

**East Baton Rouge District Attorney's
(19th Judicial District)
Check Department**



**GUIDELINES FOR VICTIMS AND
MERCHANTS**

Issued June 1, 2009

Check Department
Governmental Building
222 St. Louis St., Suite 502
Baton Rouge, LA 70802
Tel. (225) 389-3411
Fax. (225) 389-7860

To the Citizens and Merchants of East Baton Rouge Parish:

Increasing numbers of “bad” or worthless checks are being passed in the parish of East Baton Rouge. The reasons for this are multi-fold: as banks have become national in character we are seeing more checks from “out of town” banks, it is easier to create a counterfeit check using today’s computer and copier technology, and, quite frankly fewer credit worthy individuals are using checks now that ATM and debit cards are more frequently used in point-of-sale transactions.

From my perspective, a merchant or citizen is more likely to suffer a loss from a worthless check today than at any time in the past, and the amount of the loss is likely to be greater than ever. So my office is taking the following efforts to help merchants and all citizens protect themselves from accepting a worthless check.

- *We are reaching out to the business community to educate merchants about the issues of worthless checks and techniques for identifying suspicious transactions. The best defense is often a strong offense.*
- *We are developing materials to educate the merchants about the differences between a worthless check that can be easily prosecuted by our check department, a business transaction that requires the filing of a civil lawsuit, and a fraudulent act that requires additional investigation by our law enforcement partners, including the Sheriff and City Police.*
- *We are streamlining our office procedures to make it possible for merchants to submit worthless checks taken in a contemporaneous sale of merchandise, goods or services for prosecution in a one-stop process.*
- *We are working with our law enforcement partners to act more quickly to arrest criminals responsible for issuing worthless checks.*

*Sincerely yours,
Hillar C. Moore, III
District Attorney*

WHAT IS A WORTHLESS CHECK?

Under Louisiana law, a worthless check is a check given by a person who intends to defraud another person at the time the check is given. The primary legal concept behind our worthless check law is that at the time of this transaction, the person issuing the worthless check knew that he (or she) had insufficient funds in the bank to cover the amount of the check. That is why our check department can only accept checks that have been marked by the bank as “NSF,” “INSUFFICIENT FUNDS,” or “ACCOUNT CLOSED.”

Other checks may still give rise to criminal prosecution but those checks require additional investigation to prove the acts of fraud, theft, or monetary instrument abuse. Before they can be prosecuted additional evidence must be collected by local law enforcement agencies, such as the Sheriff or Police.

WHAT TO LOOK FOR WHEN YOU TAKE A CHECK¹

George G. Meade
456 Claude Lane
Dragon Lake, CA 91919
(816) 555-1232

March 31 19 96

101
79-123/1220

PAY TO THE ORDER OF Internal Revenue Service \$ 392.75

Three-hundred ninety-two and 75/100----- DOLLARS

 Dragon Lake State Bank
Dragon Lake, CA 91919

FOR _____ *George G. Meade*

⑈706001⑈ ⑆122001231⑆ 4563271⑈ 0101 ⑆0000039275⑆

Field 7 Field 5 Field 3 Field 2 Field 1

Avoid scams: Do not participate in any transactions other than accepting a check written on the day of sale and only in the amount required to buy your goods and services. Scammers use lottery proceeds and other fake reasons for presenting you with a check that is out of date or for amounts greater than the goods or services you are selling. They sound too good to be true and they are. Don't fall for these scams.

Make certain of the check's date: The date must be the same day that you accept the check and the same day that you are providing goods or services. **A pre or post dated check can not be prosecuted. A check that is "held" by you can not be prosecuted.**

Always demand identification. Under banking regulations and criminal law, the burden is on the merchant to verify the identity of the signer. Record the identification presented and record which of your employees accepted it. Many merchants now make photocopies of the id and even take pictures of the check issuer. During prosecution you or your employee will have to be able to prove the identity of the person who issued the check. **A Louisiana driver's license is your best protection – it contains a photograph and a signature for you to use in your comparison to the check writer.** Do not accept an expired driver's license.

