



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

MAR 12 1996

The Honorable Ted S. Nelson  
Acting Speaker  
Twenty-Third Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<i>Atelier</i>
Time	4:10
Date	3-12-96

Dear Speaker Nelson:

Enclosed please find copy of Substitute Bill No. 392 (LS), "AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE ISSUANCE OF BAD CHECKS", which I have **signed** into law as **Public Law 23-84**.

This legislation will provide for a sliding scale of offenses committed by persons who write bad checks, ranging from a petty misdemeanor for those who write bad checks under \$250, to a misdemeanor for those who write bad checks of amounts between \$250 and \$500, to a felony for those who write bad checks in amounts or aggregating to over \$1,000.

There is one technical area which could be clarified in later legislation. On page 3, line 26 of the bill, the bill states that "proof that, when presentment was made **within a reasonable time**, the issuer did not have sufficient funds or credit with the drawee. . . ." is an element sufficient to prove intent to issue a bad check. It would be more clear to prosecutors, offenders, and triers of fact if this element specified a specific period of time, rather than stating "within a reasonable time".

Very truly yours,

  
Carl T. C. Gutierrez

Attachment  
231041

Office of VICE-SPEAKER TED S. NELSON	
Delivered by	
<i>both</i>	
Print Name	Initial
Date: 3-12-96	Time: 1:30p

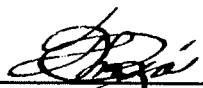
TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) Regular Session

This is to certify that Substitute Bill No. 392 (LS), "AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE ISSUANCE OF BAD CHECKS," was on the 28th day of February, 1996, duly and regularly passed.



D. PARKINSON  
Speaker

Attested:



JUDITH WON PAT-BORJA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 1st day of MARCH  
1996, at 5:40 o'clock P.M.



Assistant Staff Officer  
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ  
Governor of Guam

Date: 3-12-96

Public Law No. 23-84

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION

Bill No. 392 (LS)

As amended by the Author  
and substituted on the floor

Introduced by:

M. C. Charfauros  
A. L. G. Santos  
T. C. Ada  
J. P. Aguon  
E. Barrett-Anderson  
A. C. Blaz  
J. M. S. Brown  
F. P. Camacho  
H. A. Cristobal  
M. Forbes  
A. C. Lamorena V  
L. A. Leon Guerrero  
T. S. Nelson  
S. L. Orsini  
D. Parkinson  
F. E. Santos  
A. R. Unpingco  
J. Won Pat-Borja

AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9,  
GUAM CODE ANNOTATED, RELATIVE TO THE  
ISSUANCE OF BAD CHECKS.

1           **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**  
2           **Section 1. Legislative Findings and Intent.** The Legislature finds that  
3 the existing law concerning the issuance of bad checks is not sufficient to  
4 alleviate or resolve the problems resulting from such an act. The Legislature  
5 finds that holders of checks have had difficulty collecting from the issuers  
6 after such checks have been dishonored. The Legislature further finds that

1 law enforcement officials have had difficulty prosecuting the issuers of bad  
2 checks for reasons including, but not limited to, the inability to obtain crucial  
3 information regarding the issuer's financial accounts. The intent of this  
4 Legislature is to provide the necessary resources to law enforcement  
5 personnel to enforce the laws relative to the criminal act of issuing bad  
6 checks.

7 **Section 2.** §46.30 of Title 9, Guam Code Annotated, is hereby repealed  
8 and reenacted to read:

9 "§46.30. **Issuance of dishonored checks.** (a) **Definitions.** For the  
10 purpose of this section, the following terms have the meanings given  
11 them.

12 (1) "Check" means a check, draft, order of withdrawal, or  
13 similar negotiable or nonnegotiable instrument.

14 (2) "Credit" means an arrangement or understanding with  
15 the drawee for the payment of a check.

16 (b) **Acts constituting.** Whoever issues a check which, at the time  
17 of issuance, the issuer intends shall not be paid, is guilty of issuing a  
18 dishonored check and may be sentenced as provided in subsection (b) (i).  
19 In addition, restitution may be ordered by the court.

20 (i) **Penalties.** A person who is convicted of issuing a  
21 dishonored check under subsection (b) is:

22 (1) guilty of a petty misdemeanor punishable by  
23 imprisonment for not more than sixty (60) days or by  
24 payment of a fine of not more than \$500, or both, if the value  
25 of the dishonored check, or checks aggregated under  
26 paragraph (ii), is not more than \$250; or

1 (2) guilty of a misdemeanor punishable by  
2 imprisonment for not more than one (1) year, or by payment  
3 of a fine of not more than \$2,000, or both, if the value of the  
4 dishonored check, or checks aggregated under paragraph  
5 (ii), is more than \$250, but not more than \$1000; or

6 (3) guilty of a felony punishable by imprisonment for  
7 not more than five (5) years, or by payment of a fine of not  
8 more than \$5,000, or both, if the value of the dishonored  
9 check, or checks aggregated under paragraph (ii), is more  
10 than \$1,000.

11 (ii) In a prosecution under this paragraph, the value of  
12 dishonored checks issued by the defendant in violation of this  
13 subsection within any six-month period may be aggregated and  
14 the defendant charged accordingly in applying this section.

