

BILLINGS POLICE DEPARTMENT BAD CHECK POLICY

The following information should be read carefully and shared with each employee in your business. This information is provided as our effort to reduce the number of bad checks within the city limits of Billings, MT. Remember that prevention is your best protection.

PREVENTION/PROTECTION

1) Obtain accurate information:

- a) Full name, street address, phone number.
- b) Driver's license number and/or date of birth
- c) See a valid driver's license or a picture ID.
- d) Witness the signing of the check and write your initials on the check

NOTE: The Billings Police Department cannot obtain arrest warrants from the courts unless the check writer's birth date and/or driver's license/social security number are on the check issued.

2) Never accept:

- a) Post-dated checks
- b) Two-party checks
- c) Checks not signed in your presence
- d) Checks to be held until later
- e) Checks given as restitution for bad checks
- f) C.O.D's

3) Use Caution when accepting the following:

- a) Out of state checks
- b) Checks having no or low digits
- c) Counter checks
- d) Checks in excess of the amount of purchase

PROSECUTION AND STEPS TO FOLLOW:

- 1) The City and County Attorney's Office cannot prosecute bad checks that have been or are construed as:
 - a) Post-dated
 - b) Two party checks
 - c) Stop-payment checks
 - d) Checks with no identification
 - e) Checks that were taken by people who cannot identify the person signing the check
 - f) Checks that are over the statute of limitations date (more than one year old.)
 - g) Checks where partial payment has been accepted
 - h) C.O.D's

- 2) When a check is returned marked "FORGERY" or "IRREGULAR SIGNATURE":
 - a) These checks should immediately be taken to either the Billings Police Department if you received the check within city limits or the Yellowstone County Sheriff's Office if you received the check outside the Billings city limits.

- 3) When a check is returned for "NSF" or "ACCOUNT CLOSED":
 - a) Send written 5-day notice by **certified mail, restricted delivery, or return receipt** to the check writer to establish evidence of the writer's intent to defraud you. **USE FORM "A" TO COMPLETE THIS STEP.** Only one certified letter needs to be sent per check writer.
 - b) If restitution is not received by you within five days, fill out Form "B" and mail or bring it with the **original check or LEGAL copy (not a copy)** and proof of certified mailing of Form "A" (either the **original** signed green card or letter returned to you) to the Billings Police Department Crime Prevention Center, 2910 3rd Avenue North, Billings, MT 59101.

- 4) When the Billings Police Department receives the original check, Form B, and proof of certified mailing, a report will be generated and sent to either the Billings City Attorney's Office or Yellowstone County Attorney's Office for review. A summons or warrant may be issued for the check writer's arrest based on your complaint (misdemeanor, Felony or Felony Common Scheme.) Please keep in mind, if the total amount of checks issued is less than \$250, it is at the directive of the City and County Attorney's Office whether a summons or warrant will be pursued.

- 5) The City and County Attorney's Office will consider dismissing complaints filed in Municipal or Justice Court for misdemeanor checks after one (1) year of the date of filing. If the Police Department or Sheriff's Office is unable to locate the check writer for arrest in Montana within one (1) year, it is unlikely that the check writer will be found.

RESTITUTION

- 1) If a check writer desires to make restitution on a bad check after the check has been turned over to the Billings Police Department:
 - a) **RESTITUTION MUST BE MADE AT THE ORDER OF THE PRESIDING COURT.** Once checks have been turned over to this office for collection/prosecution the merchant **MUST NOT** accept any monies from the check writer toward the total amount owing; the check writer should be directed to contact the Attorney's Office who is prosecuting the complaint.
 - b) Restitution will not be collected or distributed by any member of the Billings Police Department.

Bad checks are an expensive and time-consuming problem for both the merchants/businesses and the law enforcement agencies of this community. I hope this policy directive will reduce the number of bad checks received, as well as reduce the "hassle and frustration" you may have experienced in the past.

We are all concerned with the number and dollar amount of bad checks being issued in the City of Billings. A large part of these can be avoided by taking the necessary precautions and educating your employees in the policies listed above.