Initial the check on its front. This will help us during the prosecution to show the court that you or your employee accepted the check during our prosecution.

¹ Information and graphic obtained from the Federal Reserves Financial Services brochure: Check Fraud

Record all information on the front. All of the information you collect when accepting a check should be recorded on the front of the check. Banking stamps will obscure any information you record on the back.

Verify the correct amount. Both the numerical amount and the written amount are required to agree for payment to issue on a valid check. Do not cash checks for more than the amount of goods purchased.

Consider the check number: Most fraudulent checks are written on new accounts, less than 1 year old. Be careful when taking low numbered checks as these may indicate a new account. Some banks now print the date the account was opened under the Dollars line.

Do not accept 2 party checks: Checks made out to 2 persons are often indications that a forger has added his name to as a payee.

Third Party Checks: Do not accept third party checks where the check has already been made out to another person. Have the recipient of the check deposit or cash the check before acquiring goods or services from you

Perforation: Most valid checks have at least one perforated edge on one side. **Be suspicious of checks without a perforated side as they may have been produced with a computer or copier.**

MICR (Fields 1,2,3,5,7): These printed numbers at the bottom of checks are often altered by forgers to create delays in check clearing. When printed by a check company they should appear flat and dull as they are printed using a special magnetic ink that allows for Magnetic Ink Character Recognition (MICR) by automated banking equipment. **Be suspicious if the MICR numbers are shiny or glossy they may have printed using a laser or ink-jet printer.**

Bank address and MICR Field 5: The check's bank address located above the Field 5 should match the correct Federal Reserve District. In the example above the first 2 digits of Field 5 are "12" indicating San Francisco, California. All East Baton Rouge banks and most Louisiana banks should have a Field 5 starting with "06" indicating the Atlanta Federal Reserve District. Some banks in the Shreveport-Bossier area will have a Field 5 beginning with "11" indicating the Dallas Federal Reserve District. **Do not accept out-of-town checks unless you can confirm funds availability by calling the bank.**

Bank ID Number/Routing number Field 5: The 5th through 8th position of the banking routing and transit numbers found in Field 5, containing "0123" in the example above, are reproduced in the top of the fraction found in the right hand corner of the check as "-123." **Be suspicious of a check where these numbers do not match.**

Serial Number Field 2: The serial number of the check is located in the top right corner and is reproduced in Field 2. In the example, check number 101 appears as “0101” in Field 2.

Be suspicious of checks that do not contain the serial number in Field 2.

Examine security features: Today’s checks have security features such as watermarks, pantographs that display “void” or ‘copy” when copied, micro-printing that is too small to be reproduced legibly when copied, chemically treated paper and inks that display the word “void” or distort the check when altered, 3-D reflective holostripes, and other warning devices.²

Forged Signatures: The best defense to a forged signature is to watch the check writer sign the check before you and compare the signature with that on his driver’s license or state identification. **To avoid fraud, do not accept third party checks or checks that have not been completed in your presence.**

Forged Endorsements: The best defense to a forged endorsement is to watch the endorser sign the check before you and compare the signature with that on his driver’s license or state identification. **To avoid fraud, do not accept third party checks or checks that have not been issued directly to you by the issuer.**

Counterfeit Checks: This is the fastest growing area of check fraud as computers and copiers have become more sophisticated. Some of these checks even contain the special MICR encoding. **But, by comparing these checks to real checks, you can often spot inconsistencies that should alert you to a fraud.**

Altered Checks: **Be very suspicious of any alteration to a check.** Alteration of the amount or the payee are often seen in fraudulent checks.

Contact your bank: The bank can help educate you and your employees on the most recent techniques for preventing check fraud.

Thumb printing: Consider using thumb printing at the time of acceptance as an additional form of id.

Consider alternative payment forms: Credit Cards, Debit Cards, Electronic Check verification and guarantee systems are available to all merchants. These systems help ensure that the merchant is dealing with a credit worthy person and clear the funds quickly which can reduce the amount of fraud each merchant is exposed to.

