

EUREKA POLICE DEPARTMENT



HANDBOOK FOR BAD CHECKS

MICHAEL A. WIEGAND
CHIEF OF POLICE

636-938-6600

Dear Neighbor:

Bad checks are bad for business, bad for the economy and consequently bad for our community. Bad checks cost Eureka merchants many thousands of dollars each year. A loss to a community merchant is a loss to the entire community.

Prosecution of a bad check offender is like any other prosecution -- it's a deterrent. For the "amateur", being arrested, finger-printed and prosecuted may be shock enough to cure him forever of his bad habits. For the "professional", we want to send a clear message -- don't do it in Eureka or you'll be sorry.

Successful Prosecution of a bad check requires cooperation. If you want our help, give us your help. What might seem like a cumbersome procedure initially will become routine. Certain information is essential. With your help, we can dramatically reduce losses.

The services of this office cost you nothing!

My staff is here to serve you. Rely on their advice and expertise. Working together, we can solve this problem.

Thank you for your support and cooperation.

Sincerely,

Michael A. Wiegand
Chief Of Police

If you receive a check which is not honored because the writer lacked sufficient funds or credit in the drawee account to pay the check or because the writer did not have an account with the institution the check was drawn on, the law of Missouri in Section 570.120, R.S.Mo., provides you with choices of remedies.

CIVIL ACTIONS

If you choose not to pursue your civil remedy, it **may** be possible to prosecute the writer of a check returned for insufficient funds, a closed account, or no account for violating Section 570.123, R.S.Mo.

CRIMINAL PROSECUTION

Here is how you would commence criminal prosecution:

1. If the check was returned to you because the writer had no account or because the account was closed, take the check to the Eureka Police Department. Ask the department to take a report, investigate, develop evidence, and, if a case can be proved, apply for a warrant for arrest of the writer at the Prosecuting Attorney's Office. (Realize that if the check was returned "account closed" and there is not evidence to prove beyond a reasonable doubt that the writer knew the account was closed, the check will have to be treated as an insufficient funds check.)
2. If the check was returned to you because of insufficient funds, you should send a Ten Day Letter demanding that the writer make payment within ten days or face prosecution. The Eureka Police Department provides Ten Day Letter forms as a service to our businesses.
3. If you do not receive payment within ten days, you should immediately take the original check and your copy of the ten day notice to the Eureka Police Department (*banks only keep records for 45 days*) and ask them to take a report, investigate, develop evidence, and - if a case can be proved - apply for a warrant for arrest of the writer at the Prosecuting Attorney's Office.

BE CAREFUL

Because of legal technicalities, the prosecutor is not able to prosecute for:

- A. Third party checks
- B. Undated or otherwise incomplete checks
- C. Checks for which you have agreed to accept or have accepted partial payment
- D. Checks marked "Refer to Maker" or "Uncollected Funds"

It is not possible to prosecute writers of checks drawn on banks located in states other than Missouri.

For your own good, please:

1. **Do not** accept checks written on banks outside Missouri.
2. **Do not** accept undated, post-dated, or incomplete checks.
3. **Do not** agree to hold checks for a period of time before negotiating them.
4. **Do not** accept third party checks.
5. **Do** require the person presenting the check to show current identification which includes a photograph of the person presenting the check to the person receiving it and write the drivers license number on the face of the check.
6. **Do** compare the photograph to the person to be sure they match.
7. **Do** require that the current address and telephone number of the person presenting the check appear on the check.
8. **Do** require person accepting the check to initial it.
9. **Do** use the "Thumb print Positive Identification System." Starter kits available at the Eureka Police Department free of charge.

Thank you for your cooperation.



EUREKA POLICE DEPARTMENT

CHECK PROCEDURES

Phone: 636-938-6600

Fax: 636-938-6602



TYPES OF MISDEMEANOR CHECKS

1. INSUFFICIENT FUNDS UNDER \$500
2. STOP PAYMENT UNDER \$500

MISDEMEANOR CHECK PROCEDURES

In misdemeanor check cases, the Eureka Police officer will:

1. Seize the check and ten day notice and have a City complaint signed for each check.
2. Write a police report and identify the suspect.
3. Statute of limitations on misdemeanors is one year from the date the check was received.

