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Chief Daniel J. Coulombe

Dear Merchant,

Enclosed is a packet to assist your business with cases of negotiating bad checks. The Hermiston Police Department is a community police department, here to assist the citizens of Hermiston. We will take a report and forward the report to the city prosecutor and/or the Umatilla County District Attorney's Office. Both those entities may request the court issue a warrant for the arrest of the person cashing the check.

To ensure successful prosecution of your check cases, please take a few minutes and read the enclosed packet. This information will assist us in finding and prosecuting the person who by writing a bad check, has failed to fulfill their role as a responsible citizen to our community.

Thank you for your assistance.

Sincerely,

Hermiston Police Department

**PROPOSED
BAD CHECK
INVESTIGATION
GUIDELINES**

INTRODUCTION

These guidelines were put together with the cooperation of the Umatilla County District Attorney's Office and local police agencies. It is to be used as a guideline in case preparation for possible prosecutions involving N.S.F. checks and closed account checks for Umatilla County.

Documents included here should be reproduced to give to businesses to educate them on what is expected of them by the local police agencies and the Umatilla County District Attorney's Office before a case will be submitted for prosecution.

Information in the following pages may at times be referred to as a "policy" or a "rule" which means in most cases these items will need to be complied with. However, nothing can be written that can address all possible circumstances, so good judgement must prevail.

Included in this document are sample documents which may be reproduced and supplied to businesses in your area. They may duplicate the documents or use them as a model to create their own letters or forms.

Polices of the Umatilla County District Attorney

The following types of checks will NOT be considered for prosecution:

1. A check for less than \$100.00
If a series of checks are being written by a person or group, or a previous and persistent abuser is involved, a check for less than \$100.00 may be submitted for prosecution.
2. A check on a corporate account.
3. A two-party check.
4. A check that has been post-dated.
5. An out-of-state check for under \$500.00.
6. A check which was uttered as payment on a loan to an institution.
7. A check which is accepted with a promise to hold.
8. Partial payment has been accepted by the victim.
9. A check which is subject to a civil controversy.
10. A check which was not presented for payment within 30 days.
11. Victim did not ask for and record ID - or cannot identify the suspect.

*Please note: Before this office will consider charges, the police report must include a copy of the check(s), a copy of the 10-day demand letter, a copy of the receipt showing that the letter was either delivered or returned, and the suspect's bank records (which are obtained by the police agency).

Dear Merchant:

In these documents you will find the minimum requirements which must be met before an investigation will be done on a bad check. These requirements have been compiled by the local police agencies and the Umatilla County District Attorney's Office in an effort to more efficiently and successfully prosecute persons who pass bad checks. As you are aware, you have the choice of submitting bad checks cases through the criminal justice system, or seeking restitution through the civil process. The enclosed documents have information on both processes. No matter which method you may choose to pursue, your polices for accepting and documenting these transactions will greatly reduce your susceptibility to victimization and enhance your ability for restitution.

You, as a merchant, can determine the quality of each bad check case. The standards you maintain within your organization determine whether or not a case is prosecutable. As explained in the enclosed policy, it is not beneficial to you or the police agencies to spend time on cases when the person accepting the check cannot identify the suspect. The employee must either check photo ID or otherwise know the suspect, and make note of that fact on the document at the time of the transaction. We MUST have a witness to the transaction available to testify at the time of trial.

Please review these polices carefully. We recommend that you examine your in-house check-cashing policy, make any modifications necessary and train your people to take the necessary steps to meet these minimum criteria. We want to assist you in stopping bad check writers, but we need your assistance to build solid cases. If, through your policies, you obtain the proper information in which to base an investigation, we will do all in our power to assure a successful prosecution.

These guidelines are not intended to be construed as legal advice—please contact a private attorney if any questions arise.

POLICY & PROCEDURE FOR MERCHANTS
regarding the investigation of
DISHONORED CHECKS

In recent years, dishonored check cases have continued to be costly and time consuming for many businesses and for your local police agencies. This policy concerning check investigations has been developed with consideration of the requirements of the Oregon Revised Statutes, the Umatilla County District Attorney's Office and the investigative sources of you local police agencies.

POLICY

The following requirements must be satisfied before a police investigation will be initiated in any check case:

1. Identification. The person accepting the check must either know the check writer or verify the suspect's identity with photo ID and document the ID number on the face of the check.
2. Witness availability. The person accepting the check must be available as a witness and be able to testify that the photo ID used at the time of the transaction matched the person who presented the check.
3. The check cannot be any of the following:
 - a. A check for less than \$100.00
If a series of checks are being written by a person or group, or a previous and persistent abuser is involved, a check for less than \$100.00 may be submitted for prosecution.
 - b. A check on a corporate account.
 - c. A two-party check.
 - d. A check that has been post-dated.
 - e. An out-of-state check for under \$500.00
 - f. A check which was uttered as payment on a loan to an institution.
 - g. A check which is accepted with a promise to hold.
 - h. Partial payment has been accepted by the victim.
 - i. A check which is subject to civil controversy.
 - j. A check which was not presented for payment within 30 days.
 - k. Victim did not ask for and record ID-or cannot identify the suspect.