Be suspicious: Don’t accept a number of checks in a short period of time, the check writer may be scamming you knowing that the checks can not clear during the short time period. Don’t let a check writer rush you or the transaction. Take the time you need to be thorough. Tell the check writer to come back when you will have more time to consider the transaction. Look for signs of nervousness that might indicate you are dealing with a scammer.

² Information taken from Check Fraud: a guide to avoiding losses by the Comptroller of the Currency Administration of National Banks

Ask questions: The more questions you ask, you more likely you will receive an answer that will tip you off to a suspicious check. When in doubt, have the presenter cash the check at his own bank and pay you in cash before you provide your goods or services. Alternatively, do not provide the goods or services until you have confirmed his check has cleared. **There is no law that requires you to accept a check for your goods and services.**

HOW TO SUBMIT A WORTHLESS CHECK FOR PROSECUTION

1. Deposit all checks timely with your bank, certainly no longer than 30 days. We can not prosecute HOLD checks or checks that are part of an agreement to extend credit or loan or payment plan or checks that involve STOP payments or checks involved in a BANKRUPTCY. These checks must be pursued by a merchant through a civil court action. If you have one of these checks and you think you have been a victim of intentional fraud, please contact your local law enforcement agency (e.g. Sheriff or Police) to conduct a fraud investigation.
2. You will receive the worthless checks back from your bank, stamped by the bank to indicate the reason for non-payment: “NSF,” “INSUFFICIENT FUNDS,” or “ACCOUNT CLOSED.”
3. Immediately contact the check writer by telephone to see if he will make good on the check. It may have been a simple mistake. Ask him to come in immediately and provide you with cash to make good the check. If he does not respond immediately, send them the “10 day demand letter” required by law.
4. If they have not responded in 10 days, and certainly no later than 60 days, bring the check to the District Attorney’s worthless check window. You are required to appear in person as a sworn affidavit is required concerning the facts of this check.
5. Your sworn affidavit must be 100% truthful and accurate as it will be the basis for a judge to issue a warrant for the check writer’s arrest. If it is not truthful, then you, your business, and your employees could be sued for false arrest or could end up being prosecuted for another crime such as false swearing.
6. If you receive notice from a bankruptcy court that the worthless check writer has included your check in bankruptcy, you should respond directly to the bankruptcy court. The bankruptcy court can exclude from bankruptcy any check that was involved in a criminal act. If the bankruptcy court does not exclude the check from the bankruptcy, then your efforts to collect the check

could result in sanctions against you, including having you pay for the check writer's attorney's fees. Also, if the check is not excluded from bankruptcy, the District Attorney may be limited in his ability to assist you. Bankruptcy does not prevent the District Attorney from pursuing a criminal conviction but it may limit your ability to collect restitution.

7. Once the District Attorney has accepted your check for prosecution, a criminal charge will be filed and a warrant will be issued for the defendant's arrest. The defendant will be required to appear in criminal court to answer to these charges. As a result of any plea or finding of guilt, the District Attorney will ask the court to impose orders of restitution that include all statutory fees.
8. After you have turned the check over to the District Attorney, you should refer all inquiries about the check to the District Attorney. Any effort on your part to communicate with the check writer can result in the District Attorney dismissing all charges due to your failure to cooperate with this prosecution.
9. You must keep the District Attorney informed of any address changes, as failure to keep him informed will result in any returned restitution payments being forfeited to the District Attorney.

THE 10 DAY DEMAND LETTER SENT BY MERCHANT (EXAMPLE)

NOTICE: THIS LETTER IS BEING MAILED THIS DAY BY CERTIFIED MAIL DEPOSITED IN THE U.S. MAIL SYSTEM - RETURN RECEIPT REQUESTED

Date: (Date of letter must be the date of deposit in U.S. Mail)

To: (Check writer at address shown on the check)

Your check dated (date of check) in the amount of \$(amount of check) drawn on the (name of bank) has been returned by the bank with the notation of non-payment at presentment of (no account, insufficient funds, account closed, etc).

We accepted this check from you on (date of check), at your request, in payment for (merchandise, goods, service).