15 (c) **Proof of intent.** Any of the following is evidence sufficient to  
16 sustain a finding that the person at the time the person issued the check  
17 intended it should not be paid:

18 (1) proof that, at the time of issuance, the issuer did not  
19 have an account with the drawee;

20 (2) proof that, at the time of issuance, the issuer did not  
21 have sufficient funds or credit with the drawee and that the issuer  
22 failed to pay the check within thirty (30) days after mailing of  
23 notice of nonpayment or dishonor as provided in this subsection;  
24 or

25 (3) proof that, when presentment was made within a  
26 reasonable time, the issuer did not have sufficient funds or credit  
27 with the drawee and that the issuer failed to pay the check within

1           thirty (30) days after mailing of notice of nonpayment or dishonor  
2           as provided in this subsection.

3           Notice of nonpayment or dishonor that includes a citation to this  
4           section shall be sent by the payee or holder of the check to the maker or  
5           drawer by certified mail, return receipt requested, or by regular mail,  
6           supported by an affidavit of service by mailing, to the address printed  
7           on the check. Refusal by the maker or drawer of the check to accept  
8           certified mail notice or failure to claim certified or regular mail notice is  
9           not a defense that notice was not received.

10           The notice may state that unless the check is paid in full within  
11           thirty (30) days after mailing of the notice of nonpayment or dishonor,  
12           the payee or holder of the check will or may refer the matter to proper  
13           authorities for prosecution under this section.

14           An affidavit of service by mailing shall be retained by the payee or  
15           holder of the check.

16           (d) **Proof of lack of funds or credit.** If the check has been  
17           protested, the notice of protest is admissible as proof of presentation,  
18           nonpayment, and protest, and is evidence sufficient to sustain a finding  
19           that there was a lack of funds or credit with the drawee.

20           (e) **Exceptions.** This section does not apply to a postdated check  
21           or to a check given for a past consideration, except a payroll check or a  
22           check issued to a fund for employee benefits."

# TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) Regular Session

6

Date: 2/28/96

## VOTING SHEET

Bill No. 392

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓	✓		
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C		✓		
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.		✓		
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL

18    3    0    0

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Recording Secretary

23-84

✓

# Senator Mark C. Charfauros

Chairman

## Committee on Judiciary, Criminal Justice, and Environmental Affairs Twenty-Third Guam Legislature

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

February 9, 1996

SPEAKER DON PARKINSON  
Twenty-Third Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Judiciary, Criminal Justice and Environmental Affairs to which was referred **Bill No. 392** As amended by the Author, "AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE ISSUANCE OF BAD CHECKS."

The voting record is as follows:

TO PASS	<u>8</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.



MARK C. CHARFAUROS

Attachments.



# Senator Mark C. Charfauros

Chairman

## Committee on Judiciary, Criminal Justice, and Environmental Affairs Twenty-Third Guam Legislature

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

February 9, 1996

### MEMORANDUM

TO: Members

FROM: Chairman

SUBJECT: Committee Report - **Bill No. 392** As amended by the Author, "AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE ISSUANCE OF BAD CHECKS."

Transmitted herewith for your information and action is the Committee on Judiciary, Criminal Justice and Environmental Affairs' Report on the subject Bill.

The narrative report is accompanied by the following:

1. Original Bill 392; Bill 392 As amended by the Author;
2. Committee Voting Sheet;
3. Testimony and Sign-in Sheet
4. Public Hearing Notice.

Should you have any questions on the narrative report or the accompanying documents, I would be most happy to answer any of them.

Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members.


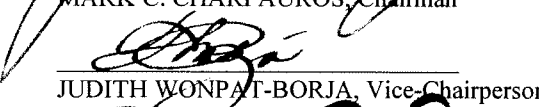
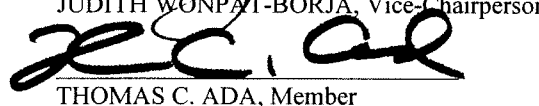
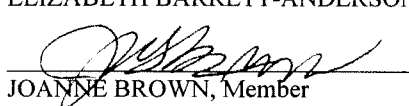
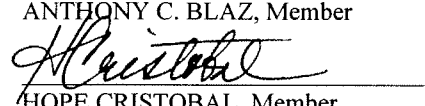
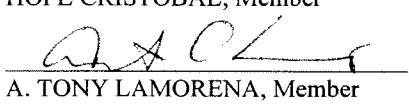
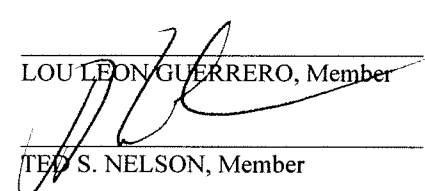
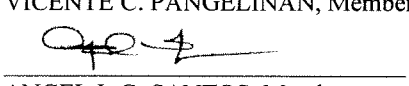
Your attention and cooperation in this matter is greatly appreciated.

Attachments.

  
MARK C. CHARFAUROS

**COMMITTEE ON JUDICIARY, CRIMINAL JUSTICE AND  
ENVIRONMENTAL AFFAIRS  
23rd Guam Legislature  
VOTING RECORD**

**Bill No. 392** As amended by the Author, "AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE ISSUANCE OF BAD CHECKS."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>
 MARK C. CHARFAUROS, Chairman	✓	—	—	—
 JUDITH WONPAT-BORJA, Vice-Chairperson	✓	—	—	—
 THOMAS C. ADA, Member	✓	—	—	—
ELIZABETH BARRETT-ANDERSON, Member	—	—	—	—
 JOANNE BROWN, Member	✓	—	—	—
ANTHONY C. BLAZ, Member	—	—	—	—
 HOPE CRISTOBAL, Member	✓	—	—	—
 A. TONY LAMORENA, Member	✓	—	—	—
LOU LEON GUERRERO, Member	—	—	—	—
 TED S. NELSON, Member	✓	—	—	—
VICENTE C. PANGELINAN, Member	—	—	—	—
 ANGEL L.G. SANTOS, Member	✓	—	—	—
DON PARKINSON, Ex-Officio Member	—	—	—	—

COMMITTEE ON JUDICIARY, CRIMINAL  
JUSTICE AND ENVIRONMENTAL  
AFFAIRS

*Twenty-Third Guam Legislature*

COMMITTEE REPORT

on

Bill No. 392

As amended by the Author

“AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED,  
RELATIVE TO THE ISSUANCE OF BAD CHECKS.”

