

## **WORTHLESS CHECK POLICY**

### **WINONA COUNTY SHERIFF'S DEPARTMENT**

#### **IF CERTIFIED MAIL IS ACCEPTED BY MAKER OF THE CHECK**

1. Wait five (5) working days from date shown on receipt signed by maker of check.
2. If not paid in five (5) working days, then bring to the Winona County Sheriffs Department (Law Enforcement Center, 201 W. Third St., Winona, MN 55987):
  - A. Original check
  - B. Copy of notice sent
  - C. Signed receipt for certified mail
  - D. Statement from person accepting check

#### **IF CERTIFIED MAIL IS NOT ACCEPTED BY MAKER OF THE CHECK**

Bring to the Winona County Sheriffs Department:

- A. Original check
- B. Copy of notice sent
- C. Unopened returned certified letter
- D. Statement from person accepting check

#### **IF THE NOTICE IS SENT BY REGULAR MAIL SUPPORTED BY AFFIDAVIT OF SERVICE BY MAIL**

1. Wait five (5) working days from date on which notice was sent to maker of the check.
2. If not paid in five (5) working days, then bring to the Winona Sheriffs Department:
  - A. Original check
  - B. Copy of notice sent
  - C. Affidavit of service by mailing
  - D. Statement of person accepting the check

\*\*\* A copy of Minnesota Statutes Section 609.535 must be sent to the writer of the check along with the notice of nonpayment or dishonor. A copy of that statute is attached.\*\*\*

## DISHONORED CHECK

Check was accepted and/or okayed by: Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Employed at: \_\_\_\_\_

Work Address: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Date check was accepted: \_\_\_\_\_ Check was accepted for: \_\_\_\_\_

Date of Check: \_\_\_\_\_ Amount of check \$ \_\_\_\_\_ Cash returned \_\_\_\_\_

Check was written by: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Check was received IN PERSON/BY MAIL. Check WAS/WAS NOT written in my presence.

Writer of check was notified of dishonored check by:  
CERTIFIED MAIL with RETURN RECEIPT / REGULAR MAIL with AFFADAVIT  
OF SERVICE

Driver's License #: \_\_\_\_\_ State: \_\_\_\_\_

Description of writer of check (Required if no Driver's License #): M/F Race:

Date of Birth: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Hair: \_\_\_\_\_ Eyes: \_\_\_\_\_

Miscellaneous Information: \_\_\_\_\_

Vehicle Make: \_\_\_\_\_ Vehicle Color: \_\_\_\_\_ License Plate: \_\_\_\_\_

**I CAN IDENTIFY ON SIGHT THE WRITER OF THE CHECK AND AM WILLING TO TESTIFY IN COURT IF NECESSARY.**

\_\_\_\_\_  
(Signature of person accepting/okaying check)

COMPLAINT WILL BE SIGNED BY: \_\_\_\_\_

(Manager or owner of business)



NOTICE AND DEMAND FOR PAYMENT OF DISHONORED CHECK

TO: \_\_\_\_\_

You are hereby notified that a check(s) dated \_\_\_\_\_, 20\_\_\_\_, drawn on \_\_\_\_\_ Bank of \_\_\_\_\_ bearing the signature of \_\_\_\_\_ and payable to the order of \_\_\_\_\_

has/have been returned with the notation that payment was refused because of \_\_\_\_\_

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Demand is hereby made for full and immediate payment of the check(s) described herein above.

You are further notified that issuance of dishonored checks of not more than \$250 is a misdemeanor pursuant to Minnesota Statutes Section 609.535. A misdemeanor is a crime for which a jail sentence of up to 90 days or a fine of not more than \$700, or both, may be imposed. Issuance of dishonored checks of more than \$250 but not more than \$500 is a gross misdemeanor pursuant to Minnesota Statutes Section 609.535. A gross misdemeanor is a crime for which a jail sentence of up to one year or a fine of up to \$3,000, or both, may be imposed. Issuance of dishonored checks of more than \$500 is a felony pursuant to Minnesota Statutes Section 609.535. A felony is a crime for which a jail sentence of not more than five years or a fine of not more than \$10,000, or both, may be imposed.

You are further notified that you are civilly liable for the issuance of a dishonored check(s) pursuant to Minnesota Statutes Section 332.50. Civil liability pursuant to said statute may include required restitution for the face amount of the check(s), plus a civil penalty of up to \$100 per check, plus interest at the rate payable on judgments pursuant to Minnesota Statutes Section 549.09

of the face amount of said check(s) from the date of dishonor, plus reasonable attorney's fees if the amount of the check exceeds the sum of \$1,250, plus a service charge of \$15 or the actual cost of collection, not to exceed \$30, or terms or conditions for imposing the charges which have been agreed to by the parties to an express contract.

You are finally notified that if the check(s) described herein above is/are not *paid in full within five business days after the mailing of this notice*, the above-named drawee will be authorized to release information to the payee or holder of the check(s) relating to your accounts and the drawee may also release said information to law enforcement or prosecuting authorities.

YOU WILL RECEIVE NO FURTHER NOTICE OR DEMAND FOR PAYMENT. DO NOT IGNORE THIS NOTICE. Payment as demanded herein must be sent to (Name) \_\_\_\_\_ at (Address) \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Company: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

## 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 \$700, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is not more than \$250.

(c) 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 art 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.

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 subdivision 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.

(c) 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.

HIST: 1963c 753 art1 s609.535; 1967 c466 s 1; 1971 c 23 s 56; 1974c 106 s 1,2; 1981 c 202 s 1; 1981 c 247 s 1-3; 1983c225 s 10; 1984c 436s34; 1985c 140s3; 1986c444; 1988c527s2,3; 1991 c 256 s 11-13; 1992c 569s 26; 1999 c 218s3