



# TROY POLICE DEPARTMENT

MERCHANTS' GUIDE – BAD CHECKS

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Millions of dollars are lost annually through the passing of bad checks in Oakland County. The complaints for such fraudulent transactions now mount in the thousands. The Troy Police Department is mindful of the magnitude of this problem and its seriousness to the business community and individual citizens who have been financially harmed.

Because the problem is so large, the Troy Police Department, the Oakland County Prosecutor's Office, and the courts cannot possibly nor practically issue warrants on every bad check. Therefore, we publish this policy as a guideline for those who would seek our assistance.

There are general principles on which we must agree. First, the private citizen or business that receives a bad check must take initial preventive measures to protect themselves and limit their exposure to harm as much as possible. Second, if the private citizen or business involved is reckless in accepting checks and has not attempted to live within policy guidelines, no assistance from this agency can be expected. Third, the Troy Police Department is in the business of bringing criminals to justice. Our primary purpose is to investigate and prosecute individuals for crimes committed (such as passing bad checks) and we cannot or will not act as a collection agency for private citizens or businesses concerned only with restitution. We do not act as a collection agency. Once a warrant has been issued, we intend to prosecute.

*Note: Any private citizen or business attempting to use our Department for collection; that is, any complainant that accepts restitution during the prosecution process without the knowledge and consent of the Troy Police Department and the Oakland County Prosecutor's Office will not receive the support of this Department on any future check complaints.*

The guidelines enumerated in the following pages are not intended to make it tough on the individual or business owner in Troy. On the contrary, they are intended to make it tough on the would-be bad check writer and to make it possible for our Department to act at some later date to successfully investigate and prosecute the complaint.

## **WHAT IS A "BAD CHECK" FOR WHICH A WARRANT CAN BE OBTAINED?**

1. Stolen, forged, counterfeit and/or altered checks, money orders, withdrawal slips, etc., which constitute the offense of Uttering and Publishing (14 year felony charge).



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2. Checks returned from the bank marked “Unable to Locate Account,” “No Account,” or “Account Closed” (2 year felony charge).
3. Checks returned due to insufficient funds in the account (1 year felony if over \$200, 90 day misdemeanor if under \$200).

## **SOME BAD CHECKS ARE NOT CRIMINALLY PROSECUTABLE**

1. The following situations where bad checks have been passed but do not constitute a crime need to be pursued in the CIVIL COURTS
2. A check issued for payment of labor. Complaints of this nature should be directed to:  
  
Michigan Department of Labor and Economic Growth  
611 West Ottawa  
P. O. Box 30004  
Lansing, Michigan 48909  
517-373-1820 (telephone)  
517-373-2129 (fax)
3. A check for rent.
  - A. Bad checks in payment of the first month’s rent constitute the offense of Obtaining the Use of a Facility Under False Pretenses.
  - B. Bad checks in payment of subsequent month’s rent are strictly civil matters.
4. A check for services.
  - A. Bad checks in payment for services constitute the offense of Obtaining Services Under False Pretenses.
5. A stop-payment check.
6. *Note: In situations 1 through 4 above, if money or material is exchanged for the check, this constitutes “present consideration” and the matter then becomes a criminal offense under different statutes.*
7. A check issued to repay a loan.
8. A check issued to pay a gambling dept.



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9. A post-dated check or one bearing a current date but the tender requests the recipient to hold until a later date.
10. A second party check; a check passed on to and cashed by a second party who is not the payee.
11. A check issued in partial payment of an automobile in which case the seller retains the title.
12. If the check was accepted outside the City of Troy, e.g., if a delivery is made in Southfield and the driver accepts the check there, then you must pursue your complaint in that jurisdiction.

## **HOW TO OBTAIN A WARRANT TO PROSECUTE A BAD CHECK INCIDENT**

The following sections set forth a MANDATORY procedure that must be followed before a complaint can be accepted and investigated in a bad check incident.