January 24, 1996

## I. OVERVIEW

The Committee on Judiciary, Criminal Justice and Environmental Affairs scheduled a public hearing on January 24, 1996 at 9:30 a.m. at the Legislative Public Hearing Room. Public notice was announced on the January 23, 1996 issue of the PDN. Members present were:

Senator Mark C. Charfauros, Chairman  
Senator Ben Pangelinan  
Senator Ted Nelson  
Senator Tom Ada  
Senator Elizabeth Barret-Anderson  
Senator Joanne Brown  
Senator Tony Blaz  
Senator Tony Unpingco

Appearing before the Committee to testify on the bill were:

**Mr. Kendall Bass**, Vice President/General Manager, Del Priore & Bass Financial Services, Inc., **oral**.

**Phil Tydingco**, Legal Counsel, Guam Police Department, **oral**.

**Captain James Marquez**, Guam Police Department, **oral**.

**Frank Torres**, Manager, Collection Agency of Guam, **written**.

## II. SUMMARY OF TESTIMONY

**Mr. Kendall Bass**, Vice President/General Manager, Del Priore & Bass Financial Services, Inc., testified in favor of Bill 392. He stated that the current statutes do not provide a sufficient deterrent to individuals who consistently write bad checks. He suggested that Bill 392 address the issue where companies such as his can file charges on behalf of the holder of the check. He stated that it is difficult to expect each company to file charges for every dishonored check; **oral**.

**Phil Tydingco**, Legal Counsel, Guam Police Department, testified in support of Bill 392. He stated that the current statutes, providing for a petty misdemeanor, does not adequately deter the writing of dishonored checks. He stated that the penalties outlined in Bill 392 were appropriate for the crime committed. He stated that under the current statutes, the penalty is the same regardless of the amount of the dishonored check or checks. Responding to a concern from Senator Pangelinan, Mr. Tydingco stated that the penalties were not mandatory, but instead provides guidelines for maximum sentencing; **oral**.

**Captain James Marquez**, Guam Police Department, testified in support of Bill 392. He stated that the possibility of jail time would influence violators to pay restitution. He further suggested that the policies of certifying checks should be reviewed to prevent the issuance of bad checks.

**Frank Torres**, Manager, Collection Agency of Guam, **written**.

### III. FINDING AND RECOMMENDATION

The Committee finds that the current statutes concerning the issuance of dishonored checks has been inadequate in deterring such a crime. The Committee finds that the penalty concerning dishonored checks provides for a petty misdemeanor, regardless of the amount of the dishonored checks. The Committee finds that Bill 392 would provide for penalty guidelines which would deter the issuance of dishonored checks. The Committee further finds that Bill 392 would give investigators the tools to prosecute individuals who purposely issue bad checks.

The Committee finds that Bill 392 has received favorable support from the public, including the Guam Police Department. The Committee finds that Bill 392 as amended by the author would resolve the inadequacies of the current statutes.

Accordingly, the Committee on Judiciary, Criminal Justice and Environmental Affairs, to which was referred **Bill No. 392**, does hereby submit its findings and recommendation to the Twenty-Third Guam Legislature **TO DO PASS Bill No. 392** As amended by the Author, "AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE ISSUANCE OF BAD CHECKS."



# COMMITTEE ON RULES

Twenty-Third Guam Legislature  
155 Hesler St., Agana, Guam 96910

October 12, 1995

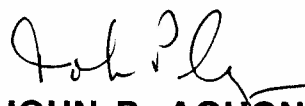
## MEMORANDUM

**TO:** Chairman, Committee on Judiciary, Criminal Justice  
and Environmental Affairs

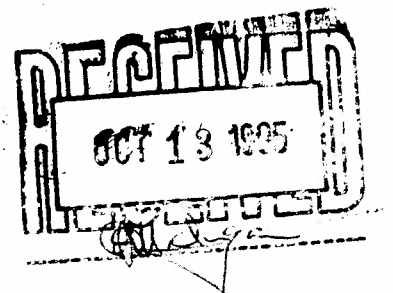
**FROM:** Acting Chairman, Committee on Rules

**SUBJECT:** Referral - Bill No. 392

The above Bill is referred to your Committee as the principal committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.

  
JOHN P. AGUON

Attachment:



JCV

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION

Bill No. 392

Introduced by:

M.C. Charfauros  
A.L.G. Santos  
T.C. Ada

AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED,  
RELATIVE TO THE ISSUANCE OF BAD CHECKS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

**Section 1. Legislative Findings and Intent.** The Legislature finds that the existing law concerning the issuance of bad checks is not sufficient to alleviate or resolve the problems resulting from such an act. The Legislature finds that holders of checks have had difficulty collecting from the issuers after such checks have been dishonored. The Legislature further finds that law enforcement officials have had difficulty prosecuting the issuers of bad checks for reasons including, but not limited to, the inability to obtain crucial information regarding the issuer's financial accounts. The intent of this Legislature is to provide the necessary resources to law enforcement personnel to enforce the criminal act of issuing bad checks.

