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# SCOTT COUNTY ATTORNEY

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## **PROSECUTION OF WORTHLESS CHECKS**

Not all “bad” checks fall under the jurisdiction of the criminal courts. There are specific elements of the crime we must prove before we can begin prosecution. If you have any questions regarding the following information, please contact our office.

**INTENT TO DEFRAUD:** The issuance of the check must have caused you to give up something of value. It must not be for payment of an existing debt. It must be marked “Insufficient Funds” or “Account Closed”.

**JURISDICTION:** The check must have been passed in Scott County, Kansas.

**IDENTIFICATION:** In order to prosecute a bad check case we must prepare a complaint and issue a summons or a warrant for the arrest of the check writer. Therefore, **we must have positive identification which will include driver’s license number and date of birth.** The merchant must actually look at the driver’s license of the check writer, compare the picture to the check writer and record the necessary information onto the check. The merchant should have some means of marking the check to indicate that this procedure was followed so the clerk can testify with certainty that he or she went through this process.

Please be advised that bad check writers and forgers know which merchants do not require identification and will frequent those stores in order to obtain cash or merchandise for resale or return. Protect your business and your customers by requesting identification when accepting a check.

**NOTIFICATION:** You must send a certified and restricted letter, return receipt requested, to the person who signed the check. The letter must be sent to the address on the check. There is no exception to this requirement. You must give the person seven (7) days from their receipt of the letter to make restitution. A suggested “seven day letter” is attached. You may ask for a \$30.00 check fee. Keep a copy of the letter you send.

If you do not receive restitution within seven (7) days of the letter’s delivery or if the certified and restricted letter is returned to you marked “unclaimed”, you still may send the check to us for prosecution. We must, however, receive the check from you within **three (3) months** of the date written.

To present a check for prosecution you must fill out the Affidavit of Prosecution, which is to be signed in the presence of a notary public. **The clerk or individual that actually took the check must fill out and sign the Offense Report.** One set of these forms is enclosed. Any check(s) submitted for prosecution must be for an amount in excess of **\$10.00.**

Bring the Affidavit for Prosecution; the Offense Report; original check; signed green card for certified/restricted letter or entire, unclaimed, unopened, certified/restricted letter; and copy of seven day letter to the Scott County Attorney's Office, Basement of Courthouse, Scott City, Kansas.

**PLEASE DO NOT HAVE ANY CONTACT WITH OR ACCEPT ANY RESTITUTION FROM THE WORTHLESS CHECK WRITER AFTER YOU HAVE SUBMITTED THE COMPLAINT TO OUR OFFICE. REFER THEM TO OUR OFFICE TO MAKE PAYMENT.**

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**PLEASE IMPLEMENT THE FOLLOWING PROCEDURES TO AVOID WORTHLESS CHECK ISSUES IN THE FUTURE:**

- **Always get proper identification. A valid Driver's License or a valid Kansas ID number is required for prosecution. There are no exceptions. This is necessary for proper identification purposes. Develop a business procedure for this.**
- If the check issuer cannot be positively identified, we will be unable to prosecute and obtain a conviction for the crime.
- Military ID and credit cards do not provide sufficient ID for prosecution.
- If your employees have any doubt about a person, try to obtain any information and identification which they have available to correctly identify them.
- Be sure you have the correct address and phone number. Ask them if the information is correct. If it is not, write the new information on the check.
- Be sure the check is properly written. It must be dated, have a payee, the two (2) amounts must agree, signed by the drawer, and be legibly written.
- When you receive a returned item, it is important to process them as soon as possible. The longer you; wait the less collective your returned item becomes.
- Checks that are for pre-existing debt, loans, payroll, partial payments, and contractual agreements cannot be processed through our office. These are considered civil cases.
- If you agree to accept and hold a post-dated check, we cannot accept this item for prosecution.
- Do not accept "second" or "third" party checks.
- Forged checks must be reported to the Police and Sheriff's Department.
- After you have placed a check with the County Attorney's office, do not accept any payments from the offender. Please direct any communication from them to our office.

**CUSTOMER WORTHLESS CHECK NOTICE**

DATE: \_\_\_\_\_

Dear Customer:

We are holding the check described below, which has been returned to us unpaid.

NAME: \_\_\_\_\_ CHECK DATED: \_\_\_\_\_

PAYABLE TO: \_\_\_\_\_

BANK DRAWN ON: \_\_\_\_\_

REASON RETURNED: INSUFFICIENT FUNDS ( ) ACCOUNT CLOSED ( )

OTHER REASON: \_\_\_\_\_

CHECK AMOUNT: \$ \_\_\_\_\_ PLUS SERVICE CHARGE \$ \_\_\_\_\_

**TOTAL DUE: \$ \_\_\_\_\_**

If payment in full is not made to our store within seven days from the date of this letter notice, we will turn this check over to the County Attorney's office in order that CRIMINAL PROSECUTION may proceed against you.