TYPES OF FELONY CHECKS

1. **ACCOUNT CLOSED** - Determine that the account was closed prior to the date on the check.
2. **INSUFFICIENT FUNDS \$500 AND OVER** - Determine that the account was insufficient on the date the check was written. Two or more insufficient funds checks written by the same person, within the City of Eureka, within a ten day period, which total \$500 or more, are considered a felony offense.
3. **NO ACCOUNT** - If the account has been closed for several years, the bank may mark the check "no account." Write the report as account closed. If the check is counterfeit, then write the report as a forgery.
4. **FORGERY**
5. **STOP PAYMENT \$500 AND OVER**

FELONY CHECK PROCEDURES

In felony check cases, the Eureka Police officer will:

1. Seize original check and ten day letter(s) as evidence and seize any work orders, contracts, invoices, or shipping statements as evidence. (Please keep a copy of these documents for your records.)
2. Package all evidence seized and forward it to the evidence custodian.
3. Contact the bank to determine the status of the account on the date the check was passed. If the bank refuses to provide information, the officer will write a report as stamped on the face of the check, (i.e., account closed, insufficient, etc.) and include statements of the witnesses in the narrative.
4. Statute of limitations on felony checks is three years from the date the check was received.
5. In the cases of fraudulently stopping payment on a check copy of certified or registered mail receipt showing date ten (10) day notice was mailed to issuer of check per state Missouri State Statute 570.125.

STATE OF MISSOURI	COMPLAINT	CASE NUMBER
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IN THE CIRCUIT COURT OF **ST. LOUIS** COUNTY, **MUNICIPAL** DIVISION

CITY OF EUREKA VS.	(PLAINTIFF) DEFENDANT'S ADDRESS:
 (DEFENDANT)	ORDINANCE VIOLATION(S) CHARGED:

COURT ADDRESS:
 Eureka Municipal Court
 120 City Hall Drive
 Eureka, MO 63025

COMES NOW _____ AND BEING DULY SWORN ON OATH COMPLAINS THAT ON OR ABOUT THE _____ DAY OF _____, 20____, WITHIN THE JURISDICTION OF THIS COURT THE ABOVE NAMED DEFENDANT DID THEN AND THERE UNLAWFULLY:

IN VIOLATION OF THE ORDINANCE(S) STATED ABOVE

 COMPLAINANT

SUBSCRIBED AND SWORN TO ME ON THIS DATE.

 DATED

 CLERK/NOTARY PUBLIC

TEN DAY NOTICE FORM

DATE MAILED _____

CHECK WRITERS INFORMATION (Individual who signed check)

LAST NAME	FIRST NAME	MIDDLE NAME	
STREET	CITY	STATE	ZIP

A complaint has been made to the Eureka Police Department by _____
(Business or Personal Name)

who holds _____ bad check(s) signed by you as follows:
(quantity)

DATE CHECK WRITTEN	AMOUNT OF CHECK

The check(s) was/were drawn on _____ and returned marked
(Name of Bank)
_____ (ie: insufficient funds / account closed / stop payment). The purpose of this

notice is to give you an opportunity within TEN DAYS of this notice to arrange with the **aforsaid person/business** to make this check good. **DO NOT SEND CASH OR MONEY ORDER TO THE EUREKA POLICE DEPARTMENT.** If arrangements are not made, upon further complaint, a warrant will be issued and prosecution proceedings instituted without further notice to you.

Eureka Police Department

Victim note to begin prosecution: Supply one copy of this document to the Eureka Police Department along with a signed complaint, bad check information form, and the original bad check after ten days has elapsed from the time this notice was mailed. You can contact the Eureka Police Department by telephone at 636-938-6600 to have a report made.

Here is how the law reads:

Missouri Revised Statutes

1. Chapter 570 Stealing and Related Offenses Section 570.120

August 28, 2005

Crime of passing bad checks, penalty--actual notice given, when--administrative handling costs, amount, deposit in fund--use of fund--additional costs, amount--payroll checks, action, when--service charge may be collected--return of bad check to depositor by financial institution must be on condition that issuer is identifiable.

