



CUSTOMER ACCOUNT APPLICATION



MAGNESSOIL.COM



# 5-37-307. KNOWINGLY ISSUING WORTHLESS CHECK.

(a) A person commits an offense if he or she issues or passes a check, order, draft, or any other form of presentment involving the transmission of account information for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check, order, draft, or any other form of payment involving the transmission of account information, as well as any other check, order, draft, or any other form of presentment involving the transmission of account information outstanding at the time of issuance.

(b)(1) This section and § 21-6-411 do not apply to a preexisting debt or a situation in which nothing of value was acquired.

(2) However, this section and § 21-6-411 do apply to a payment of rent, child support, consignment, tax, license, fee, fine, and court costs.

(c)(1) This section does not prevent the prosecuting attorney from establishing the required knowledge by direct evidence.

(2) However, for purposes of this section, the issuer's knowledge of insufficient funds is presumed, except in the case of the postdated check, order, draft, or any other form of presentment involving the transmission of account information if:

(A) The issuer had no account with the bank or other drawee at the time he or she issued the check, order, draft, or any other form of presentment involving the transmission of account information; or

(B) Payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within thirty (30) days after issue and the issuer failed to pay the holder in full, plus a service charge not to exceed twenty-five dollars (\$25.00), plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check's not being honored, within then (10) days after receiving notice of that refusal.

(d) Notice for purposes of this section shall be by the procedure as set forth in §§ 5-37-303 and 5-37-304.

(e) If notice is given, it is presumed that the notice was received no later than five (5) days after it was sent.

(f) An offense under this section is a violation and is punishable as provided in §5-4-104.

(g) This act is cumulative to all other acts and shall not repeal any other act.

History. Acts 1985 (1st Ex. Sess.), No. 33, §§ 1, 4; A.S.A. 1947, §§ 67-726, 67-728n; Acts 1987, No. 69, § 2; 1987, No. 678, § 2; 1991, No. 1051, § 2; 1995, No. 335, § 4; 2001, No. 996, § 4; 2001, No. 1466, § 4.

## OPINION NO. 2001-375

January 17, 2002

The Honorable Denny Altus  
State Representative  
8600 Moody Road  
Fort Smith, Arkansas 72903-6718

Dear Representative Altus:

I am writing in response to your request, on behalf of a constituent, for an opinion on the issuance of warrants for hot check violations where the checks are written in payment of apartment rent. Specifically, you have enclosed a letter from your constituent, a landlord, who states that a particular judge in Fort Smith will no longer issue warrants for insufficient checks written for rental payments. You and your constituent inquire as to the distinction between a check written for apartment rent and a check written, for example, for groceries. The question presented for resolution therefore appears to be whether an insufficient check given for apartment rent is prosecutable as a "hot check."

### RESPONSE

In my opinion a 1987 amendment to the "Arkansas Hot Check Law" (A.C.A. § 5-37-302) and § 5-37-307 (sometimes called the "Warm Check Law"), specifically includes the payment of rent as prosecutable under either of these two provisions. Some confusion on the issue may have arisen due to the fact that the statute was amended in 1977 to remove payments for "pre-existing debts" from prosecution under the Arkansas Hot Check Law. The 1987 amendment regarding payment of rent, however, was enacted later and should control assuming all the requisite elements of the charge can be proven.

There are two provisions under which insufficient checks may be prosecuted. The first is A.C.A. § 5-37-302 (Supp. 2001), which provides in pertinent part that: It shall be unlawful for any person:

To procure any article or thing of value, or to secure possession of any personal property to which a lien has attached or to make payment of rent or to make payment of a child support payment or to make payment of any taxes, licenses, or fees, or any fine or court costs, or for any other purpose to make or draw or utter or deliver, with the intent to defraud, any check, draft, order, or any other form of presentment involving the transmission of account information for the payment of

money upon any in-state or out-of-state bank, person, firm, or corporation, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in, or on deposit with, such bank, person, firm, or corporation for the payment of such check, draft, order, or other form of presentment involving the transmission of account information in full, and all other checks, drafts, orders, or other forms of presentment involving the transmission of account information upon such funds then outstanding. . .

A.C.A. § 5-37-302, as amended by Acts 2001, No. 1466 (emphasis added).