### **1. IDENTIFICATION OF THE PASSER**

- A. **Identification**: Proper identification of the person passing the check is made when the check is presented. The following procedure should be followed on any checks accepted at your establishment as well as by any persons accepting checks for you outside your physical business location.
  1. **Michigan Driver's License Number**: A Michigan Driver's License Number **MUST** be written on the check. Do not accept a check just because the license number is printed on the check. Do not circle the license number. The Michigan Driver's License Number must be written on the check by the person who is accepting the check. Ask for other identification if the person does not have a Michigan Driver's License.
  2. **Date of Birth**: The person who is accepting the check must obtain the date of birth of the person passing the check and write that date on the face of the check.
  3. **Race and Sex**: The person's race and sex may be written on the check. If you write this on the check, you must enter the race and sex on all checks you accept. This is an option,



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however, the information will assist law enforcement in identifying the person who passed the bad check. We hope you will support us in this request. If you are uncertain of the race and sex, omit the information.

- a. W = white
- b. B = black
- c. H = Hispanic
- d. O = Oriental

- 4. Compare Photograph with Person: The person accepting the check **MUST** compare the photograph on the operator's license with the person passing the check. The person and the photograph must appear to be the same.
  - 5. Signature on License and Check: The signature **MUST** be compared between the operator's license and the check. They must appear to be the same. Remember, the space on the license is smaller than on the check, and the signature will not appear to be exact.
  - 6. Initials or Employee Number: The sales associate who accepts a check **MUST** initial or write their employee number on the check. Even though the machine may print the employee's identification, the initials will identify that employee as the one who accepted the check. This must be done even if the person taking the check knows the person who is passing the check.
- B. Two Pieces of Identification: Two pieces of identification are always the best. A Michigan Driver's License (not an "application") is always the best source of primary identification due to the built-in safeguards against the reproduction of false identification.
- C. Poor Identification: There are three types of identification that have very little value.
- 1. Michigan Identification Card: The Michigan Identification Card is a very poor type of identification. The only proof required to obtain a Michigan ID card is a birth certificate. Many people who pass bad or stolen checks use this as identification. While both the Michigan Driver's License and the Michigan Identification Card are very similar in



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appearance, the Michigan Driver's License uses 12 numbers and the ID card uses 10 numbers. These two items are often confused, but they are clearly marked.

2. Social Security Card: The Federal Government will not release the name of the person who has been assigned a Social Security Number. As people who pass bad or stolen checks often have more than one Social Security Number assigned to them, this is of little value.
  3. Driver's License Application: These forms are legitimately issued if someone has lost their original Driver's License, has moved to Michigan from another state and applied for a Michigan Driver's License, or has just learned how to drive. There have been a great number of counterfeit Michigan Driver's License Application forms used to pass bad checks.
- D. Thumbprint: Using a "thumbprint kit" is the best means to determine who passed the check (and to deter bad and stolen check passers). The written identification should still be obtained; however, the thumbprint will remove ANY doubt about the identity of the check passer and the Automated Fingerprint Identification System (A.F.I.S.) can be used to identify persons using false identification.
1. The cost per check is 6 cents or less depending on the quantity purchased.
  2. Reports indicate that losses from bad checks can be reduced up to 80% using the thumbprint method.
  3. The use of the thumbprint system can return its cost on the collection of one check.
- E. Other Identification: Major credit cards with the same name as the person passing the check is a good second type of identification. Employee photo identification from a local company is acceptable, but bad check passers have created counterfeit or fictitious identification of this type and used it successfully. If you do not know what a company identification card should look like, be very careful in accepting it. Good common sense and experience are the best tools for anyone who accepts checks. If you are not sure



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that the person who is passing the check has proper or valid identification, do not accept the check.

- F. Law Enforcement Investigation: The Troy Police Department may refuse to investigate your complaint if you have not obtained the proper identification and information when the check was presented. The request for a warrant without the proper identification information written on the check may be refused unless the person who accepted the check personally knows the check passer and can supply all the information required to issue the warrant.

## 2. TYPES OF CHECKS

- A. “Caution” Checks: You may accept this type of check; however, the success of the investigation, apprehension, and prosecution is reduced. Be sure you are satisfied with the answers the check passer gives you.
1. Different Address: The address on the operator’s license should be the same as on the check. If the address is not the same, obtain more identification or information until YOU are satisfied you have the correct address. If the proper address cannot be established or you are not satisfied, do not take the check.
  2. P. O. Box Address: If the address on the check or license is a post office box, take caution. The Post Office cannot give an address on a box number. Establish the proper address or do not take the check.
  3. Location of Bank: The best chance to recover a bad check is when it is written on a local bank that is a reasonable distance from Troy. Use good common sense in all instances.
  4. Person Presenting Check Did Not Sign Check: This may occur when one spouse writes the check and the other spouse presents the check. Have the person passing the check sign under the first signer and obtain proper identification.



