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Dear Merchant:

Every merchant who accepts checks has been forced to deal with the problem of "bad checks." While often times a "bounced" or bad check may be the result of poor bookkeeping or carelessness on the part of the purchaser, unfortunately, it can be the result of an intent to defraud by a purchaser who knows their account is closed or that it has insufficient funds. The purchaser in the latter scenario is committing the criminal offense of Deceptive Practices.

In order to combat the problem, the State's Attorney's Office is distributing the following guidelines so that merchants can work with our office in discouraging the bad check writers before they strike and prosecuting those who insist on writing bad checks. Please review the guidelines closely, as they are crucial to a successful prosecution.

Private Collection Efforts

When a check is returned by the bank, please make reasonable collection efforts yourself. We suggest that you send a registered letter to the maker of the check informing them that the check was returned by their bank and remains unpaid. A copy of the letter should be retained by you in the event criminal prosecution is pursued.

When private collection fails, ***bring the check to the State's Attorney's Office.***

Criminal Prosecution by the State's Attorney's Office

Upon receipt of a bad check, it is the State's Attorney's duty to review the matter and decide, based on the sufficiency of the evidence, if a criminal complaint should be filed. Please note that a simple failure to pay a bad check will **not** support a criminal charge. Our office must be able to prove: 1) an intent to defraud, (i.e. that the writer of the check knew that the check would not be paid); 2) the identity of the person who signed and presented the check; and 3) that the subject matter of the purchase is property, labor or service and has been documented as such. If the State's Attorney's Office determines that any of these elements cannot be established, criminal charges cannot be proven.

To enable us to evaluate the case, the attached form (the "Bad Check Information Sheet"), must be completed for each check you present to our office. Without going into

every detail on the form, the following items are of particular importance and consistently where most problems occur:

A. Identity of the writer of the check

One of the greatest difficulties in deceptive practices prosecution is assuring that someone from the merchant's business can identify who signed and delivered the check and what goods or services they received. In many instances, it is very difficult, if not impossible, for an employee to remember the specifics of a particular transaction, especially in large businesses where an employee may accept dozens of checks in a single day. However, there is a procedure which should enable an employee to identify the check writer in court.

1. The employee accepting the check should ask to see the check writer's driver's license, and should carefully compare the photo on the license with the person presenting the check;

2. The employee should carefully, in their own handwriting, copy the driver's license number onto the check and place their initials next to the number. This will establish that an actual comparison of face and photo was made. A preprinted driver's license number on the check will not suffice, an actual comparison must be made;

3. The employee should also obtain from the check writer his social security number and write that on the check in similar fashion as described for the driver's license number above.

B. Intent to Defraud

Insufficient funds: In order to help establish an intent to defraud, insufficient fund checks must be presented to the bank twice and marked by the bank "presented twice." The second presentation must be at least 7 days after the first.

Closed account: Closed account checks need only presented once to aid in establishing an intent to defraud.

C. Current Address

To ensure the ability of the State's Attorney's Office to obtain a current address, as well as establish identity, it is imperative that a driver's license or social security number be recorded when the check is accepted by the merchant.

D. Person receiving the Bad Check

The merchant or merchant's agent who accepted the bad check must be identified on the "Bad Check Information Sheet" since he or she would have to testify to the transaction if the matter would proceed to trial.

If a criminal conviction is secured, we will ask the Court to order restitution as part of the defendant's sentence. However, if a conviction cannot be secured, we cannot guarantee any type of restitution. Our goal is to reduce this type of criminal activity through strict enforcement and prosecution and to assist businesses and individuals in obtaining restitution. Your cooperation is greatly appreciated. Feel free to contact us should you have any questions.

Very truly yours,

Randy A. Yedinak
Ford County State's Attorney

BAD CHECK INFORMATION SHEET

Note: Please attach the returned check to this sheet.

1. ***Describe the Returned Check***

Name of the drawer of the check: _____
Address: _____
Date of check: _____
Name of the Bank on which drawn: _____
Service charge by the Bank: _____

2. ***Describe Business that Accepted the Check***

Name of business: _____
Address: _____
Owner of business: _____
Telephone number: _____ Incorporated? _____

3. ***Describe the Transaction***

Date check was received: _____
Name of employee who received the check: _____
Employee's address: _____
Employee's phone number: _____
What was purchased with the check? _____
Did the employee know the person who wrote the check? _____
Can the employee identify the check writer? _____ If so, how? _____
Please describe the method of identification the employee used: _____
_____
(If a driver's license or identification used, did the employee look at the person and photo, and write the DL/ID # in their own handwriting?)
Driver's license number: _____
Other identification: (SS#; DL#, etc) _____
Did the drawer sign the check in the presence of the employee? _____
Did the drawer of the check ask that the check be held? _____ If so, until when? _____
Was the check post-dated? _____

4. ***Describe Collection Efforts***

Reason for bank refusal:
NSF (must be presented twice and stamped, at least 7 days apart): _____
Closed account: _____
Has the check writer been informed by certified letter?: _____
(Please attach a copy of the certified letter to this form, along with the signed return receipt or undelivered envelope)
Has the drawer contacted the receiver/business (or vice versa) regarding the check, other than via certified mail as described above? _____ If so, please provide details as to any such contacts, including who was involved, when and any statements made by the drawer. _____
_____
(Continue on the back if more room needed)
Have you filed a civil suit to collect? _____ If so, date of filing: _____ Case number: _____
County: _____ outcome of case _____
Attorney/name/address/phone (If you used an attorney): _____

If a criminal complaint is filed, I will cooperate with the State's Attorney's Office and pursue the charge to the fullest without regard to restitution. I realize that the State's Attorney's Office is ***not*** a collection agency.

Date: _____ _____
Signature of Manager

Date: _____ _____
Signature of employee who received the check