The other relevant section is A.C.A. § 5-37-307 (Supp. 2001), which is sometimes informally referred to as the "warm check law." It was enacted in 1985, more recently than the "Hot Check Law," which was originally adopted in 1959. The primary difference between the "warm check law" and the "Hot Check Law," is that under the "warm check law," it is not necessary to prove intent to defraud. See Ops. Att'y. Gen. 2000-181 and 97-009 at n.1. Section 5-37-307 provides in pertinent part as follows:

(a)(1) A person commits an offense if he issues or passes a check, order, draft, or any other form of presentment involving the transmission of account information for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check, order, draft, or any other form of presentment involving the transmission of account information, as well as all other checks, orders, drafts, or any other form of presentment involving the transmission of account information outstanding at the time of issuance.

(2) This section and § 21-6-411 do not apply to preexisting debt or situations where nothing of value was acquired, but do apply to rents, child support payments, consignments, taxes, licenses, fees, fines, and court costs. [Emphasis added.]

The first provision cited above is a part of the "Arkansas Hot Check Law" and was originally enacted in 1959. As originally enacted, it also made it unlawful to make payment of a pre-existing debt with a worthless check under the circumstances listed in A.C.A. § 5-37-302. The statute was amended in 1977, however, and the language regarding pre-existing debts was removed. See Acts 1977, No. 155. This amendment led the Arkansas Supreme Court to hold in *Ridenhour v. State*, 279 Ark. 240 650, S.W.2d 575 (1983) that a worthless check given for a pre-existing debt is not prosecutable under the Hot Check Law. Additionally, the court held that where nothing of value is given or received for the issuance of the check, the act is similarly beyond prosecution. I, and two of my predecessors have each concluded, therefore, that under given circumstances a prosecution will not lie where the payment is for a pre-existing debt. See Ops. Att'y. Gen. 86-195 (payment for pre-existing debt not prosecutable); 97-009 (checks written in payment of rent-to-own contracts for equipment not prosecutable if properly characterized as installment sales contracts rather than true rental agreements); 2000-181 (legality of prosecution for worthless check given in payment for utility services depends upon whether there is a simultaneous exchange of value or whether the services have already been received at the time of issuance of the check, such that payment is for a pre-existing debt).

The statute has been amended several times, however, since 1977, to include, as prosecutable, checks written for such things as taxes, licenses and fees, fines and court costs, rent, and child support payments. See Acts 1977, No. 155 (taxes, licenses or fees); Acts 1985, No. 1012 (fines and court costs); Acts 1987, No. 69 (rent); Acts 1991, No. 1051 (child support payments). The Hot Check Law was therefore specifically amended in 1987 to include, as prosecutable, worthless checks written in payment for rent. If, as your questions, suggests, the checks at issue were written for payment of a true rental agreement for apartment rent, and all the other elements of A.C.A. § 5-37-302 are present, prosecution should lie in my opinion. It must be noted, however, that facts of individual cases may impact the question. The prosecuting attorney and other appropriate judicial officers are of course in the best position to make these types of factual determinations.

The so-called "warm check law," A.C.A. § 5-37-307 (Supp. 2001), was first enacted in 1985 and contained the language in A.C.A. § 5-37-307 (a)(2) excluding pre-existing debts, but including payments for consignments, taxes, licenses, fees, fines and court costs in the original enactment. The payment of rent was added to the "warm check law" by Acts 1987, No. 69. The same conclusions reached above, therefore should also apply in prosecutions under the "warm check law," assuming all other elements of that offense are met.

Senior Assistant Attorney General Elana C. Wills prepared the foregoing opinion, which I hereby approve.

Sincerely,

**MARK PRYOR**  
Attorney General

MP:ECW/cyh

## AUTHORIZATION AGREEMENT FOR ARRANGED PAYMENTS (ACH DEBITS)

COMPANY NAME \_\_\_\_\_ FEDERAL ID NUMBER \_\_\_\_\_

I hereby authorize Magness Oil Company, its subsidiaries and affiliates, to initiate debt entries to my (our) Checking account indicated below and the depository (bank) below to debit the same to such account.

BANK NAME \_\_\_\_\_ BRANCH \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

BANK ABA NUMBER \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

NAME(S) \_\_\_\_\_

SIGNED X \_\_\_\_\_ DATE \_\_\_\_\_ SIGNED X \_\_\_\_\_ DATE \_\_\_\_\_

This authority is to remain in full force and effect until Magness Oil Company has received written notification from me of its termination in such time and in such manner as to afford Magness Oil Company a reasonable opportunity to act on it. After the account had been charged, I have the right to have the amount of an erroneous debit credited to my account by Magness Oil Company, provided I (We) send written notice of such debit entry in error to Magness oil Company.