**Section 2. §46.30 of Title 9 GCA is hereby repealed and reenacted to read:**

**“§46.30. Issuance of dishonored checks. (a) Definitions.** For the purpose of this section, the following terms have the meanings given them.

(1) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(2) "Credit" means an arrangement or understanding with the drawee for the payment of a check.

**(b) Acts constituting.** Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of a petty misdemeanor. In addition, restitution may be ordered by the court.



1           **(c) Proof of intent.** Any of the following is evidence sufficient to sustain a finding that the  
2 person at the time the person issued the check intended it should not be paid:

3           (1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

4           (2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with  
5 the drawee and that the issuer failed to pay the check within five business days after mailing of  
6 notice of nonpayment or dishonor as provided in this subdivision; or

7           (3) proof that, when presentment was made within a reasonable time, the issuer did not have  
8 sufficient funds or credit with the drawee and that the issuer failed to pay the check within five  
9 business days after mailing of notice of nonpayment or dishonor as provided in this subdivision.

10           Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the  
11 payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by  
12 regular mail, supported by an affidavit of service by mailing, to the address printed on the check.  
13 Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim  
14 certified or regular mail notice is not a defense that notice was not received.

15           The notice may state that unless the check is paid in full within five business days after  
16 mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer  
17 the matter to proper authorities for prosecution under this section.

18           An affidavit of service by mailing shall be retained by the payee or holder of the check.

19           **(d) Proof of lack of funds or credit.** If the check has been protested, the notice of protest  
20 is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain  
21 a finding that there was a lack of funds or credit with the drawee.

22           **(e) Exceptions.** This section does not apply to a postdated check or to a check given for a  
23 past consideration, except a payroll check or a check issued to a fund for employee benefits.

24           **(f) Release of account information to law enforcement authorities.** A drawee shall  
25 release the information specified below to any local law enforcement or prosecuting authority which  
26 certifies in writing that it is investigating or prosecuting a complaint against the drawer under this  
27 section, and that 15 days have elapsed since the mailing of the notice of dishonor required by  
28 subdivisions (c) and (h).

29           This subdivision applies to the following information relating to the drawer's account:

30           (1) documents relating to the opening of the account by the drawer and to the closing of the

1 account;

2 (2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn  
3 on the account within a period of six months of the date of request;

4 (3) periodic statements mailed to the drawer by the drawee for the periods immediately prior  
5 to, during, and subsequent to the issuance of any check which is the subject of the investigation or  
6 prosecution; or

7 (4) the last known home and business addresses and telephone numbers of the drawer.

8 The drawee shall release all of the information described in clauses (1) to (4) that it possesses  
9 within ten days after receipt of a request conforming to all of the provisions of this subdivision. The  
10 drawee may not impose a fee for furnishing this information to law enforcement or prosecuting  
11 authorities.

12 A drawee is not liable in a criminal or civil proceeding for releasing information in  
13 accordance with this subdivision.

14 **(g) Release of account information to payee or holder.** A drawee shall release the  
15 information specified below to the payee or holder of a check that has been dishonored who makes  
16 a written request for this information and states in writing that the check has been dishonored and  
17 that 30 days have elapsed since the mailing of the notice described in subdivision (h) and who  
18 accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.  
19 The requesting payee or holder shall notify the drawee immediately to cancel this request if payment  
20 is made before the drawee has released this information.

21 This subdivision applies to the following information relating to the drawer's account:

22 (1) Whether at the time the check was issued or presented for payment the drawer had  
23 sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or  
24 restricted for any reason and the date it was closed or restricted;

25 (2) The last known home address and telephone number of the drawer. The drawee may not  
26 release the address or telephone number of the place of employment of the drawer unless the drawer  
27 is a business entity or the place of employment is the home; and

28 The drawee shall release all of the information described in clauses (1) to (2) that it possesses  
29 within ten days after receipt of a request conforming to all of the provisions of this subdivision. The  
30 drawee may require the person requesting the information to pay the reasonable costs, not to exceed

1 15 cents per page, of reproducing and mailing the requested information.

2 A drawee is not liable in a criminal or civil proceeding for releasing information in  
3 accordance with this subdivision.

4 **(h) Notice.** The provisions of subdivisions (f) and (g) are not applicable unless the notice  
5 to the maker or drawer required by subdivision (c) states that if the check is not paid in full within  
6 five business days after mailing of the notice, the drawee will be authorized to release information  
7 relating to the account to the payee or holder of the check and may also release this information to  
8 law enforcement or prosecuting authorities.

**TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION**

Bill No. 392

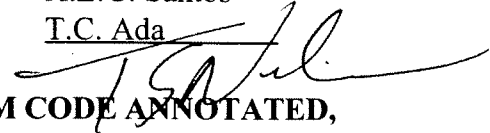
As amended by the Author

Introduced by:

M.C. Charfauros

A.L.G. Santos

T.C. Ada



**AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED,  
RELATIVE TO THE ISSUANCE OF BAD CHECKS.**

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 **Section 1. Legislative Findings and Intent.** The Legislature finds that the existing  
3 law concerning the issuance of bad checks is not sufficient to alleviate or resolve the  
4 problems resulting from such an act. The Legislature finds that holders of checks have had  
5 difficulty collecting from the issuers after such checks have been dishonored. The  
6 Legislature further finds that law enforcement officials have had difficulty prosecuting the  
7 issuers of bad checks for reasons including, but not limited to, the inability to obtain crucial  
8 information regarding the issuer's financial accounts. The intent of this Legislature is to  
9 provide the necessary resources to law enforcement personnel to enforce the criminal act of  
10 issuing bad checks.

