



SOUTH LAKE MINNETONKA POLICE DEPARTMENT

BAD CHECK PACKET

Minnesota State Statute 609.535 - Issuance of Dishonored Checks

M.S. 609.535 states in part:

“Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of a Misdemeanor.”

There are, however, several elements which are required in order to effectively prosecute the issuance of a dishonored check. This packet contains information and forms which will have to be completed in order for an investigation of an alleged bad check to proceed. If all the elements are met an investigation will proceed. Please read the attached information and forms carefully before completing them.

If you have any questions regarding the investigation and prosecution of a bad check, please contact the Investigation Unit of the South Lake Minnetonka Police Department at 952-474-3261 during office hours.

**THE FOLLOWING ELEMENTS ARE REQUIRED TO EFFECTIVELY PROSECUTE THE
ISSUANCE OF A DISHONORED CHECK**

1. Information about the drawer recorded on the face of the check:
 - A. Name
 - B. Home or work address
 - C. Home or work telephone number
 - D. A valid Driver's License or Minnesota Identification Number

2. The person receiving the check compares the drawer's physical appearance, signature and the personal information recorded on the check with the drawer's identification card, as described in (D) above, and initials the check to indicate compliance with these requirements.

3. The check must meet the following requirements:
 - A. It must have been given in exchange for goods or services received at the time the check was written.
 - B. It must not have been post-dated when it was written.
 - C. It must not have been held by the payee at the request of the drawer.
 - D. It must not have been a payment of account.
 - E. It must not be returned as a result of a stop-payment order.
 - F. It must have been presented twice for payment and returned by the bank.
 - G. The check(s) must be over \$200.00 (\$100.00 for Greenwood), excluding forgeries.

4. The holder of the check must have sent a notice of demand for dishonored check to the drawer at the address on the check by certified mail, returned receipt requested or by regular mail with an Affidavit of Service by mail.

5. The holder of the check must have waited five days from the day of mailing the notice without receiving payment. The holder should then give the original check and the certified mail return receipt or Affidavit of Service to the law enforcement officer.

6. It is also recommended that the holder generate a detailed account of any and all contacts made, such as the time, date, and what was said between the holder and the issuer of the dishonored check. This can be done on the attached First Person Statement forms.



SOUTH LAKE MINNETONKA POLICE DEPARTMENT CHECK INFORMATION REPORT

VICTIM INFORMATION

Name of business: _____

Person Reporting: _____ DOB: _____
(Last) (First) (Middle)

Home Address: _____ Phone: _____

City/State/Zip: _____ Bus. Phone: _____

Name of person accepting check: _____ DOB: _____
(Last) (First) (Middle)

Address: _____ Phone: _____

City/State/Zip: _____

PLEASE COMPLETE FOR N.S.F. AND ACCOUNT CLOSED CHECKS:

1. Amount of check \$ _____ 2. Date written: _____

3. Was proper identification checked? Yes _____ No _____
(Minnesota photo driver's license or photo identification card) **If answer is No, we cannot accept the check for investigation.**

4. Driver's License number of person writing check: _____

Name and DOB: _____
(Last) (First) (Middle) (DOB)

5. Did person accepting check initial the check? Yes _____ No _____

6. What property or service was obtained with the check?

7. Date "Demand for Payment" was sent to check passer: _____
(This must be sent by Certified Mail, return receipt. No action will be taken until 15 days have elapsed since delivery.) Attach copy of demand for payment that was sent.

PLEASE COMPLETE FOR FORGED CHECKS:

**** IMPORTANT - DO NOT TOUCH THE CHECK ****

(Handle the check as little as possible. Place it in an envelope or clear plastic bag if possible)

1. Is affidavit of forgery signed? Yes _____ No _____
2. What property or service was obtained?

3. Have the person who accepted the check view it **immediately**. Try to get a description of the person who passed the check.

Suspect's Description:

NOTICE AND DEMAND FOR PAYMENT OF DISHONORED CHECK

You are hereby notified that Check
number _____ dated _____ . 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 with reference to checks, and demand is hereby made for the payment of the above-mentioned check within 5 business days after mailing of this notice, in accordance with this law. If this check is not paid in full within 5 business days after mailing of this notice, the drawee will be authorized to release information relating to this account to the payee or holder of the check and may also release this information to law enforcement or prosecuting authorities. The payee or holder of the check (or other order for payment of money) may commence a conciliation court action in the county where the worthless check was issued to recover the amount of the check.

Extracts from Minnesota Statutes relating to the issuance of a Check Without Sufficient Funds and the Penalty

604.113 - Civil Liability For Issuance of Worthless Check

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

"Credit" means an arrangement or understanding with the drawee for the payment of the check.

"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.

"Payee" or "holder" includes an agent of the payee or holder.

Subdivision 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.

© 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 issuer'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

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)(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 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.

©) 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.

AFFIDAVIT OF SERVICE BY MAIL

_____, being first sworn, deposes and says that
on _____, (s)he served the attached Demand for Payment of
Dishonored Check form upon _____. By placing a true and correct copy
thereof in an envelope addressed as follows:

Name
Address
City, State Zip

which is (the last known address of said individual) (the address printed on the check) and depositing same,
with postage prepaid in the United States Mail at _____ Minnesota.

Location of Post Office

(Signature)

This area for Notary Public

Subscribed and sworn to before me this _____ day of _____.

Notary Public, _____ County, Minnesota.

My commission expires _____