



MEMORANDUM

TO Users of *Arrest Warrant and Indictment Forms* (6th ed. 2010)

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RE Replacement form

DATE May 30, 2013

This is an interim update that corrects an error in the form related to G.S. 14-107, the statute covering worthless checks.

In brief, the worthless checks statute requires that the defendant not have sufficient “funds on deposit in or credit with” a bank to cover a check. In some places, however, the form being updated refers only to the lack of “funds on deposit” and fails to mention the lack of “credit.” Failure to include the language regarding lack of credit is erroneous under *State v. Edwards*, 190 N.C. 322 (1924).

Please contact the author with any questions or concerns.

Introductory Comment:

This statute defines several offenses related to the writing of worthless checks. The offenses vary based on the value of the check, whether the account on which the check was drawn was closed or non-existent, and the defendant's history of writing worthless checks.

Charging Language:**I. Felony worthless check (check in amount over \$2,000): principal offender**

... unlawfully, willfully, and feloniously did draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city*), (*name state*), for the payment of (*give amount*) in money. The check was payable to (*name payee*) and was dated (*give date*). The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

II. Felony worthless check (check in amount over \$2,000): aider and abettor

... unlawfully, willfully, and feloniously did aid and abet (*name maker of check*) to draw, make, utter, issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city and state*) for the payment of (*give amount*) in money. The check was payable to (*name payee*) and dated (*give date*), which was the date it was drawn. The defendant had reasonable grounds to believe at the time that (*name maker of the check*) did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

III. Simple misdemeanor worthless check (check in amount of \$2,000 or less): principal offender

... unlawfully and willfully did draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city*), (*name state*), for the payment of (*give amount*) in money. The check was payable to (*name payee*) and was dated (*give date*). The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

IV. Simple misdemeanor worthless check (check in amount of \$2,000 or less): aider and abettor

... unlawfully and willfully did aid and abet (*name maker of check*) to draw, make, utter, issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city and state*) for the payment of (*give amount*) in money. The check was payable to (*name payee*) and dated (*give date*), which was the date it was drawn. The defendant had reasonable grounds to believe at the time that (*name maker of the check*) did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

V. Check written on nonexistent account: principal offender

... unlawfully and willfully did draw, make, utter, issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city and state*) for the payment of (*give amount*) in

money. The check was payable to *(name payee)* and was dated *(give date)*. The check was drawn upon a nonexistent account and the defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

VI. Check written on nonexistent account: aider and abettor

. . . unlawfully and willfully did aid and abet *(name maker of check)* to draw, make, utter, issue and deliver to *(name person who received the check)* a check for the payment of *(give amount)* in money, drawn upon *(name bank)* of *(name city and state)* and drawn upon a nonexistent account. The check was payable to *(name payee)* and dated *(give date)*, which was the date it was drawn. The defendant had reasonable grounds to believe at the time that *(name maker of check)* did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

VII. Check written on closed account: principal offender

. . . unlawfully and willfully did draw, make, utter and issue and deliver to *(name person who received the check)* a check drawn upon *(name bank)* of *(name city)*, *(name state)*, for the payment of *(give amount)* in money. The check was payable to *(name payee)* and was dated *(give date)*. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation. [Choose one: (1) The check was drawn upon an account that had been closed by the defendant before the time the check was drawn. (2) The check was drawn upon an account that the defendant knew to have been closed by the bank before the time the check was drawn.]

VIII. Check written on closed account: aider and abettor

. . . unlawfully and willfully did aid and abet *(name maker of check)* to draw, make, utter, issue and deliver to *(name person who received the check)* a check for the payment of *(give amount)* in money, drawn upon *(name bank)* of *(name city and state)* and [choose one: drawn upon an account that had been closed by *(name maker of check)* before the time the check was drawn; drawn upon an account that the *(name maker of check)* knew to have been closed by the bank before the time the check was drawn]. The check was payable to *(name payee)* and dated *(give date)*, which was the date it was drawn. The defendant had reasonable grounds to believe at the time that *(name maker of check)* did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

IX. Simple misdemeanor worthless check: fourth or subsequent offense

. . . unlawfully and willfully did draw, make, utter and issue and deliver to *(name person who received the check)* a check drawn upon *(name bank)* of *(name city)*, *(name state)*, for the payment of *(give amount)* in money. The check was payable to *(name payee)* and was dated *(give date)*. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with

the bank with which to pay the check upon presentation. The defendant was convicted three times previously of the crime of writing a worthless check on the ___ day of _____, _____, in the _____ Court, _____ County; on the _____ day of _____, _____, in the _____ Court, _____ County; and on the _____ day of _____, _____, in the _____ Court, _____ County.

Notes about Charging Language:

- The statute applies to drafts also. If the instrument is a draft, substitute the word “draft” for the word “check” throughout.
- The date on the check should be the same as the date on which the check was drawn. There is no crime under this statute if the check was postdated.
- The aiding and abetting provisions of the statute apply to soliciting also. If appropriate, substitute the word “solicit” for the words “aid and abet.”
- Under *State v. Edwards*, 190 N.C. 322 (1924), a charge under this section that refers only to the lack of “funds on deposit” and fails also to mention the lack of “credit with the bank” is fatally defective.