11 **Section 2. §46.30 of Title 9 GCA is hereby repealed and reenacted to read:**

12 **"§46.30. Issuance of dishonored checks. (a) Definitions.** For the purpose of this section,  
13 the following terms have the meanings given them.

14 (1) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable  
15 instrument.

16 (2) "Credit" means an arrangement or understanding with the drawee for the payment of a  
17 check.

18 **(b) Acts constituting.** Whoever issues a check which, at the time of issuance, the issuer  
19 intends shall not be paid, is guilty of [~~a petty misdemeanor~~] issuing a dishonored check and may be

1 sentenced as provided in subdivision (b) (i). In addition, restitution may be ordered by the court.

2 (i) Penalties. (a) A person who is convicted of issuing a dishonored check under  
3 subdivision (b) is:

4 (1) guilty of a petty misdemeanor punishable by imprisonment for not more than  
5 sixty (60) days or to payment of a fine of not more than \$500, or both, if the value of the dishonored  
6 check, or checks aggregated under paragraph (b), is not more than \$250; or

7 (2) guilty of a misdemeanor punishable by imprisonment for not more than one (1)  
8 year, or to payment of a fine of not more than \$2,000, or both, if the value of the dishonored check,  
9 or checks aggregated under paragraph (b), is more than \$250, but not more than \$1000; or

10 (3) guilty of a felony punishable by imprisonment for not more than five (5) years,  
11 or to payment of a fine of not more than \$5,000, or both, if the value of the dishonored check, or  
12 checks aggregated under paragraph (b), is more than \$1,000.

13 (ii) In a prosecution under this subdivision, the value of dishonored checks issued by the  
14 defendant in violation of this subdivision within any six-month period may be aggregated and the  
15 defendant charged accordingly in applying this section.

16 **(c) Proof of intent.** Any of the following is evidence sufficient to sustain a finding that the  
17 person at the time the person issued the check intended it should not be paid:

18 (1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

19 (2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with  
20 the drawee and that the issuer failed to pay the check within [~~five business~~] thirty (30) days after  
21 mailing of notice of nonpayment or dishonor as provided in this subdivision; or

22 (3) proof that, when presentment was made within a reasonable time, the issuer did not have  
23 sufficient funds or credit with the drawee and that the issuer failed to pay the check within [~~five~~  
24 ~~business~~] thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this  
25 subdivision.

26 Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the  
27 payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by  
28 regular mail, supported by an affidavit of service by mailing, to the address printed on the check.  
29 Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim

1 certified or regular mail notice is not a defense that notice was not received.

2 The notice may state that unless the check is paid in full within [~~five-business~~] thirty (30)  
3 days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or  
4 may refer the matter to proper authorities for prosecution under this section.

5 An affidavit of service by mailing shall be retained by the payee or holder of the check.

6 **(d) Proof of lack of funds or credit.** If the check has been protested, the notice of protest  
7 is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain  
8 a finding that there was a lack of funds or credit with the drawee.

9 **(e) Exceptions.** This section does not apply to a postdated check or to a check given for a  
10 past consideration, except a payroll check or a check issued to a fund for employee benefits.

11 **(f) Release of account information to law enforcement authorities.** A drawee shall  
12 release the information specified below to any local law enforcement or prosecuting authority which  
13 certifies in writing that it is investigating or prosecuting a complaint against the drawer under this  
14 section, and that [~~15~~] thirty (30) days have elapsed since the mailing of the notice of dishonor  
15 required by subdivisions (c) and (h).

16 This subdivision applies to the following information relating to the drawer's account:

17 (1) documents relating to the opening of the account by the drawer and to the closing of the  
18 account;

19 (2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn  
20 on the account within a period of six months of the date of request;

21 (3) periodic statements mailed to the drawer by the drawee for the periods immediately prior  
22 to, during, and subsequent to the issuance of any check which is the subject of the investigation or  
23 prosecution; or

24 (4) the last known home and business addresses and telephone numbers of the drawer.

25 The drawee shall release all of the information described in clauses (1) to (4) that it possesses  
26 within ten (10) days after receipt of a request conforming to all of the provisions of this subdivision.  
27 The drawee may not impose a fee for furnishing this information to law enforcement or prosecuting  
28 authorities.

29 A drawee is not liable in a criminal or civil proceeding for releasing information in

1 accordance with this subdivision.

2           **(g) Release of account information to payee or holder.** A drawee shall release the  
3 information specified below to the payee or holder of a check that has been dishonored who makes  
4 a written request for this information and states in writing that the check has been dishonored and  
5 that 30 days have elapsed since the mailing of the notice described in subdivision (h) and who  
6 accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.  
7 The requesting payee or holder shall notify the drawee immediately to cancel this request if payment  
8 is made before the drawee has released this information.

9 This subdivision applies to the following information relating to the drawer's account:

10           (1) Whether at the time the check was issued or presented for payment the drawer had  
11 sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or  
12 restricted for any reason and the date it was closed or restricted;

13           (2) The last known home address and telephone number of the drawer. The drawee may not  
14 release the address or telephone number of the place of employment of the drawer unless the drawer  
15 is a business entity or the place of employment is the home; and

16           The drawee shall release all of the information described in clauses (1) to (2) that it possesses  
17 within ten (10) days after receipt of a request conforming to all of the provisions of this subdivision.  
18 The drawee may require the person requesting the information to pay the reasonable costs, not to  
19 exceed 15 cents per page, of reproducing and mailing the requested information.

