

OTTAWA COUNTY CHECK FRAUD PREVENTION GUIDE FOR MERCHANTS

We in law enforcement look forward to working with you in crime prevention and pledge our cooperation if you become a crime victim. By following these guidelines, check fraud (non-sufficient funds [NSF], account closed, and forged checks) can be dramatically reduced. If you become the victim of check fraud, adherence to these guidelines should insure successful prosecution.

I. MERCHANT/COMPLAINANT RESPONSIBILITIES

1. IDENTIFICATION

Identification must be requested and produced when a check is accepted. Positive identification is an essential requirement for criminal prosecution and civil recovery. The driver's license number and date of birth must be written on the check. If the license number is preprinted on the face of the check, the person accepting the check must verify the license number and affix his/her initials next to the license number.

2. VERIFICATION

Merchant should inquire if the address and phone number on the check are current. Also, the license photo should be compared with the appearance of the check writer.

3. FIVE DAY NOTICES

In the event the check is returned to you unpaid, the merchant must send a statutory notice by certified mail with return receipt requested. Also, the merchant must request a forwarding address in case the notice is undeliverable as addressed. Pre-printed notice forms have been included in this packet. Additional forms are available from your local police department or at the office of the prosecutor.

4. ACCEPTANCE OF PAYMENTS

(a) If before criminal check fraud charges are authorized the merchant accepts full or partial payment, prosecution is not permitted by law. (See II. CIVIL ALTERNATIVE TO PROSECUTION).

(b) After charges are authorized, the merchant is required to confer with the Prosecutor's Office before acceptance of payment.

5. PROSECUTION

(a) Absent special circumstances the total dollar amount on non-sufficient fund checks received from an account must be at least \$50.00.

(b) Prosecution requests are to be submitted within sixty (60) days from

the delivery of the five day notice. Delays of more than sixty (60) days require an appropriate explanation.

(c) Merchants are required to fill out a Merchant Information Form. Forms have been included in this packet. Additional forms are available from your local police department or at the office of the prosecutor.

II. CIVIL ALTERNATIVE TO PROSECUTION

Merchants should be aware that they may make a written demand for payment of a check by first class mail. The statute requires the following text be used for the written demands:

“A check, draft, or order for payment of money drawn by you for \$ _____ was returned to me / us / client (client’s name) dishonored for:

Insufficient funds

No account

This notice is a formal demand for payment of the full amount of the dishonored check, draft, or order plus a processing fee of \$25.00 for a total amount of \$ _____. If you pay this total amount within 7 days, excluding weekends and holidays, after the date this notice was mailed, no further civil action will be taken against you.

If you do not pay the \$ _____ as requested above, but within 30 days after the date this notice was mailed you pay the amount of the dishonored check, draft, or order plus a \$35.00 processing fee, for a total amount of \$ _____, no further civil action will be taken against you.

If you fail to pay either amount indicated above, I / we / our client will be authorized by state law to bring a civil action against you to determine your legal responsibility for payment of the check, draft, or order and civil damages and costs allowed by law.

If you dispute the dishonoring of this check, draft, or order, you should also contact your bank or financial institution immediately.”

Merchants also have access to the Small Claims Division of District Court. Note that if the amount exceeds the jurisdiction of small claims (\$3,000) the action for collection may still be brought, but the amount of damages may not exceed the jurisdiction of small claims. A civil action may also be filed in the District Court within the jurisdiction limit of \$25,000 in damages.

Finally, merchants are advised that criminal prosecution initiated before or during the course of this civil action will result in a dismissal of the civil action. If criminal charges are brought after a civil judgment is awarded to the merchant, then the judgment is void and any money paid must be returned to the defendant check writer.