# SECURITY AGREEMENT

UCC Agreement

BE IT KNOWN, that for good consideration of Supply Agreement/Consigned Fuel Agreement \_\_\_\_\_  
(Owner/Operator/Debtor/Consignee) grants to Magness Oil Company (Secured Party) and moved and assigns a security interest pursuant to Article 9 of the Uniform Commercial Code in the following property (Collateral), which shall include all after-acquired property of like nature and description and proceeds and products thereof:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
This security interest is granted to secure payment and performance on the following obligations as well as other debts now or hereinafter owed to Secured Party from Owner/Operator/Debtor/Consignee: Supply & Consigned Goods Agreement

Owner/Operator/Debtor Hereby acknowledges to Secured Party that:

1. That Collateral Shall be kept at the \_\_\_\_\_ Address and not moved or relocated without written consent of Secured Party.
2. Owner/Operator/Debtor/Consignee assures by signing this document that Owner/Operator/Debtor/Consignee owns the collateral and it is free from any lien, encumbrance and security interest or adverse interest and has the full authority to grant this security interest.
3. Owner/operator/Debtor/Consignee agrees to execute such financing statements as are reasonably required by Secured Party to perfect this security agreement in accordance with state law and the Uniform Commercial Code.
4. Upon default in payment or performance of any obligation for which this security interest granted, or breach of any term of this security agreement, then in such instance Secured Party may declare all obligations immediately due and payable and shall all remedies of a Secured Party under the Uniform Commercial Code, as enacted in the Owner/Operator/Debtor/Consignee's state, which rights shall be cumulative and not necessarily successive with any other rights or remedies.
5. Owner/Operator/Debtor/Consignee agrees to maintain such insurance coverage on the collateral as Secured Party may from time to time reasonably require and Secured Party shall be named as loss Payee.
6. This security agreement shall further be in default up the death, Insolvency or bankruptcy of any party who is an obligor to this agreement or upon any material decrease in the value of the collateral or adverse change in the financial condition of the Owner/Operator/Debtor/Consignee.
7. Upon default the Owner/Operator/Debtor/Consignee shall pay reasonable attorney's fees and cost of collection to enforce this agreement.

IN WITNESS WHEREOF, this agreement is signed this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Owner/Operator/Debtor/Consignee

\_\_\_\_\_  
Secured Party

## CONTINUING CONSIGNMENT GUARANTY

In consideration for agreeing to place consigned goods by Magness Oil Company to Customer, I/We \_\_\_\_\_ personally guarantee prompt payment of all past, present or future of sales of consigned goods by \_\_\_\_\_ as agreed by the Fuel Supply Contract. This guaranty is an absolute, completed and continuing one, and no notice of any extension of payment for consigned good sales already or hereafter contracted by or extended to Customer need be given to the Guarantor(s). Customer and Company may rearrange, extend and/or renew Customer's Payment Agreement without notice to Guarantor(s) and in such even Guarantor(s) will remain fully bound hereunder on such Agreement. Guarantor(s) hereby expressly waive presentment, demand, protest and notice of protest and dishonor on any and all forms of such indebtedness, and also notice of acceptance of this guaranty, acceptance on the part of Company being conclusively presumed by its request for this guaranty and delivery of the same to it. Guarantor(s) waive any right to require Company to (a) proceed against Customer, (b) proceed against or exhaust any security or collateral, or (c) pursue any other remedy in Company's power whatsoever. Guarantor(s) waive any defense arising by reason of any disability, lack of corporate authority of power, or defense of Customer or any other guarantor of Customer's indebtedness, and shall remain liable hereon. Until all sales of consigned goods have been paid in full, Guarantor(s) shall have no right of subrogation, and waive any right to enforce any remedy which Company now has or may hereafter have against the Customer, and waives any benefit of and any right to participate in any security now or hereafter held by Company. Should legal proceedings be necessary to enforce this agreement, Guarantor(s) agree to pay, all costs of such legal proceedings, including attorney's fees of no less than 15% of the amount due and owing hereunder. By signing this Guaranty Agreement, Guarantor understands that he/she is personally Guaranteeing payment for any Consigned Goods placed with Customer by Magness Oil Company that is sold by Customer. It is understood that Magness Oil Company holds title to all goods placed with Customer until sold and holds security interest in consigned goods product until filed. Customer also agrees to sign UCC agreement in favor of Magness Oil Company for all inventory Customer holds until Magness Oil Company is paid in full for Consigned Goods sold. This guaranty shall be available to the successors and assignors of Company and shall always be fully binding upon the successors, assigns, heirs and administrators of Guarantor(s).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

The term "Customer" means the applicant and the term "Company" means the corporation to whom this application is submitted.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME** insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