20           A drawee is not liable in a criminal or civil proceeding for releasing information in  
21 accordance with this subdivision.

22           **(h) Notice.** The provisions of subdivisions (f) and (g) are not applicable unless the notice  
23 to the maker or drawer required by subdivision (c) states that if the check is not paid in full within  
24 [~~five business~~] thirty (30) days after mailing of the notice, the drawee will be authorized to release  
25 information relating to the account to the payee or holder of the check and may also release this  
26 information to law enforcement or prosecuting authorities.

**COLLECTION AGENCY OF GUAM, INC.**

115 SAN RAMON STREET • 2ND FL.  
AGANA, GUAM 96910  
PHONE (671) 477-3488, 477-3491

11/3/95  
RB  
**RECEIVED**  
NOV 03 1995  
at home

October 31, 1995

Senator Mark C. Charfauros  
138 East Marine Drive  
Suite 101C - Annex  
Agana, Guam 96910

Re: Bill 392 - Dishonored Checks

Dear Senator Charfauros,

Thank you for your letter requesting assistance for ideas and/or recommendations for Bill 392 - Dishonored Checks.

My opinion is that you have an excellent bill to curb and discourage the issuance of bad checks. One provision should be for "Closed Accounts". Many checkwriters have intentionally written checks after they have closed their checking accounts. Should this be a felony or misdemeanor? Otherwise, I cannot add to improve your Bill 392.

Thank you once again for your letter, dated October 13, 1995.

Very Truly Yours,



Frank Torres  
Manager

Via fax and airmail

✓ Senator C  
Tom C ✓  
Dick





Copy

**Notice of Public Hearing**



**Senator  
Mark C. Charfauros**

**Chairman, Committee on Judiciary,  
Criminal Justice and Environmental Affairs  
Twenty-Third Guam Legislature**

**9:30 a.m.  
Agenda**

**Bill No. 354, AN ACT TO AMEND CHAPTER 33 TITLE 5 GUAM CODE ANNOTATED RELATIVE TO NOTARIES PUBLIC.**

**Bill No. 357, AN ACT TO ADD A NEW SECTION 1658 OF TITLE 1 GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING THE GUAM CODE COMMISSION.**

**Bill No. 392 (AS AMENDED BY THE AUTHOR), AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GCA, RELATIVE TO THE ISSUANCE OF BAD CHECKS.**

**Bill No. 453, AN ACT TO PERMIT GUAM POLICE DEPARTMENT OFFICERS TO USE THEIR PERSONAL VEHICLES FOR OFFICIAL PURPOSES.**

**Date:** Wednesday, January 24, 1996

**Time:** 9:30 a.m.

**Place:** Public Hearing Room, Guam Legislature  
155 Hesler St., Agana

**The Public is invited to attend**

*Run date  
1/23/96*

*plc - Rita Lando 4:50 pm  
1/18/96*



**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR, Post Office Box 2950, Agana, Guam 96910

**CARL T.C. GUTIERREZ**  
GOVERNOR

**MADELEINE Z. BORDALLO**  
1<sup>ST</sup> GOVERNOR

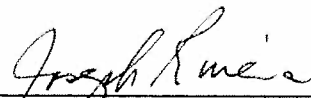
**OCT 23 1995**

**JOSEPH E. RIVERA**  
DIRECTOR

**FRANCES J. BALAJADIA**  
DEPUTY DIRECTOR

The Bureau requests that Bill No(s). 392 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Bill No. 392 is administrative in nature and therefore poses no fiscal impact on the General Fund.

  
\_\_\_\_\_  
Joseph E. Rivera  
Acting Director

**RECEIVED**  
NOV 09 1995  
*Pauls*



**TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION**

Bill No. 392

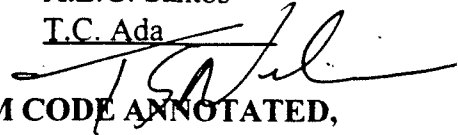
As amended by the Author

Introduced by:

M.C. Charfauros

A.L.G. Santos

T.C. Ada



**AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED,  
RELATIVE TO THE ISSUANCE OF BAD CHECKS.**

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 **Section 1. Legislative Findings and Intent.** The Legislature finds that the existing  
3 law concerning the issuance of bad checks is not sufficient to alleviate or resolve the  
4 problems resulting from such an act. The Legislature finds that holders of checks have had  
5 difficulty collecting from the issuers after such checks have been dishonored. The  
6 Legislature further finds that law enforcement officials have had difficulty prosecuting the  
7 issuers of bad checks for reasons including, but not limited to, the inability to obtain crucial  
8 information regarding the issuer's financial accounts. The intent of this Legislature is to  
9 provide the necessary resources to law enforcement personnel to enforce the criminal act of  
10 issuing bad checks.

11 **Section 2. §46.30 of Title 9 GCA is hereby repealed and reenacted to read:**

12 **“§46.30. Issuance of dishonored checks. (a) Definitions.** For the purpose of this section,  
13 the following terms have the meanings given them.

14 (1) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable  
15 instrument.

16 (2) "Credit" means an arrangement or understanding with the drawee for the payment of a  
17 check.

18 **(b) Acts constituting.** Whoever issues a check which, at the time of issuance, the issuer  
19 intends shall not be paid, is guilty of [~~a petty misdemeanor~~] issuing a dishonored check and may be

1 sentenced as provided in subdivision (b) (i). In addition, restitution may be ordered by the court.