Pursuant to Article 14:71 of the Louisiana Criminal Code, I am hereby notifying you of this non-payment. Your failure to pay me the amount of this check within ten days after the mailing of this letter will be presumptive proof of your intent to defraud me and I will refer this matter to the District Attorney for criminal prosecution and issuance of a warrant for your arrest.

From: (Merchant)

**STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE**

**VICTIM/MERCHANT AFFIDAVIT OF CRIMINAL COMPLAINT
(FOR EACH RETURNED CHECK)**

I, _____, known hereafter as Victim, do state that the following information is COMPLETE AND TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF:

Victim's name: _____

Address: _____

City, State, Zip Code: _____

Telephone/Fax: _____ / _____

Employee who accepted check: _____

Employee home address: _____

City, State, Zip Code: _____

Telephone/Cell: _____ / _____

(IF KNOWN)

Other witness: _____

Witness home address: _____

City, State, Zip Code: _____

Telephone/Cell: _____ / _____

Check writer's name: _____

Address: _____

City, State, Zip Code: _____

Telephone/Cell: _____ / _____

Driver's license number (State): _____ (_____))

Race: _____ **Gender:** _____ **DOB:** _____

SSN: _____

(IF KNOWN)

Check writer's employer: _____

Address: _____

City, State, Zip Code: _____

Telephone/Fax: _____ / _____

Occupation: _____

Furthermore, my employees or I can identify the check writer and that this check was accepted on the date shown on the face of the attached check in payment for the merchandise, goods or services described below:

Date on face of check: _____

Date of acceptance of check: _____

Location of acceptance of check: _____

(Note: Location must be in East Baton Rouge Parish)

Bank check was drawn upon: _____

Bank where check was deposited: _____

Reason marked by bank for non-payment: _____

Amount of check: _____

Payable by (Payor): _____

Check Account Holder

Payable to (Payee): _____

To Whom Check Is Payable To

Signed by (Payor): _____

Signer on Check

Merchandise, Goods, or Services exchanged for check: _____

Value of Merchandise, Goods or Services exchanged for check: _____

Furthermore, that upon receiving the return of the attached check with notation of non-payment from my bank, I did cause to be mailed the attached 10 day demand letter to the above named check writer at the above address and that I did cause to be deposited this demand letter in the U.S. Mail for **CERTIFIED-RETURN RECEIPT REQUESTED** mailing on:

DATE OF MAILING: _____

That I have received the attached return receipt or unclaimed letter back and that 10 days have elapsed from the original date of deposit of the demand letter in the U.S. Mail.

I also affirm by my initials, that that the check attached:

- _____ **was not taken in payment of an antecedent debt,**
- _____ **was not payment against a loan or other credit arrangement,**
- _____ **was not payment against an open account, NO NET BILLING**
- _____ **has not been returned by the bank due to a STOP payment order,**
- _____ **was not taken by me to be held against future payment,**
- _____ **was not pre or post dated check,**
- _____ **that there has been no notice to me that this check is subject to a bankruptcy, and**
- _____ **that there was no indication to me at the time of this check that the check writer did not have sufficient funds to cover the amount of this check.**

Furthermore, I understand that I am presenting this check to the District Attorney for criminal prosecution and affirm that my employees and I will cooperate in the prosecution of this crime. We will not request that this prosecution be dismissed nor will we accept any payments on this check. We will refer all inquiries to the District Attorney. I also agreed to notify the District Attorney of any change in address.

Signature of Victim

**SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____,
2____.**

**Kathy McGrew
Investigator and Ex-Officio Notary Public**

My Commission Expires

CHECK DOCUMENTATION (FOR EACH CHECK)

ATTACH CHECK

ATTACH U.S. MAIL RETURN RECEIPT OR UNCLAIMED LETTER

**ALSO ATTACHED TO THIS PAGE IS A COPY OF THE 10 DAY DEMAND LETTER
THAT WAS MAILED**

DOCUMENTATION OF EXCHANGE (FOR EACH CHECK)

1. Attach documentation of sale (invoices, sales receipts) of merchandise, goods, or services.
2. Attach documentation of value (MSRP, fee schedule, or “blue book”) of merchandise, goods, or services.
3. Attach documentation of check writer’s identification (e.g. driver’s license).
4. Attach photographs of check writer taken at time of sale.

