



**Police Department
Office of Chief of Police**

PROCEDURE FOR PROSECUTION OF BAD CHECKS

In order to bring a check in for prosecution, the check **MUST HAVE** a driver's license number and/or a date of birth from the person who signs the check. Obtain this information from a driver's license or State Id card.

Any checks returned to businesses or individuals should be brought to the Fairmont Police Department. The individual or business representative should speak with an Officer regarding the bad check.

There are four types of checks which can be returned to a business. They are: non-sufficient funds, account closed, forged or irregular signature, and stop payment checks. Below are the procedures that must be followed in order to prosecute these checks.

Non-sufficient Funds and Account Closed Checks

It is our policy that checks brought to us for prosecution must be written for at least \$25.00. Any check smaller than this amount should not be brought to the Fairmont Police Department for prosecution. If you, as a merchant, have two or more checks from the same party and they equal \$25.00 or more, then they may be brought to the Fairmont Police Department.

Step 1: The business/payee must mail a notice of non-payment that includes a citation and description of the penalties to the issuer of the check at the address on the check. If there are two names on the check, mail the notice to the person who actually signed the check. This notice must be sent Certified Mail, Return Receipt Requested. Attached hereto, is a copy of a form entitled "Notice and Demand for Payment of Dishonored Check". Make photocopies of this notice and use this as your form. Also attached is a completed sample form for your reference. Keep a copy of the notice which is mailed to the maker of the check.

Step 2: Wait five business days after receiving the return receipt card back in the mail. Attach the return receipt card to the copy of the notice which you sent and the original check(s). Bring all of this information to the Fairmont Police Department with an attached note indicating the business name, telephone number, and the name and title of the person who sent the notice.

- Step 3: The Fairmont Police Department will complete any additional investigation necessary and will forward the case to the Martin County Attorney's Office for a formal complaint.
- Step 4: The Fairmont Police Department will receive the Criminal Complaint and submit it to the District Court to be signed.
- Step 5: The District Court serves the Summons and Complaint upon the defendant. If the defendant does not appear at the scheduled court time, the Judge will issue a bench warrant for the defendant's arrest. This can only be done if we have the full name and date of birth of the person who wrote the check. It is for this reason that we need to have a drivers' license and/or date of birth written on the check. If we do not have this information, the complaint will be dismissed.

If the defendant appears at the scheduled time, he/she pleads guilty or not guilty and hearings are scheduled accordingly.

Check Forgeries and Irregular Signatures

All check forgeries and irregular signature checks should be taken to the Fairmont Police Department and given to an officer for further investigation. An officer will investigate the matter and forward a full report to the County Attorney for a formal complaint.

Stop Payment Checks

Determine if the business has received a complaint from the maker of the check for dissatisfaction with a product or service received from the business or individual. If a complaint has been received, this cannot be processed as a bad check. The business or individual will then have to work this out with the maker of the check or seek damages in conciliation court. If no complaint has been received, proceed by following all of the steps as outlined for NSF and A/C checks.

The process for prosecuting makers of NSF and A/C checks is not fast. Even if the defendant appears and pleads guilty right away, the court usually gives the defendant time in which to make restitution and pay their fine.

Bad checks received for payments on an established credit account cannot be prosecuted as NSF or A/C checks. These checks will have to be taken to conciliation court to recover restitution. DO NOT ACCEPT PARTIAL PAYMENTS ON THE BAD CHECK. If you do, we will not be able to prosecute as a NSF or A/C check.

Post-dated checks cannot be prosecuted as NSF or A/C checks; these must also be taken to Conciliation Court for restitution.

Often, if a person has bad checks at one place in town, he/she will have others. If proceedings are already pending against a defendant, a letter to the Deputy Court Administrator of the District Court will be sent with the additional check(s) requesting that they be added to the pending complaint for restitution. A copy of this letter will be mailed to the business for your information.

ALL CHECKS AND SUPPORTING DOCUMENTATION SHOULD BE BROUGHT TO THE FAIRMONT POLICE DEPARTMENT PROMPTLY. THE COUNTY WILL NOT PROSECUTE ANY CHECKS WHICH ARE OVER SIX MONTHS OLD.

If at any time you have questions regarding these procedures, please feel free to contact the Fairmont Police Department at (507) 238-4481.

Attachments

NOTICE AND DEMAND FOR PAYMENT OF DISHONORED CHECK

_____ John Doe _____, you are hereby notified that a check dated (date of check) _____, 20____
issued to Your Business' Name _____, drawn on the Profinium _____ bank of
Fairmont _____ (town), in the amount of \$ 45.00 _____, bearing the signature of
John Doe _____ has been returned, unpaid with the notation that payment has been
refused because of non-sufficient funds or account closed.

Your attention is called to the laws of this state with reference to checks (portions of these laws appear below) and demand is hereby made for the payment of the above mentioned check within five business days, in accordance with the law.

DO NOT IGNORE THIS NOTICE!

Extracts from Minnesota Statutes Relating to the Issuance of a Check Without Sufficient Funds and the Criminal Penalty Therefore

Minnesota Statute Section 609.535 **Issuance of Worthless Check**, Subdivision 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 to imprisonment for not more than ninety days and/or payment of a fine of not more than \$1,000, or both. In addition, pursuant to Minnesota Statute Section 332.50, restitution and a service fee not to exceed \$30 per check may be ordered by the court. Minnesota Statute Section 609.535, Subdivision 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 person did not have an account with the drawee; (2) proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided by this subdivision; or (3) proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and that the person failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision. If the check is not paid in full within five business days after mailing notice of nonpayment or dishonor, the payee or holder of the check may or will refer the matter to proper authorities for prosecution under this statute.

Dated: Date of mailing

Remit to: Your Business' Name
Address

Fairmont, MN 56031

Signed: Signature of Person Signing Complaint
Title:

| | |
|------------------|----------|
| AMOUNT OF CHECK: | \$ 45.00 |
| SERVICE FEE: | 30.00 |
| TOTAL DUE: | \$ 75.00 |

NOTICE AND DEMAND FOR PAYMENT OF DISHONORED CHECK

_____, you are hereby notified that a check dated _____, 20____,
issued to _____, 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 non-sufficient funds or account closed.

Your attention is called to the laws of this state with reference to checks (portions of these laws appear below) and demand is hereby made for the payment of the above mentioned check within five business days, in accordance with the law.

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Dated: _____

Remit to: _____

Signed: _____
Title: _____

AMOUNT OF CHECK: \$ _____
SERVICE FEE: _____
TOTAL DUE: \$ _____

609.535 ISSUANCE OF DISHONORED CHECKS.

Subdivision 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 after 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), item (i), 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 that 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 exceeds \$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 527 s 2,3; 1991 c 256 s 11-13; 1992 c 569 s 26; 1999 c 218 s 3; 2004 c 228 art 1 s 72