2 (i) Penalties. (a) A person who is convicted of issuing a dishonored check under  
3 subdivision (b) is:

4 (1) guilty of a petty misdemeanor punishable by imprisonment for not more than  
5 sixty (60) days or to payment of a fine of not more than \$500, or both, if the value of the dishonored  
6 check, or checks aggregated under paragraph (b), is not more than \$250; or

7 (2) guilty of a misdemeanor punishable by imprisonment for not more than one (1)  
8 year, or to payment of a fine of not more than \$2,000, or both, if the value of the dishonored check,  
9 or checks aggregated under paragraph (b), is more than \$250, but not more than \$1000; or

10 (3) guilty of a felony punishable by imprisonment for not more than five (5) years,  
11 or to payment of a fine of not more than \$5,000, or both, if the value of the dishonored check, or  
12 checks aggregated under paragraph (b), is more than \$1,000.

13 (ii) In a prosecution under this subdivision, the value of dishonored checks issued by the  
14 defendant in violation of this subdivision within any six-month period may be aggregated and the  
15 defendant charged accordingly in applying this section.

16 **(c) Proof of intent.** Any of the following is evidence sufficient to sustain a finding that the  
17 person at the time the person issued the check intended it should not be paid:

18 (1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

19 (2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with  
20 the drawee and that the issuer failed to pay the check within [~~five business~~] thirty (30) days after  
21 mailing of notice of nonpayment or dishonor as provided in this subdivision; or

22 (3) proof that, when presentment was made within a reasonable time, the issuer did not have  
23 sufficient funds or credit with the drawee and that the issuer failed to pay the check within [~~five~~  
24 business] thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this  
25 subdivision.

26 Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the  
27 payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by  
28 regular mail, supported by an affidavit of service by mailing, to the address printed on the check.  
29 Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim

1 certified or regular mail notice is not a defense that notice was not received.

2 The notice may state that unless the check is paid in full within [~~five business~~] thirty (30)  
3 days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or  
4 may refer the matter to proper authorities for prosecution under this section.

5 An affidavit of service by mailing shall be retained by the payee or holder of the check.

6 **(d) Proof of lack of funds or credit.** If the check has been protested, the notice of protest  
7 is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain  
8 a finding that there was a lack of funds or credit with the drawee.

9 **(e) Exceptions.** This section does not apply to a postdated check or to a check given for a  
10 past consideration, except a payroll check or a check issued to a fund for employee benefits.

11 **(f) Release of account information to law enforcement authorities.** A drawee shall  
12 release the information specified below to any local law enforcement or prosecuting authority which  
13 certifies in writing that it is investigating or prosecuting a complaint against the drawer under this  
14 section, and that [~~+5~~] thirty (30) days have elapsed since the mailing of the notice of dishonor  
15 required by subdivisions (c) and (h).

16 This subdivision applies to the following information relating to the drawer's account:

17 (1) documents relating to the opening of the account by the drawer and to the closing of the  
18 account;

19 (2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn  
20 on the account within a period of six months of the date of request;

21 (3) periodic statements mailed to the drawer by the drawee for the periods immediately prior  
22 to, during, and subsequent to the issuance of any check which is the subject of the investigation or  
23 prosecution; or

24 (4) the last known home and business addresses and telephone numbers of the drawer.

25 The drawee shall release all of the information described in clauses (1) to (4) that it possesses  
26 within ten (10) days after receipt of a request conforming to all of the provisions of this subdivision.  
27 The drawee may not impose a fee for furnishing this information to law enforcement or prosecuting  
28 authorities.

29 A drawee is not liable in a criminal or civil proceeding for releasing information in

1 accordance with this subdivision.

2 **(g) Release of account information to payee or holder.** A drawee shall release the  
3 information specified below to the payee or holder of a check that has been dishonored who makes  
4 a written request for this information and states in writing that the check has been dishonored and  
5 that 30 days have elapsed since the mailing of the notice described in subdivision (h) and who  
6 accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.  
7 The requesting payee or holder shall notify the drawee immediately to cancel this request if payment  
8 is made before the drawee has released this information.

9 This subdivision applies to the following information relating to the drawer's account:

10 (1) Whether at the time the check was issued or presented for payment the drawer had  
11 sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or  
12 restricted for any reason and the date it was closed or restricted;

13 (2) The last known home address and telephone number of the drawer. The drawee may not  
14 release the address or telephone number of the place of employment of the drawer unless the drawer  
15 is a business entity or the place of employment is the home; and

16 The drawee shall release all of the information described in clauses (1) to (2) that it possesses  
17 within ten (10) days after receipt of a request conforming to all of the provisions of this subdivision.  
18 The drawee may require the person requesting the information to pay the reasonable costs, not to  
19 exceed 15 cents per page, of reproducing and mailing the requested information.

20 A drawee is not liable in a criminal or civil proceeding for releasing information in  
21 accordance with this subdivision.

22 **(h) Notice.** The provisions of subdivisions (f) and (g) are not applicable unless the notice  
23 to the maker or drawer required by subdivision (c) states that if the check is not paid in full within  
24 [~~five business~~] thirty (30) days after mailing of the notice, the drawee will be authorized to release  
25 information relating to the account to the payee or holder of the check and may also release this  
26 information to law enforcement or prosecuting authorities.