THE LOUISIANA WORTHLESS CHECK STATUTE (R.S. 14: 71)

Issuing worthless checks

A.(1)(a) Issuing worthless checks is the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has not sufficient credit with the bank, or other depository for the payment of such check, draft, or order in full upon its presentation.

(b) This Section shall apply to a check, draft, or order tendered for satisfaction, in whole or in part, of payments due on installment contracts, open accounts, or any other obligation for which the creditor has authorized periodic payments or the extension of time in which to pay.

(c) This provision shall apply to a check, draft, or order for the payment of money given for a motor vehicle when such payment is conditioned upon delivery of documents necessary for transfer of a valid title to the purchaser.

(d) For purposes of this Section, an open account shall include accounts where checks are tendered as payment:

(i) In advance of receipt, in whole or in part, for telecommunication facilities or services.

(ii) For deposits, prepayments, or payments for the lease or rent of a rental motor vehicle, pursuant to a lease or rental agreement.

(e) This Section shall apply to a check, draft, or order tendered for satisfaction, in whole or in part, of a state tax obligation. For purposes of this Section, "state tax obligation" means a state tax, interest, penalty, or fee, or any contract, installment agreement, or other obligation arising out of such obligation.

(f) For purposes of this Section, any check, draft, or order tendered for payment of any tax, fee, fine, penalty, or other obligation to the state or any of its political subdivisions shall be considered issuing a check, draft, or order in exchange for anything of value.

(2) The offender's failure to pay a check, draft, or order, issued for value, within ten days after notice of its nonpayment upon presentation has been deposited by certified mail in the United States mail system addressed to the issuer thereof either at the address shown on the instrument or the last known address for such person shown on the records of the bank upon which such instrument is drawn or within ten days after delivery or personal tender of the written notice to said issuer by the payee or his agent, shall be presumptive evidence of his intent to defraud.

B. Issuing worthless checks is also the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft, or order for the payment of money or the issuing of such an instrument for the payment of a state tax obligation, when the offender knows at the time of the issuing that the account designated on the check, draft, or order has been closed, or is nonexistent or fictitious, or is one in which the offender has no interest or on which he has no authority to issue such check, draft, or order.

C. Whoever commits the crime of issuing worthless checks, when the amount of the check or checks is five hundred dollars or more, shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than three thousand dollars, or both.

D. When the amount of the check or checks is three hundred dollars or more, but less than five hundred dollars, the offender shall be imprisoned, with or without hard labor, for not more than two years or may be fined not more than two thousand dollars, or both.

E. When the amount of the check or checks is less than three hundred dollars, the offender shall be imprisoned for not more than six months or may be fined not more than five hundred dollars, or both. If the offender in such cases has been convicted of issuing worthless checks two or more times previously, upon any subsequent conviction he shall be imprisoned, with or without hard labor, for not more than two years or be fined not more than one thousand dollars, or both.

F. When the offender has issued more than one worthless check within a one hundred eighty-day period, the amount of several or all worthless checks issued during that one hundred eighty-day period may be aggregated to determine the grade of the offense.

G. In addition to any other fine or penalty imposed under this Section, the court shall order as part of the sentence restitution in the amount of the check or checks, plus a fifteen dollar per check service charge payable to the person or entity that initially honored the worthless check or checks, an authorized collection agency, or justice of the peace. In the event the fifteen dollar per check service charge is paid to a person or entity other than one who initially honored the worthless check or checks, the court shall also order as part of the sentence restitution equal to the amount that the bank or other depository charged the person or entity who initially honored the worthless check, plus the actual cost of notifying the offender of nonpayment as required in Paragraph A(2).

H. In any prosecution for a violation of this Section, the prosecution may enter as evidence of a violation of this Section any check, draft, or order for the payment of money upon any bank or other depository which the bank or other depository has refused to honor because the person who issued the check, draft, or order did not have sufficient credit with the bank or other depository for the payment of that check, draft, or order in full upon its presentation.