Lee F. Fisher
Prosecuting Attorney

CHECKS THAT WILL NOT BE PROSECUTED

1. **Third Party Checks:** If a two party check has not been made payable to cash, to your business, or to you, it cannot be prosecuted.
2. **Partial Payment Checks:** If you have accepted partial payment from the check writer, the check is considered a civil matter.
3. **Out of State Checks:** Out of state checks drawn on an out of state bank will generally not be prosecuted.
4. **Checks \$ 50.00 and Under:** NSF and account closed checks in amounts \$50.00 and under will generally not be prosecuted unless a series of them is received that total over the required minimum.
5. **“Post Dated “and “Request to Hold” Checks:** When a check is post-dated or you agree to hold a check, this check becomes a “promissory note” and cannot be prosecuted.
6. **Stop Payment Checks:** Checks that have had a stop payment placed on them will generally not be prosecuted.
7. **Down Payment Deposit Checks:** Checks that have been written to hold property or goods (i.e.: down payment, rent deposit, or escrow deposit) will not be prosecuted.
8. **Installment or Repayment Plan”:** Checks that are written for repayment of an existing loan will not be prosecuted.
9. **Rent Payment:** Checks accepted for the payment of rent will not be prosecuted.
10. **Checks held for more than 60 days:** An NSF check or Account Closed check held for more than 60 days, except in unusual circumstances, will not be prosecuted.
11. **Payroll Checks:** If a payroll check is NSF, account closed, or stop payment, contact the Department of Labor to investigate. Should the payroll check be returned as forged, contact your local law enforcement agency to investigate.
12. **Five Day Notice Return Receipt:** Merchant must mail notice of dishonor to the check maker and provide the mailing receipt to investigating police agency.
13. **Civil Process:** Checks turned over to small claims court or collection agency will not be criminally prosecuted.
14. **Checks for Past and Future Consideration:** Checks in payment of past consideration will not be prosecuted unless new consideration is given in reliance on the bad check presented. Similarly a check for future consideration not yet extended will not be prosecuted.

If you have any questions, contact the Prosecutor’s Office

**OTTAWA COUNTY PROSECUTING ATTORNEY
NON-SUFFICIENT FUND CHECK/NO ACCOUNT CHECK
MERCHANT INFORMATION FORM**

TO BE FILLED OUT BY MERCHANT / COMPLAINANT:

1. MERCHANT/COMPLAINANT:

NAME: _____

ADDRESS: _____

TELEPHONE: _____

2. SUSPECT:

NAME: _____

ADDRESS: _____

TELEPHONE: _____

3. BANK DRAWN ON: _____

ACCOUNT # _____

PAYEE: _____

PAYOR: _____

AMOUNT: _____

DATE: _____

(If cashed different date, give date and explain)

Check was presented in payment for _____

NOTE: Original check is to be turned over to the police department when the warrant request is submitted.

4. Person who cashed check:

NAME: _____

TITLE: _____

HOME ADDRESS: _____

HOME PHONE: _____

5. Person who approved - if applicable:

NAME: _____

TITLE: _____

HOME ADDRESS: _____

HOME PHONE: _____

CAN HE/SHE IDENTIFY SUSPECT? _____ YES _____ NO
WAS CHECK MADE OUT IN HIS/HER PRESENCE? _____ YES _____ NO **OVER**

6. Identification: List all means of identification shown by suspect, and all license numbers, etc. taken from such identification if any had a picture.

7. Date check was returned: _____

8. Date 5-day notice was mailed: _____
(Registered or certified mail, return receipt requested)

9. Date "return Receipt" received: _____
Signed by: _____

NOTE: Signed receipt is to be turned over to police department when warrant request is submitted.

10. 5 Day Notice Returned as "Undeliverable" _____ Yes _____ No
If "yes", was forwarding address requested ? _____ Yes _____ No
If not, request a forwarding address.
If one is supplied, a 5-day notice must be mailed to the forwarding address.

11. Person mailing notice:

NAME: _____

TITLE: _____

HOME ADDRESS: _____

HOME PHONE: _____

12. Describe any contact you have had with suspect regarding check.

13. Person submitting warrant request:

NAME: _____

TITLE: _____

DATE: _____

If date of request is more than 60 days after date 5-day notice was returned, explain delay:

POLICE USE ONLY: Complaint # _____ File Class _____
Disposition: _____

NOTICE TO SENDER: THIS NOTICE MUST BE SENT BY CERTIFIED MAIL.
RETURN RECEIPT REQUESTED.
DELIVERABLE TO ADDRESSEE ONLY.
(To the person who made the check)
FORWARDING ADDRESS MUST BE REQUESTED.

DATED: _____

TO

BAD CHECK NOTICE

This is to inform you that I am in receipt of a check alleged to have been written by you.

DATED	MADE PAYABLE TO	NAME OF BANK	AMOUNT

This check was exchanged for cash, and / or goods, and / or services, in the usual course of business, and was returned from the above bank marked:

_____ INSUFFICIENT FUNDS _____ ACCOUNT CLOSED

In accordance with Michigan Compiled Law 750.132 you are hereby given five (5) days notice that said check has not been paid, and if you shall not have paid the amount due thereon within five (5) days of receipt of this Notice, this shall serve as evidence of intent to defraud in a criminal prosecution.

SIGNED _____

FORM PROVIDED BY:
Lee F. Fisher
Prosecuting Attorney
414 Washington Street
Grand Haven, MI 49417
(616) 846-8215

_____ STREET ADDRESS

CITY STATE ZIP CODE

DEBTORS COPY