

CITIZENS AND BUSINESSES OF ST. CHARLES COUNTY:

The St. Charles County Prosecuting Attorney's Office Bad Check Unit assists citizens in the collection and prosecution of bad checks given to them in St. Charles County. Since its creation in December, 1989, our Unit has prosecuted thousands of bad checks cases and collected approximately nine million dollars in restitution.

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

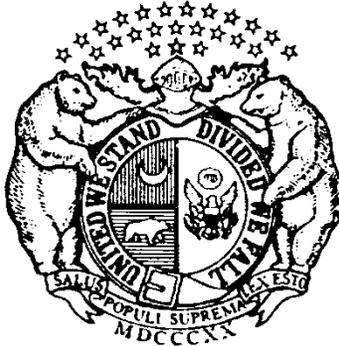
The Bad Check Unit serves anyone who received a bad check in St. Charles County. Once your bank returns a check and you have been unsuccessful in collecting from the issuer, you may send your bad check to our office. Follow the guidelines set out in this booklet, and please share this information with your employees and co-workers. Further, please make sure each check submitted to our office is accompanied by a fully completed PROBABLE CAUSE STATEMENT / CHECK INFORMATION SHEET.

The services of St. Charles County Prosecuting Attorney's Office in collecting and prosecuting bad checks are free to you, the victim of a bad check. The issuers of bad checks, not you, will pay any administrative costs as set out by Missouri law.

Sincerely,

Tim Lohmar
Prosecuting Attorney

ST. CHARLES COUNTY PROSECUTING ATTORNEY



MERCHANTS HANDBOOK FOR BAD CHECKS

**Tim Lohmar
St. Charles County Prosecuting Attorney**

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WHEN YOU TAKE A CHECK

1. LOOK AT THE CHECK

Try to determine if the check is from a new account. Some checks are printed with a coded number by the address printed on the check or just above the signature line. This determines how old the account is. For example, the numbers 984 mean the account was opened in September of 1984. This can help you, because the check writer can make a request to begin the new account with a higher number.

Check the printed name and address. Do not take counter checks without an address or "starter checks" or new account checks without precautions.

Check the date the check was written. We cannot prosecute postdated checks (a check dated several days later). If you accept a postdated check, it is at your own risk.

Check if the check writer has altered any words or numerals on the check. Look for different colored ink, or any other suspicious differences.

2. COMPARE THE CHECK AND THE PERSON WRITING THE CHECK WITH A VALID DRIVER'S LICENSE

Look at the picture.

Compare the signatures.

Make sure the driver's license address is the same as printed on the checks. If the addresses do not match, verify and record the correct address.

Make sure the driver's license current and valid. Do not accept an expired license as valid identification.

3. OBTAIN THE DRIVER'S LICENSE NUMBER AND THE PERSON'S DATE OF BIRTH

The St. Charles County Prosecuting Attorney's Office requires these before criminal charges can be filed. If you know your customer well, you may not normally take this information, but remember we cannot help you without this information. You and your employees should initial the check so that the person accepting the check can be identified for court testimony.

The driver's license is your primary source of identification. Record the date of birth as printed on the license.

We recommend that you record this information on the front of the check. The bank usually stamps the back of the checks during processing, making essential information illegible.

While these two pieces of identification are the minimum required by our office, the more information you can obtain the better for you and for us in trying to find the check writer. Other helpful information is the check writer's place of employment. Asking to see a major credit card will not help us file criminal charges, but it may assure you of their financial resources and that the person is who they say they are.

We recommend not accepting or cashing checks from people who live out of state. Extradition from other states is an extremely expensive and difficult process.

WHAT TO DO IF THE BANK HAS RETURNED A CHECK TO YOU

If you receive a check that 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 570.123, RSMo., provides you with a choice of remedies, civil or criminal.

CIVIL ACTION FOR MONEY

If you choose to pursue your civil remedy, you would take these steps:

1. By certified or registered mail, send notice that the check did not clear and a written demand for payment within 30 days to the maker of the check and to any endorser of the check at the address appearing on the check or to the last known address of each person. Keep a copy of the letter, the stub from the certified or registered mail form, and the green postcard if it is returned to you.
2. If you do not receive payment within 30 days, file suit. You can represent yourself in small claims court if the amount of money you seek is not greater than \$1,500.00.
3. In addition to the face amount of the check you can ask for a penalty of three times the face amount of the check, but not less than \$100.00 and not more than \$500.00. You can also ask for attorney fees incurred in bringing the action if you have an attorney.
4. When you have obtained a judgment, you will have to collect it if the writer does not pay it voluntarily.

