**TO: BURLEIGH COUNTY AREA BUSINESSES AND CITIZENS**

**FROM: BURLEIGH COUNTY STATE’S ATTORNEY’S OFFICE**

**RE: NSF/NO ACCOUNT PROSECUTION POLICY AND PROCEDURES**

**EFFECTIVE DATE: June 3, 2015**

The State’s Attorney’s Office will not accept any checks under $10.00 for prosecution. If there are several checks that total over $10.00, we will file them together. Please bring all NSF/No Account checks at the same time. Once the Criminal Complaint is filed, we will not accept checks to add to it. **We do not prosecute NSF/No account checks drawn on out-of-state or internet-based banks**.

**For checks dated on or after August 1, 2011, the State’s Attorney’s Office has a set time limit for accepting NSF/No Account checks of 115 days from the date the check was written**. **If a business is attempting to aggregate check values to reach our minimum dollar threshold of $10 for prosecution and any check written is dated before August 1, 2011, our policy of 115 days applies**. This time limit is not negotiable and is set in order for us to prepare the complaint and bring it before a judge to sign and file with the court. In the case of No Account/Closed Account checks, the check must be issued after the date the account was closed to constitute a No Account/Closed Account check. Our office requires the date the account was closed be obtained from the Bank on which the check was issued before being brought to us. Our office cannot contact the bank to get this information.

North Dakota statute provides that a check may be presented to the State’s Attorney for prosecution only if the issuer was mailed a Notice of Dishonored Check, and the law was amended effective August 1, 2011, to permit collection of fees and costs not exceeding $35, an increase from the previous $25. **Under this law, our office cannot initiate criminal prosecution unless this requirement is met and with the new amount the new Notice must be used for checks written on or after August 1, 2011**. Attached you will find a form for the Notice you may use. Please make a copy of the mailed Notice for your records as we will require a copy too.

An Affidavit is attached for the individual that accepts the check. **This MUST be filled out by the person who accepted the check, and it must also be signed by that person in the presence of a notary public.** On the Affidavit, the individual filing it is swearing that he or she looked at an identification verifying the signature and the identity of the individual by either a driver’s license (noting Expiration Date) or by a state-issued identification card (noting Date of Issue). Alternatively, the individual filing the affidavit may indicate he or she can personally identify the person who wrote the check. **The individual filing the Affidavit acknowledges that the Affidavit is a sworn written statement, and making a false statement is a Class A Misdemeanor punishable by up to 1 year incarceration and a fine of $2,000, or losing the service of the State’s Attorney’s Office for prosecution of NSF/No Account checks.** Please use the Affidavit attached. You may make copies as you need.

Our office cannot prosecute Hold or Post Dated Checks under the bad check statutes. **This is State Law**. A Post Dated Check is one on which the date on the check was for a time later than when the check was received by the business or individual. A Hold Check is one where the person receiving the check agrees not to deposit or cash it for any period of time no matter how minimal the delay.

Once a check has been turned over to our office for prosecution, we will NOT dismiss or return the check if the check writer pays restitution. **This office is a prosecution office, not a collection agency**. Once the Criminal Complaint is filed, the check writer must appear in court. If restitution is paid to you, please issue a receipt for the amount of restitution that they can bring to Court showing the amount of restitution paid.