

Checks



WILLMAR POLICE DEPARTMENT

2201 23rd Street NE

Suite 102

Willmar, Minnesota 56201-9566

320-235-3100

TAKE THE BOUNCE OUT OF CHECKS

In today's "cashless society," almost all business is done by check, debit card, credit card, or other "cashless" means. Checking accounts are easily opened and credit cards are easily obtained. How can the business person protect himself / herself from excessive losses from bad checks? There are a number of things that can be done to reduce these losses. Probably one of the most important elements is to have a sound check cashing policy.

REMEMBER: *The writer of any check is acting as the United States Mint, and you (the receiver) are accepting this document as legal tender, therefore, you should know the writer or have formal identification as to who they are.*

Experience with people who have been arrested for bad checks has resulted in formulating the following policy. While the following procedures will not completely eliminate bad check losses, it should greatly reduce them.

POLICIES TO PRACTICE WHEN ACCEPTING CHECKS

1. **Post Dated Checks Should Not be Accepted**

These are checks with a date in advance of the date the check is cashed. Post-dating a check is not a criminal offense. The check is accepted knowing there is no money in the bank and you are then extending "credit" to the passer.

2. **Third Party Checks Should Not be Accepted**

These are checks written by one person to another person and cashed at your store. These are extremely difficult to prosecute and will not be accepted by the City or County Attorney for prosecution.

3. **Person Accepting the Check Should Initial the Check**

It must be established who took the check at your place of business. The passer of the check must be identified and the first step is to look to the person who accepted the check.

4. **Check Should be Endorsed in the Clerk's Presence**

The person accepting the check must be able to testify that the passer actually endorsed the check. If the check is already endorsed, have the passer re-endorse it.

Do not fill in a check for a customer if the check has already been signed.

5. **Request Identification from Person Tendering Check**

Under *NO* circumstances should a Social Security card be accepted as identification. Social Security cards can be obtained by anyone in any name.

6. **Driver's License and Minnesota Identification Card Should be Accepted as Identification**

- ***Be sure photograph and physical description on the driver's license match the passer***

Examine driver's license closely to see that it has not been tampered with. Driver's licenses are easily stolen and used. Attempts are often made to alter them. A check should not be cashed if the driver's license appears to have been altered.

- ***Check the expiration date of the driver's license***

An expired driver's license is worthless as identification and you cannot prosecute if that is the only identification you verify. If a driver's license is accepted, write the driver's license number on the check, as well as any other information you wish to note.

- ***Determine if Address on Check or Driver's License is Current***

If the passer of the check has moved, a current address should be obtained and noted.

- ***Don't be Afraid to Ask for More Than One Piece of Identification***

Ask for other credit cards, or cards that have a signature or picture identification.

- ***Ask for Home Telephone Number***

Be sure the telephone number fits the address. Don't be afraid to call the number. At least check with telephone information to see if that number is correct.

7. **Be on the Alert for Misspellings or Errors on the Check**

Very often on a forged check, names are misspelled and street addresses are wrong. If a check presented shows a misspelling, have the passer sign the check as issued and again as identification appears.

8. **Accept Checks Only for Amount of Purchase**

Accepting checks only for the amount of purchase limits your losses, however, care still must be taken to establish who the person is and where he/she is living.

9. **Explain to Customer at Outset why Precautions are Necessary**

Explain the rise in the amount of bad check losses, etc. This tends to explain your actions to the customer.

10. **Beware of the Customer Making a Small Purchase and Cashing a Large Payroll Check**

Counterfeit checks are on the increase. Passers are after money, not merchandise. What they try to purchase is usually minimal.

11. **Be on the Alert When a Check has Alterations or Erasures on It**

A good policy is not to accept altered checks.

12. **If Your Suspicion is Aroused, Get as Much Information as Possible**

Get a good description of the passer, the vehicle used by the passer and license plate number, if possible. Also note other people who may be with the passer.

13. **Remember, Government Checks are Stolen Every Day - Be Alert on All Types of Government Checks**

The possession of the envelope that the check came in does not prove that the passer is the one entitled to the check.

14. **Use Recording Equipment to Record the Transaction and Save for Law Enforcement**

A video recording of the offender can be the best evidence because it can provide a clear identity of the person who cashed or attempted to cash the check. Sometimes it may be the difference between filing criminal charges or declining charges.

PROCEDURE FOR PROSECUTION

If your place of business holds checks that have been dishonored by the bank, the following steps must be taken if the writer is to be prosecuted under Minnesota State Statute 609.535, Issuance of Dishonored Checks, as requested by our county justice system for prosecution.