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- B. “At Your Own Risk” Checks: The checks under this category will probably not be eligible for investigation or prosecution. Therefore, be sure you can afford to lose the amount the check is written for if it is returned to you.
1. Postdated Checks: Should you agree to accept a postdated check, it is a “promissory note” and cannot be prosecuted as a bad check if it is returned.
  2. Request to Hold Check: If you agree to hold a check when the check passer asks you to, this is a “promissory note” and cannot be prosecuted as a bad check if it is returned.
  3. Two-Party Checks: The check must be made payable to cash, your business name, or yourself. A two-party check cannot be prosecuted as a bad check if it is returned.
  4. Out-of-State Checks: Checks written on an out-of-state bank will not be accepted for investigation or prosecution. It is too difficult and expensive to have an agent from an out-of-state bank appear in a Michigan court. The other major problem is locating the check passer.
- C. Cautions: Experience is the best teacher on knowing what type of checks to avoid. The following list should raise questions on the check you may accept. Not all checks that have the following problems may be bad, but use care when accepting them.
1. Check Numbers: Studies have indicated that 80% of bad checks are starter accounts and checks with numbers under 300. However, the bad check passer will use the last book of checks from a shipment in order to obtain higher numbers.
  2. Telephone Numbers: Another study showed that 80% of people who pass bad checks do not have a telephone or it is unlisted. Check the name of the person passing the check in the phone book to determine if they have a listed telephone number. Unfortunately, many bad check passers have people waiting to answer some telephone numbers. Use common sense.
  3. Tampered or Altered Checks: Numbers can be changed to represent an amount different from which the check was



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written. Request a new check. Do not accept the check presented if it appears altered in any way.

4. Account Opening Date: Checks will have an opening date printed on them if the accounts were opened in 1985 or later as provided by Michigan law. Accounts with a date of less than six months and/or numbers of less than 300 should be carefully examined. Also, compare the account opening date and the check number to see if a person could logically write that number of checks within the period since the account was opened. Bad check passers frequently start with the last packet of checks they received after opening a new account.
  5. Payroll Checks: Payroll checks that are returned as NSF, Account Closed, or Stop Payment will be investigated by the Michigan Department of Labor and Economic Growth. Checks that are returned as forged will be investigated by law enforcement. Payroll checks are the most common type of stolen check.
  6. Government Checks: Federal and state checks are often stolen from the mail system. Know your passer.
- D. Contact: Call the Troy Police Department Criminal Investigations Section at 248-524-3453 with any questions you have concerning the above information.

### 3. RETURNED CHECKS

- A. Types of Returned Checks: There are three types of checks which may be prosecutable if they are returned. These listed below along with a list of procedures that you must follow and complete before the Troy Police Department will take a report.
  1. Non-Sufficient Funds (NSF) Check
    - a. A NSF check should be presented twice to the bank. Many checks will clear the second time they are presented.
    - b. If the check is returned a second time:



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- i. Make an attempt to contact the check passer by telephone and demand payment.
  - ii. Make a written record of dates and times that you attempted contact and written notes of the results.
  - iii. Keep these records for your reference and the police report.
  - iv. Send either the “Five-Day Notice” form or a letter containing the text of the five-day notice to the check passer. This must be sent by certified mail, returned receipt requested. This receipt must be kept and presented at the time you make your report to the Troy Police Department. If the check passer refuses to accept the notice or does not pick it Post Office, the five-day notice will be returned to you. Keep the five-day notice and envelope as documentation that a delivery attempt was made.
2. Account Closed Check
  - a. Do not send the check back to the bank.
  - b. Use the same procedure as the NSF checks, beginning with step (b).
3. Forged Check
  - a. If you receive a forged check, follow this procedure exactly:
    - i. To preserve fingerprint evidence, do not handle the check or permit anyone to examine or touch the check.
    - ii. Immediately place the check in an envelope, touching only the very edge.
    - iii. Turn the check over to the investigating officer.