Sincerely Yours,

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**SPECIAL NOTICE FROM THE SCOTT COUNTY ATTORNEY:**

Writing worthless checks is a criminal offense under K.S.A. 21-5821. Offenders will face criminal prosecution if full restitution is not paid to the victim.

**REBECCA J. FAUROT  
SCOTT COUNTY ATTORNEY**

**AFFIDAVIT**

STATE OF KANSAS            )  
  ) SS:  
SCOTT COUNTY             )

I, \_\_\_\_\_, hereinafter referred to as “the Affiant,” being duly sworn upon my oath, state that the following answers and information are true and correct to the best of my knowledge and belief:

The information below is in regard to check number(s) and amount(s):

\_\_\_\_\_

The check(s) was received by \_\_\_\_\_, hereinafter referred to as “the Payee,” and was not honored by the financial institution on which the check(s) was drawn. Affiant is:

- the Payee
- a duly authorized [  employee  agent  owner ] of the Payee.

**Section A: Details Concerning the Check**

1. The name of the maker of the check was \_\_\_\_\_, hereinafter referred to as “the Maker.”
2. The Maker  was  was not the same person who gave the Payee the check(s).
3. The date(s) written on the check(s) was:  
\_\_\_\_\_.
4. The check was actually given to the Payee on:  
 the same date written on the check.  
 on \_\_\_\_\_.
5. The Maker  did  did not ask the Payee to hold the check(s).
6. The check(s) was made payable to:  
 the Payee  
 Other: \_\_\_\_\_.
7. In return for the check(s), the Maker received the following (briefly described the goods and/or services received by the maker): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
8. There  was  was not a delay in depositing said check(s) or presentation for payment, said check(s) having been deposited or presented for payment in the usual course of business.
9. When the check(s) was returned by the Maker’s financial institution, the reason given for the return was:

- Insufficient Funds  Closed Account  No account found  Other: \_\_\_\_\_.
10. The check(s)  was  was not given for a security on a loan or debt, to pay a gambling debt, or for past due rent of payment on account.

- Was this the full purchase price?  Yes  No
- Has property been returned or complained about?  Yes  No
- Have you been notified of bankruptcy proceedings?  Yes  No
- Has check been referred to a collection agency?  Yes  No

**Section B: Identification of the Maker**

11. The name of the person who physically accepted the check(s) was:

\_\_\_\_\_.

- This person(s) observed the Maker sign the check (s).
- This person(s) did not observe the Maker sign the check(s).
- It is unknown to the Affiant whether this person(s) observed the Maker sign the check(s).

12. The person named in No. 11 above who accepted the check(s) can identify the Maker of the check(s).

- Yes  No. If Yes, the identification is based on (check all that apply):
- personal knowledge of, or acquaintance with, the Maker.
  - Security video/photo's.
  - on the basis of the identification presented, which consisted of:
    - Driver's License number: \_\_\_\_\_ issued by the State of \_\_\_\_\_.
    - Photo ID Card number: \_\_\_\_\_ issued by \_\_\_\_\_.

13. The physical description of the Maker is as follows:

Sex:  Male  Female Race: \_\_\_\_\_

Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Date of Birth: \_\_\_\_\_.

14. There are other persons with knowledge of this check who could provide additional information.

Yes  No. If Yes, the name(s) of the other person(s) is/are: \_\_\_\_\_

\_\_\_\_\_.

**Section C: Notice and Demand for Payment**

15. When the check was returned, the Payee gave the Maker notice that the check(s) was not honored by the Maker's financial institution and the Payee made demand for payment.

- Yes  No If Yes, said notice was by:
- oral communication with the Maker. The oral communication was accomplished on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The name of the person who spoke to the Maker was:  Affiant  Other: \_\_\_\_\_.
- The oral communication with the Maker took place  in person  on the phone.

written notice issued by **certified restricted delivery mail** to the printed address as it appears on the check. Said written notice was mailed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the following individual:

Affiant  Other: \_\_\_\_\_. As a result issuing the written notice:

the notice was returned to the Payee undelivered.

a signed return receipt was received on \_\_\_\_\_ and was signed by:

the Maker  Other: \_\_\_\_\_.

In addition to the address as it appears on the check, notice was also mailed to the Maker at the following address(es): \_\_\_\_\_

\_\_\_\_\_.

16. At least seven days have passed since notice and demand for payment was sent to the Maker and payment:

has not been received.

has not been received in full, but partial payment has been received in the amount of \$\_\_\_\_\_ which was received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The attached check(s) is submitted to the County Attorney's Office for the purpose of prosecution and not collection. It is to be understood and agreed that no payments on said check(s) are to be accepted by payee, its agents, and employees; and dismissal shall not be proposed or agreed upon by payee without prior approval of the Scott County Attorney's Office; and that the determination of the manner of prosecution or dismissal thereof is at the sole discretion of the Scott County Attorney's Office.

\_\_\_\_\_  
Affiant's Signature

\_\_\_\_\_  
Payee's Address

\_\_\_\_\_  
Payee's Telephone

SUBSCRIBED to and affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in Scott County, Kansas.

(SEAL)

\_\_\_\_\_  
Notary Public