PROCEDURE

- A. When you, the merchant, receive a check back from the bank with an NSF or ACCOUNT CLOSED advice notice, immediately prepare a demand letter (see sample copy) to be sent to the passer by certified or registered mail (signature and return receipt required). The law requires that the passer be given ten days in which to make the check good from the time passer was notified by you that the bank refused to honor the check.
- B. Keep the post office receipt, a copy of the demand letter and the original check. All documents will need to be submitted to the investigating agency if an investigation is initiated.
- C. If the passer has not made restitution on the check within ten days, after receiving your demand letter, complete a Dishonored Check Report form (see attached sample) and then call the police. Generally, checks not received by the police within 60 days of the date written, will NOT be accepted for investigation. The police agency cannot investigate a bad check case unless the merchant has followed all steps in this procedure.
- D. When an agency received your Dishonored Check Report, cases will be screened according to the above criteria. Determination will be made either to assign the case for criminal investigation, or to return the check to the victim for civil remedy.
- E. At the conclusion of our investigation, the case will be presented to the prosecutor's office for evaluation. If the suspect subsequently pleads not guilty, a trial will be held. The person accepting the check must be prepared to state that the accused was the person who passed the check. They must also be able to testify that he/she accepted the check (by recognizing his/her initials or employee number on the check), and that they checked the passer's identification at the time of the transaction.
- F. If the accused is found guilty of Negotiating a Bad Check, the judge may impose a sentence of up to 365 days in jail, and/or a \$5000.00 fine, and/or restitution to you. Most often, those found guilty of Negotiating a Bad Check for the first time will be required to reimburse the merchant, pay a fine and be placed on probation. Subsequent violations would probably result in more severe penalties.

- G. To file a check case that meets the above criteria, telephone the appropriate police agency. When filing the report, complete the Dishonored Check Report, submit the original bad check a copy of your demand letter, the certified mail return receipt and any related materials to the agency.

DISHONORED CHECK REPORT:

IMPORTANT: Management. Please show any dishonored checks to the employee that received it immediately upon its return from the bank and fill out this form completely. Once the ten-day waiting period after sending demand notice has passed, submit this form, the Post Office receipt, a copy of the demand letter and the original check to the appropriate police agency.

Today's Date: _____

(2) DOCUMENT INFORMATION:

Reason check not honored. (Circle one)

NSF

ACCOUNT CLOSED

FORGED

_____ \$ _____
Date/time check accepted by merchant Check # Face value of check

To your knowledge is this the check part of a series totaling more than
\$100.00? Yes No

(3) VICTIM:

NAME DOB (if an individual)

ADDRESS PHONE

ADDRESS WHERE SUSPECT PRESENTED CHECK IF DIFFERENT
THAN ABOVE.

(4) PERSON REPORTING:

NAME DOB

ADDRESS PHONE

POSITION WITH BUSINESS ACCEPTING DISHONORED CHECK

(5) PERSON ACCEPTING CHECK:

NAME

DOB

ADDRESS

PHONE

POSITION WITH BUSINESS ACCEPTING DISHONORED CHECK

- A. Can acceptor identify check? Yes () No ()
B. Can acceptor identify suspect? Yes () No ()
C. Was suspect previously know to acceptor? Yes () No ()
D. Did the acceptor observe the check being filled out? Yes () No ()
Entire document? () Part of document? () Signature ()

CASE#

OFFICER

CIVIL REMEDY

The following Oregon Revised Statute gives merchants a method of collecting on bad checks in lieu of criminal proceedings. This is not intended to be construed as legal advice.

ORS: 30.700 Procedure to Recover damages on dishonored checks.

(1) In any action against a person who makes any check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the same, or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages in the amount equal to \$100.00 or triple the amount of the check, draft, or order is drawn, whichever is greater. However, damages recovered under this section shall not exceed by more than \$500.00 the amount of the check, draft or order and may be awarded only if the plaintiff made written demand of the defendant for payment of the amount of the check, draft or order not less than 30 days before commencing the action and if the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded.

(2) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check and the incurred court and service costs.

(3) If the court or the jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages. However, if the court or jury waives all or part of the statutory damages, the court or jury shall render judgment against the defendant in the amount of the dishonored check plus incurred court and service costs.