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## 4. Stop Payment Check

- a. A stop payment check is generally considered a civil matter unless you are able to demonstrate that a fraud has been perpetrated.

## B. Records

1. Keep good records on everything you do to collect a bad check.
2. One person should send all notices and letters, and make telephone and personal contacts.
3. The person who investigates the check complaints for your business will be required to testify in Court.

## 4. **FIVE-DAY NOTICE (STATUTORY CERTIFIED NOTICE)**

- A. Five-Day Notice: The five-day notice (FDN) is required to be sent to the person who passed the bad check. Form available at: <http://www.checkprogram.com/oaklandcountymi/notice.htm>

1. Send FDN by certified mail, return receipt requested, deliverable to “addressee only” (the person who wrote the check).

- B. When to Mail FDN: When the check has been returned to you from the bank, do at least one of the following:

1. Mail the FDN to the check passer when the check is returned to you a second time.
2. Attempt some type of contact, then mail the FDN.
3. Allow five working days to repay the check once contact has been made. If not paid by then, mail the FDN.
4. DO NOT wait longer than ten working days after the check has been returned from the bank to mail the FDN. The longer you wait, the less chance you will have to recover your loss.



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## 5. CHECK RECOVERY

- A. Types of Collection: There are three ways to attempt recovery of your loss if your contacts and letters have been unsuccessful.
- B. You CANNOT use the civil court or a collection agency, and then use the criminal justice system.
  1. Civil Court: The dollar amount of the check will be a factor in determining how to handle your court action.
    - a. Determine if you will require the assistance of a private attorney.
    - b. Determine the court in which you will file your complaint: Circuit Court, District Court, or Small Claims Court.
    - c. Follow all instructions supplied by the court or your attorney.
    - d. You will be required to follow the check identification process and the FDN procedure even in a civil court action.
  2. Collection Agency: A collection agency will attempt to recover your check for a fee. Make certain the person or company you hire is licensed by the State of Michigan.
  3. Criminal Justice System: There is no cost to use the criminal justice system, only rules. Keep in mind that the prime responsibility of the criminal justice system is to prosecute the person who violates the check laws. The issuance of a warrant for the arrest of the check passer is no guarantee of loss recovery.

## 6. CRIMINAL JUSTICE SYSTEM

- A. Law Enforcement Policy: The following steps should be completed before requesting assistance from the Troy Police Department.



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1. Check Identification: Be certain you have all information as required by this document.
  2. Check Passer Contact: You should make an attempt to collect on your check.
  3. Five-Day Notice: If a FDN has not been mailed, the report will not be accepted.
  4. Bad Check Information Form: The Troy Police Department and Oakland County Prosecutor's Office forms are located at the end of this document.
  5. Certified Mail Return Receipt Card: This is your confirmation that the FDN was mailed and will indicate if the letter was accepted or rejected.
- B. Law Enforcement Contact: After you have completed steps 1 through 5 and restitution has not been made, bring the following items to the Troy Police Department to file a report:
1. Check
  2. Five day notice
  3. Certified mail return receipt card or addressed envelope (if delivery not accepted by addressee)
  4. Troy Police Department/Prosecutor's Work Sheet
  5. Oakland County Prosecutor's Office Bad Check Crime Report

## 7. TROY POLICE DEPARTMENT POLICIES

### A. Check Policies

1. Partial Payment: Do not accept any partial payment on the check. Once you accept any money, it becomes a civil court action and cannot be prosecuted.



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2. Refuse to Prosecute: After a warrant has been issued and the business refuses to prosecute or accept restitution, no more warrants will be issued on behalf of that business.
3. Checks Held Longer Than Four (4) Months: Any check held longer than four (4) months may not be considered for prosecution. This time limit could be waived on a case-by-case basis.
4. Business Account Checks: Business account checks will be handled on a case-by-case basis.
5. Checks Received by Mail: No complains will be taken on checks received through the mail or not presented in person. The Prosecutor's Office will not issue warrants in these instances due to lack of identification of the passer.
6. NSF Checks under \$50: These checks can be handled through Small Claims Court which has a \$1,500 limit. Civil Court judges under law are able to award the dollar amount of the check plus double the damage award of \$50 with a maximum award of \$500.

### B. Check Investigation

1. The Troy Police Department will investigate your complaint.