1. **Non-Sufficient Funds**

- A five-day notice is required to be sent by certified mail, restricted delivery, and return receipt requested. Retain a copy.
- Notification may be made in person with a witness present. Make a detailed account of any and all contacts made, such as time, date, location, and what was said between you and the passer of the dishonored check.
- A telephone call, email, text, or fax are NOT notification.
- After ten days, bring the following to the police department:
 1. The check with the bank slip
 2. A copy of the five-day notice
 3. The certified mail receipt or other documentation
- Fill out the police department questionnaire (see attached copy).

2. Account Closed

- Use the same procedure as non-sufficient funds checks.
- Call the bank to determine how long the account has been closed.

3. No Account

- Bring the check and bank slip to the police department for immediate investigation and prosecution.
- Fill out the police department questionnaire (see attached copy).

4. Forged

- Bring the check and bank slip to the police department for immediate investigation and prosecution.

PLEASE NOTE

1. The Willmar Police Department, the Willmar City Attorney, and the Kandiyohi County Attorney are not collection agencies.
2. Checks with a date over 3 months old may **not** be accepted for prosecution.
3. Check passer has to be identified as the account holder by a state-issued or an acceptable form of identification. The identification number needs to be printed on the check. If not done, it may not be accepted for prosecution.
4. On out-of-state checks, bring them to the police department to determine if prosecution is feasible.
5. Make sure the check is dated. A check without a date is not legal tender.
6. Checks under the aggregate amount of \$50.00 will not be accepted for prosecution.
7. The police department is unable to prosecute on checks for payments on charge accounts. They can be collected through Small Claims Court.
8. If the recipient of a check accepts a partial payment, the matter is no longer considered criminal and the police department will not be able to pursue the case under the NSF statute.

NOTICE OF DISHONOR AND DEMAND FOR PAYMENT OF WORTHLESS CHECK

You are hereby notified that check number _____ dated _____, 20_____, drawn on the _____ bank, of (town) _____, in the amount of \$ _____, bearing the signature of _____ has been returned unpaid with the notation that payment has been refused because of _____.

Your attention is called to the laws of the State of Minnesota, M.S.A. 604.113 and 609.535 with reference to checks. The civil and criminal penalties for violations of said laws appear below, and demand is hereby made for the payment of the above mentioned check and unless the check is paid in full within five business days after mailing of this notice of nonpayment or dishonor, the payee or holder of the check will refer the matter to proper authorities for prosecution under this section and in accordance with law.

Remit to: _____

By: _____

Dated: _____ Address: _____

Minnesota Statutes Relating to the Issuance of a Worthless Check and the Penalty Therefor

604.113 CIVIL LIABILITY FOR ISSUANCE OF WORTHLESS CHECK

Subd. 1. Definitions.

- (a) The definitions provided in this subdivision apply to this section.
- (b) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.
- (c) "Credit" means an arrangement of understanding with the drawee for the payment of the check.
- (d) "Dishonor" has the meaning given in section 336.3-502, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.
- (e) "Payee" or "holder" includes an agent of the payee or holder.

Subd. 2. Acts constituting. Whoever issues any check that is dishonored is liable for the following penalties:

(a) A service charge, not to exceed \$30, may be imposed immediately on any dishonored check by the payee or holder of the check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check on behalf of the payee or holder, up to the entire amount of the service charge may be retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check. The displayed notice must also include a provision notifying the issuer of the check that civil penalties may be imposed for nonpayment.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the check and the reason for nonpayment. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for nonpayment after 30 days;

(2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and
(3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

Subd. 3. Notice of dishonor required. Notice of nonpayment or dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check. The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored. An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4. Proof of identity. The check is prima facie evidence of the identity of the issuer if the person receiving the check:

(a) records the following information about the issuer on the check, unless it is printed on the face of the check:

- (1) name;
- (2) home or work address;
- (3) home or work telephone number; and
- (4) identification number issued pursuant to section 171.07;

(b) compares the drawer's physical appearance, signature, and the personal information recorded on the check with the issuer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

Subd. 5. Defenses. Any defense otherwise available to the issuer also applies to liability under this section.

609.535 ISSUANCE OF DISHONORED CHECKS.

Subd. 1. Definitions. For the purpose of this section, the following terms have the meanings given them.

- (a) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.
- (b) "Credit" means an arrangement or understanding with the drawee for the payment of a check.

Subd. 2. Acts constituting. Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check and may be sentenced as provided in subdivision 2a. In addition, restitution may be ordered by the court.

Subd. 2a. Penalties.

(a) A person who is convicted of issuing a dishonored check under subdivision 2 may be sentenced as follows:

- (1) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than \$500;
- (2) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b) is more than \$250, but not more than \$500; or
- (3) to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is not more than \$250.

(b) In a prosecution under this subdivision, the value of dishonored checks issued by the defendant in violation of this subdivision within any six-month period may be aggregated and the defendant charged accordingly in applying this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the dishonored checks was issued for all of the offenses aggregated under this paragraph.

Subd. 3. Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid.

