

HOT CHECKS

The Prosecuting Attorney Prosecutes Hot-Check Writers



**Benton County
Prosecuting Attorney's Office**

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A. PROCEDURE FOR TAKING A CHECK:

It is important that you or your company establish a set policy for all employees to follow when accepting all checks. It is vital that you stress to your employees the importance of this policy. If your company has a set policy for all customers then no one customer should have any reason to feel that they are being treated unfairly. It is a good idea to have a checklist for all cashiers so that they may follow it. It should include the following:

1. IS THE CHECK DATED TODAY?

Checks must be dated the same day they are given. Post dated checks cannot normally be prosecuted under Hot Check Statutes.

2. RECORD THE I.D. THAT IS BEING USED.

Record on the check the type of I.D. and I.D. numbers as well as the initials of the clerk taking the check. This information should be printed on the front of the check and it should be legible.

3. DO WRITTEN AMOUNTS & NUMBERS CORRESPOND?

Banks will not honor checks with discrepancies.

4. CAN YOU CONFIRM THE IDENTITY OF THE CHECK WRITER?

Every kind of I.D. can be forged. The most reliable I.D.'s are those that show a physical description with photos, etc. If you are suspicious, ask the check writer to hand you the license and while it is in your hand, ask his/her address, social security number and/or birth date. If it is not his/her license, he/she may be caught off guard and give the wrong information.

5. IS THE ADDRESS ON THE CHECK COMPLETE?

Require a permanent street address - not a P.O. Box number. This facilitates collection and prosecution of the check if that becomes necessary.

6. IS THE SIGNATURE LEGIBLE?

Do NOT accept checks previously signed. Make sure all checks are signed in your presence. In the case of company checks, it is vital that the signature is legible. If not, ask the individual what his/her name is and note that on the check. Ideally, all signatures should be compared with the signature on a valid Arkansas driver's license.

7. BANK LOCATION

Is the check drawn on an out-of-state bank? If so, this may have an effect on any collections and prosecution efforts.

B. CLUES FOR DETECTING BAD CHECKS:

Check the finish on the black magnetic computer numbers on the bottom. Magnetic ink is very dull and never shiny. These checks are generally drawn on recently opened accounts. Train your employees to look for low numbered checks. Look for at least one perforated edge. All checks, except government or computer produced checks, should have a perforated edge.

C. TYPES OF IDENTIFICATION:

As mentioned earlier all forms of I.D. can be forged. Types of identifications that can be used include:

- Driver's Licenses - In Arkansas, driver's licenses contain photographs of the individuals. Instruct your employees to compare photos with the check writer's real appearance. Hair color and weight can always change but one's sex and race are generally easy to determine.
- Age, which can be determined from the birth date, can also be checked.
- Credit Cards - Major credit card companies have policies against giving out any information about their customers. Therefore, be cautious about using these credit cards as a form of I.D. Ask for local credit cards. Local companies are much more willing to give helpful information.
- Arkansas State I.D. Cards - Arkansas State I.D. Cards also contain photographs but are easily attainable. They should never be relied upon as the sole means of identification of a check writer.

D. PROCEDURE WHEN A CHECK IS RETURNED:

There are certain procedures you must follow before this office will accept a Hot Check for collection and /or prosecution. The check must be presented to the bank for payment, even if you know it will be dishonored. It must be stamped by the bank as to the reason for rejection.

E. PROCEDURE WHEN A CHECK IS SUBMITTED TO THE PROSECUTING ATTORNEY'S HOT CHECK DEPARTMENT:

You may request the Prosecuting Attorney, under Arkansas Code Ann. 5-37-302, to criminally prosecute the writers of insufficient fund or close account checks. You begin the prosecution by bringing or mailing the unpaid check along with a completed affidavit for warrant for arrest to:

PROSECUTING ATTORNEY'S OFFICE
ATTN: HOT CHECK DEPARTMENT
100 N.E. "A" STREET
BENTONVILLE, AR 72712
TELEPHONE (501) 271-1030

We begin prosecution by mailing a notice to the check writer that a check was returned unpaid by their bank. The drawer or maker of the check is directed to make payment of the check amount, your merchant fee and the Prosecutor's processing fee directly to the Prosecuting Attorney within ten days from the mailing of the notice. If the check writer makes restitution within the ten days, we stop the criminal prosecution. If the check writer attempts to make payment to you, you are asked to direct him/her to this office.

If after ten days we have not received full payment and you have provided our office with all information needed for prosecution, we will send your check to the appropriate court for a warrant.

1. FELONY CHECKS:

If the check is a felony (amount of \$200.00 or aggregated over \$200.00) A warrant will then be issued for the arrest of the maker or drawer of the check. You may be requested to testify at a preliminary hearing and again at the trial of the case in Circuit Court.

2. MISDEMEANOR CHECKS:

If the check is for less than \$200.00, the offense will be a misdemeanor, and the warrant will be issued from the appropriate municipal court.

3. NON-PROSECUTABLE CHECKS:

At times this office discovers that a check writer is not able to be prosecuted after we have sent the required notification letter. Once we positively determine that a check is not prosecutable, we will take no further action if the check writer does not make restitution. Possible non-prosecutable checks are:

1. Checks that do not show payee, date, amount and signature.
2. Checks that are postdated when accepted.
3. Checks that are asked to be held when accepted.
4. Checks outside of the Statutes of Limitations.
(12 months — misdemeanor)
(3 years — felony)
5. Two-party checks.
6. Checks where the identification of the check writer cannot be made.
7. Checks where a stop payment order has been filed.
8. Checks suspected as being forgeries.
9. Checks not written or passed in Benton or Carroll Counties.
10. Checks that are altered.

Please refer to our brochure on Civil Hot Check Collection if your check is not prosecutable under these statutes.

NOTE

Some of the above checks may be prosecutable under other Statutes, i.e. forgeries, fraud, fraudulent stop payments, fraudulent contracting schemes, etc. Please contact the appropriate law enforcement agency and file a report if you feel another statute may apply.