driver's license from check writer**
- 2. Insure that the person signing the check is a signer on the account**
- 3. Please obtain a physical street address, as we cannot warrant a P.O. Box**
- 4. Ask for his/her place of employment**

We find a very high number of worthless checks are written for cash. Our office also

suggests that merchants have a rubber stamp that your employee fills out on the back side of the check. The stamp may contain a place for the date of birth, social security number, race, sex driver's license and state. This will insure that your employees properly identify the check writer.

The following is an explanation of what you must do to file charges against someone who has written you an NSF or Account Closed check. Please read it carefully and have your employees read it as well.

1. Immediately upon receipt of an NSF check/ Insufficient Funds, send the accused a certified letter, with return receipt requested. Attached is a sample letter that you may use to help guide you. **It is not required by law to send a certified letter to an accused whose check is stamped "Account Closed" although we encourage merchants to do so.**

2. If, after 10 working days have lapsed from the receipt of the letter, and the individual has not made full restitution, prepare your affidavit to be turned over to our office for prosecution. **If the check writer offers you the value of the check but refuses to pay the service charge, you may refuse to accept payment.**

Once a charge has been accepted by our office, it is then processed, if the individual is a habitual offender, we will immediately issue a warrant for his/her arrest. If the individual has no prior checks referred to our office, we will send them a notice advising them that full restitution must be made within our assigned due date or a warrant will be issued.

In addition to the amount of the check, the law allows us to collect a \$15.00 service charge to be added to the amount of each bad check collected. Our office also collects a processing fee (authorized by 1983 session of the Louisiana Legislature). This fee is designed to have the check writer pay a part of the cost incurred to the District Attorney's office.

Once warrants are issued and arrests are made, the matter will be referred to court. The court most always requests that restitution be made through our office. Please keep in mind that once a check has been turned over to our office for prosecution, it could take months to three years to receive restitution. If the defendant has just made an error, payment is usually made quickly. If the defendant is a habitual offender, it could take years to receive restitution.

**Please remember, once a check is turned over to our office for prosecution, the merchant must not accept any payment for the worthless check(s). If a payment is received by one of your employees, do not deposit it. You have a choice to either mail it back to the defendant and inform them that they need to contact our office or forward the payment (money order or cashier's check only) to our office to be processed.** At that time, we will send the check writer a letter explaining that the merchant has been paid but there are still outstanding fees assessed to the defendant, (not the merchant) which need to be paid. This will prevent merchants from being exposed to a false arrest suit. **A good policy to follow would be- if you do not have the check to return, do not accept payment.**

The following checks will not be accepted for prosecution by our office.

- A. Payroll checks-contact Federal Office, Wage and Hour Division at the Department of Labor**
- B. Checks written for "CASH"- check must be made payable to the person filing charges.**
- C. Checks over 120 days old-problem of identification**
- D. Two Party Checks-problem of proving intent to defraud and identification**
- E. Checks with Stop Payment or Refer to Maker stamped on them- this is a civil matter.**
- F. Credit Card checks**
- G. Pay day or Checks made out for a loan**
- H. Checks where there is no physical address- cannot warrant a P.O. Box**
- I. Out of State checks- We must have bank personnel and witnesses, merchant must write a letter stating that they agree to pay all expenses to transport a book-keeper of the bank to Calcasieu Parish if needed for prosecution.**
- J. Checks without identification, Driver's license number**

The major problem we face is locating the individual. A large number of those individuals for whom arrest warrants are issued are never located by law enforcement. For this reason, we urge you to obtain other information such as place of employment and telephone number. Prevention is the best way to avoid receiving worthless checks. A firm check policy avoids the problem of having to prosecute patrons of your establishment. Please have all your employees review this letter. It is also a good idea to keep a record of names of check writers that you have turned over to this office.

Sincerely,

Assistant District Attorney