CRIMINAL PROSECUTION

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 570.120 RSMo. Here is how you would commence criminal prosecution:

1. PLEASE FILL OUT A CHECK INFORMATION SHEET.

If you do not have all the information requested, our ability to help you collect this check is limited to sending a warning letter to the check writer. We urge you to change your procedures so we can help you on future checks you might receive.

2. THE BAD CHECK UNIT STAFF WILL TAKE PHYSICAL POSSESSION OF THE CHECK.

3. OUR OFFICE WILL SEND 10 DAY LETTER AND A FINAL WARNING LETTER TO THE CHECK WRITER, WARNING THAT WE INTEND TO PROSECUTE IF THEY DO NOT IMMEDIATELY PAY OFF THE CHECK.

Missouri law requires this notice to the check writer be sent from our office before we can prosecute the check. More importantly, it often leads to the check being paid off immediately.

An envelope will be enclosed so that the offender can mail in their restitution to our office. We will only accept a cashier's check or a money order. In addition to the full value of the check, the check writer must send an administrative handling fee for the Prosecuting Attorney's Office. According to Missouri Section 570.120 RSMo., our office, in addition to the face amount of the check, can collect a reasonable service charge for you. An additional \$25.00 will be added per check.

If the offender contacts you and wants to pay the check, you must refer them to the Bad Check Unit of the Prosecuting Attorney's Office. If you accept the payment, you will become responsible for the check writer's administrative handling fee. **DO NOT ACCEPT A PARTIAL PAYMENT ON THE FACE VALUE OF THE CHECK.** This will end all collection efforts on your behalf. Accepting partial payment means that you have agreed to let the check writer pay off the debt in several payments, or accept less than the full amount owed. We cannot file criminal charges if you have accepted partial payment.

To retrieve the check, the offender must come to our office and pay the check completely, including an administrative fee for our office.

If the check is paid, we will send you the cashier's check or money order by mail as soon as possible.

4. AFTER ABOUT FOUR WEEKS, IF THE CHECK IS NOT MADE GOOD, THE CASE WILL BE REVIEWED FOR CRIMINAL PROSECUTION.

If you have not received payment from us within four weeks, the prosecuting attorney will evaluate the case and determine if criminal charges can be filed.

Only an Assistant St. Charles County Prosecuting Attorney can determine whether the evidence is sufficient to file criminal charges. Although we may have sent a letter on your behalf, that does not mean criminal charges can be filed with the court. Only a prosecutor can make this decision.

You will be notified through the mail, whether or not the filing of criminal charges is appropriate. If we are not able to file a criminal charge the check will be returned to you with a letter explaining why.

BECAUSE OF LEGAL TECHNICALITIES, WE MAY NOT PROSECUTE:

- postdated checks;
- checks that you agreed to hold;
- checks for which you agreed to accept or have accepted partial payment;
- third-party checks;
- payroll checks;
- out-of-state checks;
- checks with a face value less than \$40.00
- offenders who cannot be sufficiently identified in a court of law; or
- checks stamped refer to maker or uncollected funds.

Were you told when you accepted the check that it was not good, but would be good later? If so, the check cannot be prosecuted in criminal court.

5. If criminal charges are to be filed, you must provide us with sufficient information to correctly identify this individual. Thus, we need a driver's license number and a date of birth (for use in the law enforcement computer system). A physical description, any known aliases, and the most recent address or workplace is also helpful. The more information you give us, the better chance the Sheriff will have of finding the check writer to arrest him or her.

6. IF YOUR TESTIMONY IS REQUIRED, WE WILL NOTIFY YOU OF THE TIME AND PLACE.

A great majority of cases end in guilty pleas without testimony required from witnesses.

In instances where a habitual offender or a professional fraud artist is involved, our prosecutors may seek a jail/prison sentence. If the prosecutor seeks incarceration as an appropriate punishment, and the judge sentences the defendant to jail/prison time, then restitution will probably not be collected by our office.

Please remember that the prosecutor and the judge reserve the discretion to decide how the case is best concluded.

STOP PAYMENT CHECKS

Stop payment checks are governed by Section 570.125 RSMo., a different statute from the one governing insufficient funds, account closed, and no account checks. Sometimes it is a crime to stop payment on a check. Sometimes it is not. The issue is whether or not the person stopping payment did so with the intent to defraud. If there is a dispute over the quality of goods or services, proving intent to defraud is often impossible. If you receive a stop payment check, you can submit the check to this office; however keep in mind that filing a criminal charge may not be possible. Before submitting a stop payment check to our office, you must send the check writer a certified letter regarding the check being returned. [SAMPLE LETTER.](#)