I. In addition to the provisions of Subsection H, in any prosecution for a violation of this Section, the prosecution may enter as evidence of a violation of this Section any tangible copy, facsimile, or other reproduction of the check, draft, or order, or any electronic reproduction of the check, draft, or order, or any other form of the record of the check, draft, or order, provided that the tangible copy, facsimile, or other reproduction, or the electronic reproduction, or the other form of the record of the check, draft, or order has been made, recorded, stored, and reproduced in accordance with the requirements of the Louisiana Office of Financial Institutions, or in accordance with the requirements of the federal agency which regulates the bank or other depository, and provided that the appropriate officer of the bank or other depository has certified that the tangible copy, facsimile, or other reproduction, or the electronic copy, or the other form of the record of the check, draft, or order for the payment of money has been made, stored, and reproduced in accordance with the requirements of the Louisiana Office of Financial Institutions, or in accordance with the requirements of the federal agency which regulates the bank or other depository, and is a true and correct record of the transaction involving the check, draft, or order upon which the prosecution is based.

Amended by Acts 1952, No. 433, §1; Acts 1954, No. 442, §1; Acts 1956, No. 156, §1; Acts 1972, No. 197, §1; Acts 1972, No. 655, §1; Acts 1975, No. 601, §1; Acts 1976, No. 651, §1; Acts 1977, No. 367, §1; Acts 1980, No. 386, §1; Acts 1983, No. 376, §1; Acts 1988, No. 439, §1, eff. July 9, 1988; Acts 1990, No. 1003, §1; Acts 1991, No. 135, §1; Acts 1991, No. 171, §1; Acts 1993, No. 670, §1; Acts 1994, 3rd Ex. Sess., No. 125, §1; Acts 1999, No. 338, §1; Acts 2001, No. 141, §1, eff. May 25, 2001; Acts 2001, No. 944, §4; Acts 2001, No. 1022, §1, eff. July 1, 2001; Acts 2003, No. 675, §1; Acts 2006, No. 143, §1.

IMPORTANT LEGAL CONCEPTS

The elements

1. *State v. Alphonse*, 98 So. 430 (La. 1923): “In prosecutions under this statute, one of the essential ingredients of the crime is fraudulent intent. It is sacramental that an intent to defraud be alleged and proved. . . . The fraudulent intent must unite with the overt act, and they must concur in point of time.”[Note: this case further establishes that this is a “specific” intent crime, thus, it can not arise by mistake, accident, or disregard of consequences.]
2. *State v. McLean*, 44 So.2d 698, 674 (La. 1950): “The crime [of issuing worthless checks] is committed only when there is a concurrence in point of time of an intent to defraud, the receipt of title and possession of a thing of value, and the giving of the worthless check in payment therefore; it does not include the giving of a check for an antecedent debt. [When] the check is given subsequent to the receipt of the thing, the required exchange does not take place and no intent to defraud attends the check’s issuance. Rather, in such a case, the check issued in payment of an antecedent debt – a debt created by a previous sale and delivery of the thing on terms of credit, on a promise to pay, not on the faith of a check.” [Note: in this case an NSF check was issued pursuant to an invoice received three days after bananas had been delivered. The crime of issuing a worthless check was not found on the facts the court.]
3. *State v. Jones*, 400 So.2d 658 (La. 1981): “An essential element of the crime of issuing worthless checks is that the defendant at the time of the issuing be possessed of intent to defraud.”[Note: in this case a grocer agreed to hold a check for groceries and return it to the defendant at a later time when the defendant would have cash from a monthly SSI payment. The court said procedure of a “hold” check indicated the existence of a “credit” arrangement.]
4. *Bluebonnet Creamery, Inc. v. Gulf Milk Ass’n*, 172 So.2d 133 (La. App. 1st Cir. 1965): “A worthless checks given in payment of an open account or pre-existing indebtedness cannot be issued with intent to defraud.”[Note: in this case a milk retailer was forced into bankruptcy by the loss of the bulk of his business when a competitor took over most of his retail delivery routes. During negotiations with the milk supplier who knew of this loss, the milk supplier insisted on daily signed checks be given by the defendant with the amount to be filed out at a later time by the supplier. On the issue of intent to defraud the court commented: “A creditor cannot close his eyes to his previous dealings with the debtor and claim to have been misled.” On the issue of discharging these debts in bankruptcy, the court said: “The mere fact that a debtor promises to pay and subsequently fails to meet this obligation will not bar his discharge of the debt created as a result of the unfulfilled promise.”]