570.120. 1. A person commits the crime of passing a bad check when:

(1) With purpose to defraud, the person makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee; or

(2) The person makes, issues, or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that there are insufficient funds in or on deposit with that account for the payment of such check, sight order, or other form of presentment involving the transmission of account information in full and all other checks, sight orders, or other forms of presentment involving the transmission of account information upon such funds then outstanding, or that there is no such account or no drawee and fails to pay the check or sight order or other form of presentment involving the transmission of account information within ten days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

2. As used in subdivision (2) of subsection 1 of this section, "actual notice in writing" means notice of the nonpayment which is actually received by the defendant. Such notice may include the service of summons or warrant upon the defendant for the initiation of the prosecution of the check or checks which are the subject matter of the prosecution if the summons or warrant contains information of the ten-day period during which the instrument may be paid and that payment of the instrument within such ten-day period will result in dismissal of the charges. The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept.

3. The face amounts of any bad checks passed pursuant to one course of conduct within any ten-day period may be aggregated in determining the grade of the offense.

4. Passing bad checks is a class A misdemeanor, unless:

(1) The face amount of the check or sight order or the aggregated amounts is five hundred dollars or more; or

(2) The issuer had no account with the drawee or if there was no such drawee at the time the check or order was issued, in which cases passing bad checks is a class C felony.

5. (1) In addition to all other costs and fees allowed by law, each prosecuting attorney or circuit attorney who takes any action pursuant to the provisions of this section shall collect from the issuer in such action an administrative handling

cost. The cost shall be twenty-five dollars for checks of less than one hundred dollars, and fifty dollars for checks of one hundred dollars but less than two hundred fifty dollars. For checks of two hundred fifty dollars or more an additional fee of ten percent of the face amount shall be assessed, with a maximum fee for administrative handling costs not to exceed seventy-five dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, RSMo, the costs provided for in this subsection shall be deposited by the county treasurer into a separate interest-bearing fund to be expended by the prosecuting attorney or circuit attorney. The funds shall be expended, upon warrants issued by the prosecuting attorney or circuit attorney directing the treasurer to issue checks thereon, only for purposes related to that previously authorized in this section. Any revenues that are not required for the purposes of this section may be placed in the general revenue fund of the county or city not within a county. Notwithstanding any law to the contrary, in addition to the administrative handling cost, the prosecuting attorney or circuit attorney shall collect an additional cost of five dollars per check for deposit to the Missouri office of prosecution services fund established in subsection 2 of section 56.765, RSMo. All moneys collected pursuant to this section which are payable to the Missouri office of prosecution services fund shall be transmitted at least monthly by the county treasurer to the director of revenue who shall deposit the amount collected pursuant to the credit of the Missouri office of prosecution services fund under the procedure established pursuant to subsection 2 of section 56.765, RSMo.

(2) The moneys deposited in the fund may be used by the prosecuting or circuit attorney for office supplies, postage, books, training, office equipment, capital outlay, expenses of trial and witness preparation, additional employees for the staff of the prosecuting or circuit attorney, employees' salaries, and for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that office.

(3) This fund may be audited by the state auditor's office or the appropriate auditing agency.

(4) If the moneys collected and deposited into this fund are not totally expended annually, then the unexpended balance shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year.

6. Notwithstanding any other provision of law to the contrary:

(1) In addition to the administrative handling costs provided for in subsection 5 of this section, the prosecuting attorney or circuit attorney may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, which along with the face amount of the check, shall be turned over to the party to whom the bad check was issued;

(2) If a check that is dishonored or returned unpaid by a financial institution is not referred to the prosecuting attorney or circuit attorney for any action pursuant to the provisions of this section, the party to whom the check was issued, or his or her agent or assignee, or a holder, may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, not to exceed twenty-five dollars, plus an amount equal to the actual charge by the depository institution for the return of each unpaid or dishonored instrument.

7. When any financial institution returns a dishonored check to the person who deposited such check, it shall be in substantially the same physical condition as when deposited, or in such condition as to provide the person who deposited the check the information required to identify the person who wrote the check.