Sample Charges:

I. Felony worthless check (check in amount over \$2,000)

... unlawfully, willfully, and feloniously did draw, make, utter and issue and deliver to Peter Piper a check drawn upon Central Carolina Bank of Durham, N.C. for the payment of \$2,112.95 in money. The check was payable to Peter Piper and was dated October 30, 2005. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

II. Felony worthless check (check in amount over \$2,000): aider and abettor

... unlawfully, willfully, and feloniously did aid and abet John Rankin to draw, make, utter, issue and deliver to Fixit Hardware Store a check drawn upon Planters Bank of Raleigh, N.C. for the payment of \$2,135.89 in money. The check was payable to Fixit Hardware Store and dated September 28, 2005, which was the date it was drawn. The defendant had reasonable grounds to believe at the time that John Rankin did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

III. Simple misdemeanor worthless check (check in amount of \$2,000 or less: principal offender)

... unlawfully and willfully did draw, make, utter and issue and deliver to K Mart Stores, Incorporated, a check drawn upon Central Carolina Bank of Durham, N.C. for the payment of \$12.95 in money. The check was payable to K Mart Stores, Incorporated, and was dated October 12, 2004. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

IV. Simple misdemeanor worthless check (check in amount of \$2,000 or less): aider and abettor

... unlawfully and willfully did aid and abet John Smith to draw, make, utter, issue and deliver to Home Mortgage Company a check drawn upon Planters Bank of Raleigh, N.C. for the payment of \$1,335.89 in money. The check was payable to Home Mortgage Company and dated September 10, 2004, which was the date it was drawn. The defendant had reasonable grounds to believe at the time that John Smith did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

V. Check written on nonexistent account: principal offender

... unlawfully and willfully did draw, make, utter, issue and deliver to Lloyd's U-Make Furniture, Inc., a check drawn upon First Union National Bank of Charlotte, N.C. for the payment of \$35.47 in money. The check was payable to Lloyd's U-Make Furniture and was dated August 11, 2004. The check was drawn upon a nonexistent account and the defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

VI. Check written on nonexistent account: aider and abettor

... unlawfully and willfully did aid and abet Sue Anne Delbet to draw, make, utter, issue and deliver to Terry's One-stop Shop, Inc. a check for the payment of \$11.19 in money, drawn upon Wachovia Bank of Winston-Salem, N.C. and drawn upon a nonexistent account. The check was payable to Terry's One-stop Shop and dated August 4, 2004, which was the date it was drawn. The defendant had reasonable grounds to believe at the time that Sue Anne Delbet did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

VII. Check written on closed account: principal offender

... unlawfully and willfully did draw, make, utter and issue and deliver to Peter Graves a check drawn upon Wachovia National Bank of Raleigh, N.C. for the payment of \$60.00 in money. The check was payable to Peter Graves and was dated November 1, 2004. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay upon presentation. The check was drawn upon an account that had been closed by the defendant before the time the check was drawn. [G.S. 14-107(4)]

VIII. Check written on closed account: aider and abettor

... unlawfully and willfully did aid and abet Susan James to draw, make, utter, issue and deliver to Kroger's Grocery a check for the payment of \$83.24 in money, drawn upon Wachovia Bank of Charlotte, N.C. and drawn upon an account that had been closed by Susan James before the time the check was drawn. The check was payable to Kroger's Grocery and dated October 23, 2004, which was the date it was drawn. The defendant had reasonable grounds to believe at the time that Susan James did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

IX. Simple misdemeanor worthless check: fourth or subsequent offense

... unlawfully and willfully did draw, make, utter and issue and deliver to Sam's Towel Shop, Incorporated, a check drawn upon Wachovia National Bank of Durham, N.C. for the payment of \$150.75 in money. The check was payable to Sam's Towel Shop and was dated May 15, 2004. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation. The defendant was convicted three times previously of the crime of writing a worthless check on the 15th day of June, 2003, in the District Court, Durham County, on the 18th day of August, 2003, in the District Court, Durham County, and on the 25th day of May, 2003, in the District Court, Durham County.

AOC Forms for This Offense:

AOC-CR-107 (Arrest Warrant, for offenses III and IX only)

AOC-CR-115 (Criminal Summons, for offenses III and IX only)

Punishment:

Felony worthless check (check in amount over \$2,000): Class I felony.

Simple misdemeanor worthless check (check in amount of \$2,000 or less): Class 2 misdemeanor.

For a check of any amount but not more than \$2,000, when it is a fourth or subsequent offense of violating any provision of G.S. 14-107, the offense is a Class 1 misdemeanor; in addition, the defendant must be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

Check written on nonexistent account: Class 1 misdemeanor (for all checks of not more than \$2,000).

Check written on closed account: Class 1 misdemeanor (for all checks of not more than \$2,000).