OCT 12 1995

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION

Bill No. 892(LS)

Introduced by:

M.C. Charfauros *MC*  
A.L.G. Santos *AGS*  
T.C. Ada *Ada*

**AN ACT TO REPEAL AND REENACT §46.30 OF TITLE 9, GUAM CODE ANNOTATED,  
RELATIVE TO THE ISSUANCE OF BAD CHECKS.**

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 **Section 1. Legislative Findings and Intent.** The Legislature finds that the existing  
3 law concerning the issuance of bad checks is not sufficient to alleviate or resolve the  
4 problems resulting from such an act. The Legislature finds that holders of checks have had  
5 difficulty collecting from the issuers after such checks have been dishonored. The  
6 Legislature further finds that law enforcement officials have had difficulty prosecuting the  
7 issuers of bad checks for reasons including, but not limited to, the inability to obtain crucial  
8 information regarding the issuer's financial accounts. The intent of this Legislature is to  
9 provide the necessary resources to law enforcement personnel to enforce the criminal act of  
10 issuing bad checks.

11 **Section 2. §46.30 of Title 9 GCA is hereby repealed and reenacted to read:**

12 **“§46.30. Issuance of dishonored checks. (a) Definitions.** For the purpose of this section,  
13 the following terms have the meanings given them.

14 (1) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable  
15 instrument.

16 (2) "Credit" means an arrangement or understanding with the drawee for the payment of a  
17 check.

18 **(b) Acts constituting.** Whoever issues a check which, at the time of issuance, the issuer  
19 intends shall not be paid, is guilty of a petty misdemeanor. In addition, restitution may be ordered  
20 by the court.



1           **(c) Proof of intent.** Any of the following is evidence sufficient to sustain a finding that the  
2 person at the time the person issued the check intended it should not be paid:

3           (1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

4           (2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with  
5 the drawee and that the issuer failed to pay the check within five business days after mailing of  
6 notice of nonpayment or dishonor as provided in this subdivision; or

7           (3) proof that, when presentment was made within a reasonable time, the issuer did not have  
8 sufficient funds or credit with the drawee and that the issuer failed to pay the check within five  
9 business days after mailing of notice of nonpayment or dishonor as provided in this subdivision.

10           Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the  
11 payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by  
12 regular mail, supported by an affidavit of service by mailing, to the address printed on the check.  
13 Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim  
14 certified or regular mail notice is not a defense that notice was not received.

15           The notice may state that unless the check is paid in full within five business days after  
16 mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer  
17 the matter to proper authorities for prosecution under this section.

18           An affidavit of service by mailing shall be retained by the payee or holder of the check.

19           **(d) Proof of lack of funds or credit.** If the check has been protested, the notice of protest  
20 is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain  
21 a finding that there was a lack of funds or credit with the drawee.

22           **(e) Exceptions.** This section does not apply to a postdated check or to a check given for a  
23 past consideration, except a payroll check or a check issued to a fund for employee benefits.

24           **(f) Release of account information to law enforcement authorities.** A drawee shall  
25 release the information specified below to any local law enforcement or prosecuting authority which  
26 certifies in writing that it is investigating or prosecuting a complaint against the drawer under this  
27 section, and that 15 days have elapsed since the mailing of the notice of dishonor required by  
28 subdivisions (c) and (h).

29           This subdivision applies to the following information relating to the drawer's account:

30           (1) documents relating to the opening of the account by the drawer and to the closing of the

1 account;

2 (2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn  
3 on the account within a period of six months of the date of request;

4 (3) periodic statements mailed to the drawer by the drawee for the periods immediately prior  
5 to, during, and subsequent to the issuance of any check which is the subject of the investigation or  
6 prosecution; or

7 (4) the last known home and business addresses and telephone numbers of the drawer.

8 The drawee shall release all of the information described in clauses (1) to (4) that it possesses  
9 within ten days after receipt of a request conforming to all of the provisions of this subdivision. The  
10 drawee may not impose a fee for furnishing this information to law enforcement or prosecuting  
11 authorities.

12 A drawee is not liable in a criminal or civil proceeding for releasing information in  
13 accordance with this subdivision.

14 **(g) Release of account information to payee or holder.** A drawee shall release the  
15 information specified below to the payee or holder of a check that has been dishonored who makes  
16 a written request for this information and states in writing that the check has been dishonored and  
17 that 30 days have elapsed since the mailing of the notice described in subdivision (h) and who  
18 accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.  
19 The requesting payee or holder shall notify the drawee immediately to cancel this request if payment  
20 is made before the drawee has released this information.

21 This subdivision applies to the following information relating to the drawer's account:

22 (1) Whether at the time the check was issued or presented for payment the drawer had  
23 sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or  
24 restricted for any reason and the date it was closed or restricted;

25 (2) The last known home address and telephone number of the drawer. The drawee may not  
26 release the address or telephone number of the place of employment of the drawer unless the drawer  
27 is a business entity or the place of employment is the home; and

28 The drawee shall release all of the information described in clauses (1) to (2) that it possesses  
29 within ten days after receipt of a request conforming to all of the provisions of this subdivision. The  
30 drawee may require the person requesting the information to pay the reasonable costs, not to exceed

1 15 cents per page, of reproducing and mailing the requested information.

2 A drawee is not liable in a criminal or civil proceeding for releasing information in  
3 accordance with this subdivision.

4 **(h) Notice.** The provisions of subdivisions (f) and (g) are not applicable unless the notice  
5 to the maker or drawer required by subdivision (c) states that if the check is not paid in full within  
6 five business days after mailing of the notice, the drawee will be authorized to release information  
7 relating to the account to the payee or holder of the check and may also release this information to  
8 law enforcement or prosecuting authorities.