5. *State v. Andrus*, 617 So.2d 1334 (La. App. 3rd Cir. 1993): “To prove the crime of issuing worthless checks, the state must prove beyond a reasonable doubt the following elements: 1) the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, 2) with intent to defraud, 3) any check, draft or order for the payment of money upon any bank or other depository, 4) knowing at the time of the issuing that the offender has not sufficient credit with the bank, or other depository for the payment of such draft or order in full upon its presentation. . . . When defendant issued the check for \$450.00, he had sufficient credit with the bank for payment of the check. In order for the State to prove the element of the crime at issue, [the state] would have to show that defendant knew when he issued the \$450.00 check that he would then write other checks which would be presented for payment prior to the \$450.00 check.” [In this case, the defendant wrote a check for car repairs and then later wrote other checks that cleared the bank first, resulting in the \$450.00 being returned NSF. Because the defendant had \$450.00 available in the bank at the time of the issuance of the check, the court found that not crime had been proved.]

The warrant process

1. *In re: Fuselier*, 837 So.2d 1257 (La. 1/28/03): “A court’s handling of worthless checks is confined to following statutory criminal law [and] an affidavit of probable cause, which says on its face that the affiant appeared to provide facts sufficient to support arrest, means what it says.” [Note: In this case, a judge improperly accepted rubber stamped merchant signatures on affidavits provided in support of warrants for arrest of check writers.]

Bankruptcy

1. *In re Hartung*, 258 B.R. 210 (USBC-D.Montana 10/25/200): “The protections afforded by §362(a) [the automatic bankruptcy stay] are not so broad as to forestall a creditor’s right to report a crime. . . . Once the state has made an independent decision to file criminal charges, the prosecution belongs to the government, not to the complaining witness. . . .Simply put, ‘Bankruptcy courts were not creates as a haven from criminals.’”
2. *In re: Caravona*, 347 B.R. 259 (USBC-N.D.Ohio 7/28/2006): “This court believes that the better view is that a prosecutor bringing a bad check prosecution against a debtor is exempt from the automatic stay, regardless of the prosecutors motive in bring the charges. . . . A debtor may still come to the bankruptcy court and ask that a stay be imposed (i.e. that an injunction be entered) based on the facts of the case. In the words of one leading commentator, at that point the ‘bankruptcy court should exercise its equitable power to enjoin such prosecution when the primary purpose is debt collection, or in any case in which it seems clear that enforcement of the criminal law is not the primary motivation of the prosecution.’” (citing *Colliers on Bankruptcy* 362.05[1][b])

3. *In re Pearce*, 2009 WL 197977 (Bkrcty.N.D. Iowa 1/27/09): “Courts have split in their application of § 362(b)(1) [the criminal exception to an automatic bankruptcy stay]. Many courts apply it strictly to all criminal actions or proceedings, citing its plain meaning. . . . Other courts, including this Court in dicta, have stated that the §362(b)(1) exception to the automatic stay is not absolute and does not apply when the criminal prosecution of a debtor is primarily motivated by an intent to collect a dischargeable debt. . . . These courts have concluded that it is inappropriate to allow creditors to utilize the criminal system to collect an otherwise dischargeable debt.” [This bankruptcy court concluded the creditor intended to collect the debt from the debtor when he contacted the prosecutor. Thus, the debtor was determine to have willfully violated the automatic stay provision of the bankruptcy court and assessed a sanction of \$7,344.62 plus payment of the debtor’s attorney fees in bringing this adversary action in bankruptcy court.]