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

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

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

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

Subd. 4. Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

Subd. 5. Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

Subd. 6. Release of account information to law enforcement authorities. A drawee shall release the information specified below to any state, county, or local law enforcement or prosecuting authority which certifies in writing that it is investigating or prosecuting a complaint against the drawer under this section or section 609.52, subdivision 2, clause (3)(a), and that 15 days have elapsed since the mailing of the notice of dishonor required by subdivisions 3 and 8. This subdivision applies to the following information relating to the drawer's account:

- (1) documents relating to the opening of the account by the drawer and to the closing of the account;
- (2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn on the account within a period of six months of the date of request;
- (3) periodic statements mailed to the drawer by the drawee for the periods immediately prior to, during, and subsequent to the issuance of any check which is the subject of the investigation or prosecution; or
- (4) the last known home and business addresses and telephone numbers of the drawer.

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

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

Subd. 7. Release of account information to payee or holder.

(a) A drawee shall release the information specified in paragraph (b), clauses (1) to (3) to the payee or holder of a check that has been dishonored who makes a written request for this information and states in writing that the check has been dishonored and that 30 days have elapsed since the mailing of the notice described in subdivision 8 and who accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.

The requesting payee or holder shall notify the drawee immediately to cancel this request if payment is made before the drawee has released this information.

(b) This subdivision applies to the following information relating to the drawer's account:

- (1) Whether at the time the check was issued or presented for payment the drawer had sufficient funds or credit with the drawee, and whether at the time the account was open, closed, or restricted for any reason and the date it was closed or restricted;
- (2) The last known home address and telephone number of the drawer. The drawee may not release the address or telephone number of the place of employment of the drawer unless the drawer is a business entity or the place of employment is the home; and
- (3) A statement as to whether the aggregated value of dishonored checks attributable to the drawer within six months before or after the date of the dishonored check exceed \$250; for purposes of this clause, a check is not dishonored if payment was not made pursuant to a stop payment order.

The drawee shall release all of the information described in clauses (1) to (3) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may require the person requesting the information to pay the reasonable costs, not to exceed 15 cents per page, of reproducing and mailing the requested information.

(c) A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

Subd. 8. Notice. The provisions of subdivisions 6 and 7 are not applicable unless the notice to the maker or drawer required by subdivision 3 states that if the check is not paid in full within five business days after mailing of the notice, the drawee will be authorized to release information relating to the account to the payee or holder of the check and may also release this information to law enforcement or prosecuting authorities.

History: 1963 c 753 art 1 s 609.535; 1967 c 466 s 1; 1971 c 23 s 56; 1974 c 106 s 1,2; 1981 c 202 s 1; 1981 c 247 s 1-3; 1983 c 225 s 10; 1984 c 436 s 34; 1985 c 140 s 3; 1986 c 444; 1988 c 537 s 2,3; 1991 c 256 s 11-13; 1992 c 569 s 26 YOU ARE FURTHER NOTIFIED that in accordance with the provision of M.S.A. 487.30 Subd. 4. as amended, the payee or holder of the check may commence a conciliation court action in the county where the dishonored check was issued, to recover the amount of the check even though the defendant or defendants enforcement or prosecuting authorities are not residents of the county, and that the Summons may be served anywhere in the state of Minnesota.

WILLMAR POLICE DEPARTMENT

Defendant: _____

Complainant: _____

Complainant's Address: _____

Complainant's Telephone Number: _____

Check Number: _____ Date of Check: _____ Amount of Check: _____

Payee: _____

Reason for Nonpayment: _____

Person who Accepted Check: _____

PLEASE ANSWER THE FOLLOWING QUESTIONS:

(CIRCLE YES OR NO)

- | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| 1. Was this check given for a past consideration, that is, on account or as part of a credit sale? | YES | NO |
| 2. Was this check postdated at the time of delivery? | YES | NO |
| 3. Did you or any of your employees agree to hold this check, that is, refrain from depositing the check immediately? | YES | NO |
| 4. Are you certain that this check has not been paid? | YES | NO |
| 5. Has the defendant attempted to pay it? | YES | NO |
| 6. Do you understand that once signed, the defendant will be prosecuted even if the check is paid prior to trial? | YES | NO |
| 7. Are you seeking prosecution of the above of your own volition and upon your own initiative? | YES | NO |
| 8. Can the passer be identified?
What form of I.D. was used to identify the passer? _____ | YES | NO |
| 9. Do you, therefore, request that a criminal complaint be drawn charging the above defendant with the crime of Issuance of a Dishonored Check? | YES | NO |
| 10. Did the person who accepted the check see the check made out and signed by the person that gave it to him/her? | YES | NO |

(To be filled out at the Willmar Police Department)

Reporting Party's Signature

Reporting Party's Date of Birth

Reporting Party's Address

Date

WITNESSED BY:

Signature of Witness

Date

Time Reported AM PM