(L. 1977 S.B. 60, A.L. 1989 S.B. 310, A.L. 1992 S.B. 705, A.L. 1993 S.B. 180, A.L. 2001 H.B. 80, A.L. 2002 H.B. 1888, A.L. 2005 H.B. 353)

CROSS REFERENCE: Taxes paid with bad checks, penalty, RSMo 139.235

Missouri Revised Statutes

1. Chapter 570 Stealing and Related Offenses Section 570.123

August 28, 2005

Civil action for damages for passing bad checks, only original holder may bring action-- limitations--notice requirements--payroll checks, action to be against employer.

570.123. In addition to all other penalties provided by law, any person who makes, utters, draws, or delivers any check, draft, or order for the payment of money upon any bank, savings and loan association, credit union, or other depository, financial institution, person, firm, or corporation which is not honored because of lack of funds or credit to pay or because of not having an account with the drawee and who fails to pay the amount for which such check, draft, or order was made in cash to the holder within thirty days after notice and a written demand for payment, deposited as certified or registered mail in the United States mail, or by regular mail, supported by an affidavit of service by mailing, notice deemed conclusive three days following the date the affidavit is executed, and addressed to the maker and to the endorser, if any, of the check, draft, or order at each of their addresses as it appears on the check, draft, or order or to the last known address, shall, in addition to the face amount owing upon such check, draft, or order, be liable to the holder for three times the face amount owed or one hundred dollars, whichever is greater, plus reasonable attorney fees incurred in bringing an action pursuant to this section. Only the original holder, whether the holder is a person, bank, savings and loan association, credit union, or other depository, financial institution, firm or corporation, may bring an action pursuant to this section. No original holder shall bring an action pursuant to this section if the original holder has been paid the face amount of the check and costs recovered by the prosecuting attorney or circuit attorney pursuant to subsection 6 of section 570.120. If the issuer of the check has paid the face amount of the check and costs pursuant to subsection 6 of section 570.120, such payment shall be an affirmative defense to any action brought pursuant to this section. The original holder shall elect to bring an action pursuant to this section or section 570.120, but may not bring an action pursuant to both sections. In no event shall the damages allowed pursuant to this section exceed five hundred dollars, exclusive of reasonable attorney fees. In situations involving payroll checks, the damages allowed pursuant to this section shall only be assessed against the employer who issued the payroll check and not against the employee to whom the payroll check was issued. The provisions of sections 408.140 and 408.233, RSMo, to the contrary notwithstanding, a lender may bring an action pursuant to this section. The provisions of this section will not apply in cases where there exists a bona fide dispute over the quality of goods sold or services rendered.

(L. 1985 S.B. 264 § 2, A.L. 1989 S.B. 310, A.L. 1993 S.B. 180, A.L. 2002 H.B. 1888, A.L. 2005 S.B. 420 & 344)

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Missouri Revised Statutes

1. Chapter 570 Stealing and Related Offenses Section 570.125

August 28, 2005

Fraudulently stopping payment on an instrument, penalties.

570.125. 1. A person commits the crime of "fraudulently stopping payment of an instrument" if he, knowingly, with the purpose to defraud, stops payment on a check or draft given in payment for the receipt of goods or services.

2. Fraudulently stopping payment of an instrument is a class A misdemeanor, unless the face amount of the check or draft is five hundred dollars or more or, if the stopping of payment of more than one check or draft is involved in the same course of conduct, the aggregate amount is five hundred dollars or more, in which case the offense is a class D felony.

3. It shall be prima facie evidence of a violation of this section if a person stops payment on a check or draft and fails to make good the check or draft, or return or make and comply with reasonable arrangements to return the property for which the check or draft was given in the same or substantially the same condition as when received within ten days after notice in writing from the payee that the check or draft has not been paid because of a stop payment order by the issuer to the drawee.

4. "Notice in writing" means notice deposited as certified or registered mail in the United States mail and addressed to the issuer at his address as it appears on the dishonored check or draft or to his last known address. The notice shall contain a statement that failure to make good the check or draft within ten days of receipt of the notice may subject the issuer to criminal prosecution.

(L. 1983 S.B. 75, A.L. 1985 S.B. 264, A.L. 2002 H.B. 1888)

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