1c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

1d. **SEE INSTRUCTIONS**      ADD'L INFO RE ORGANIZATION DEBTOR      1e. TYPE OF ORGANIZATION      1f. JURISDICTION OF ORGANIZATION      1g. ORGANIZATIONAL ID #, if any

NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (2a or 2b) do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

2c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

2d. **SEE INSTRUCTIONS**      ADD'L INFO RE ORGANIZATION DEBTOR      2e. TYPE OF ORGANIZATION      2f. JURISDICTION OF ORGANIZATION      2g. ORGANIZATIONAL ID #, if any

NONE

**3. SECURED PARTY'S NAME** (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

3c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

**4. This FINANCING STATEMENT covers the following collateral:**

5. ALTERNATIVE DESIGNATION [if applicable]:	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
---	---------------	---------------------	---------------	--------------	----------	----------------

6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]	All Debtors	Debtor 1	Debtor 2
--	---	-------------	----------	----------

**8. OPTIONAL FILER REFERENCE DATA**

## Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read all Instructions, especially Instruction 1; correct Debtor name is crucial. Follow Instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice. Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. If you want to make a search request, complete item 7 (after reading Instruction 7 below) and send Search Report Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, you are encouraged to use either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP).

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor name:** Enter only one Debtor name in item 1, an organization's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.
    - 1a. **Organization Debtor.** "Organization" means an entity having a legal identity separate from its owner. A partnership is an organization; a sole proprietorship is not an organization, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine Debtor's correct name, organization type, and jurisdiction of organization.
    - 1b. **Individual Debtor.** "Individual" means a natural person; this includes a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.

For both **organization and individual Debtors:** Don't use Debtor's trade name, DBA, AKA, FKA, Division name, etc. in place of or combined with Debtor's legal name; you may add such other names as additional Debtors if you wish (but this is neither required nor recommended).
  - 1c. An address is always required for the Debtor named in 1a or 1b.
  - 1d. Reserved for Financing Statements to be filed in North Dakota or South Dakota only. If this Financing Statement is to be filed in North Dakota or South Dakota, the Debtor's taxpayer identification number (tax ID#) — social security number or employer identification number must be placed in this box.
  - 1e,f,g. "Additional information re organization Debtor" is always required. Type of organization and jurisdiction of organization as well as Debtor's exact legal name can be determined from Debtor's current filed charter document. Organizational ID #, if any, is assigned by the agency where the charter document was filed; this is different from tax ID #; this should be entered preceded by the 2-character U.S. Postal identification of state of organization if one of the United States (e.g., CA12345, for a California corporation whose organizational ID # is 12345); if agency does not assign organizational ID #, check box in item 1g indicating "none."
- Note:* If Debtor is a trust or a trustee acting with respect to property held in trust, enter Debtor's name in item 1 and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a decedent's estate, enter name of deceased individual in item 1b and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a transmitting utility or this Financing Statement is filed in connection with a Manufactured-Home Transaction or a Public-Finance Transaction as defined in applicable Commercial Code, attach Addendum (Form UCC1Ad) and check appropriate box in item 18.
2. If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. To include further additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.
  3. Enter information for Secured Party or Total Assignee, determined and formatted per Instruction 1. To include further additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may either (1) enter Assignor S/P's name and address in item 3 and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Total Assignee's name and address in item 3 and, if you wish, also attaching Addendum (Form UCC1Ad) giving Assignor S/P's name and address in item 12.
  4. Use item 4 to indicate the collateral covered by this Financing Statement. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).
  5. If filer desires (at filer's option) to use titles of lessee and lessor, or consignee and consignor, or seller and buyer (in the case of accounts or chattel paper), or bailee and bailor instead of Debtor and Secured Party, check the appropriate box in item 5. If this is an agricultural lien (as defined in applicable Commercial Code) filing or is otherwise not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 5, complete items 1-7 as applicable and attach any other items required under other law.
  6. If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, complete items 1-5, check the box in item 6, and complete the required information (items 13, 14 and/or 15) on Addendum (Form UCC1Ad).
  7. This item is optional. Check appropriate box in item 7 to request Search Report(s) on all or some of the Debtors named in this Financing Statement. The Report will list all Financing Statements on file against the designated Debtor on the date of the Report, including this Financing Statement. There is an additional fee for each Report. If you have checked a box in item 7, file Search Report Copy together with Filing Officer Copy (and Acknowledgment Copy). Note: Not all states do searches and not all states will honor a search request made via this form; some states require a separate request form.
  8. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.



www.MagnessOil.com

167 Tucker Cemetery Road | Gassville, Arkansas 72635

Phone: 870-425-4353 | Fax: 870-425-6286