If you have any questions, please contact the Crime Prevention Center, at (406)247-8590.

Thank you,

Chief St. John
Billings Police Department

FORM "A"
FIVE-DAY NOTICE

DATE: _____

Dear: _____

Pursuant to Section 45-6-316, MCA, you are hereby notified that the undersigned holds a check(s) in the amount of \$ _____ drawn on (bank) _____

Payable to: _____

Dated: _____ and signed by: _____

This check has not been paid by the financial institution on which it was drawn and has been returned with the notation: _____.

Section 45-6-316, MCA, provides: (as of October 1, 2017)

- 1) A person commits the offense of issuing a bad check when he/she issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.
- 2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer, is prima facie evidence that he/she knew that it would not be paid by the depository.
- 3) A person convicted of issuing a bad check faces these maximum penalties:
 - a) -1st offense less than \$500 value on the check; \$500 fine, no jail
 - b) -2nd offense less than \$500 value on the check; \$500 fine, 6 months jail
 - c) -3rd offense less than \$500 value on the check; \$500 fine, 5 days up to 1 year jail
 - d) -1st offense value between \$1500 and \$5000; \$1500 fine, 3 years state prison
 - e) -2nd offense value between \$500 and \$5000; \$1500 fine, 5 years state prison
 - f) -3rd offense value between \$500 and \$5000; \$5000 fine; 2-5 years state prison
 - g) -offense exceeds \$5000 in value or common scheme; \$10000 fine; 10 years in state prison

As provided in Section 45-6-316, MCA, you are hereby given FIVE (5) days from the receipt of this letter in which to make this check good. If you fail to do so, the matter will be turned over to the Billings Police Department.

Will you immediately contact: _____
(name of individual or firm)

(address)

(phone)

RETURN FORM TO:
BILLINGS POLICE
CRIME PREVENTION CENTER
2910 3RD AVE N
BILLINGS, MT 59101

FORM "B"
BAD CHECK INFORMATION SHEET AND COMPLAINT

1. Business or individual to whom check is payable.

NAME: _____
COMPLETE ADDRESS: _____
PHONE: _____ MANAGER: _____

NOTE: PROSECUTION CANNOT BE PURSUED WITHOUT AN IDENTIFICATION

2. Individual accepting the check:

NAME: _____
ADDRESS: (write "same as above" if using business address)

PHONE: _____

3. Can person accepting check identify check writer? YES _____ NO _____
4. Did person accepting check look at picture ID? YES _____ NO _____

NOTE: A WARRANT CANNOT BE OBTAINED WITHOUT SUSPECT'S NAME, D.O.B & SS/DL #

5. Identification of individual passing check:

NAME: _____
ADDRESS: _____
SEX _____ RACE _____ HAIR _____ EYES _____ DOB _____ PHONE # _____
DRIVER'S LICENSE #: _____
OTHER IDENTIFYING CHARACTERISTICS: _____

6. Check information:

DATE CHECK WRITTEN: _____ CHECK # _____ CHECK AMOUNT \$ _____
BANK: _____
ACCOUNT # _____ REASON CHECK RETURNED: _____

7. Has 5-day demand letter (FORM A) been sent certified? YES _____ NO _____
8. Was the check post-dated? YES _____ NO _____
9. Was check agreed to be held until a later date? YES _____ NO _____
10. Have any payments been made towards THIS check? YES _____ NO _____

PLEASE READ CAREFULLY

The check(s) was accepted with the understanding that it was good. The check(s) was not post-dated. The payee was not asked and did not agree to hold the check(s) until a later date. The check writer did not state or imply that the check(s) would not be honored at the bank. The check(s) is not a two-party check.

I understand that criminal charges may be filed as a result of my signing this complaint and that the check writer named above may be arrested. **I FURTHER AGREE NOT TO ACCEPT PAYMENT ONCE THE CHECK HAS BEEN GIVEN TO THE BILLINGS POLICE DEPARTMENT FOR PROSECUTION.** I swear that the above facts are true and correct.

SIGNED: _____ DATE _____