



MIAMI COUNTY ATTORNEY'S OFFICE

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Miami County Courthouse

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PROSECUTION OF WORTHLESS CHECKS

Not all “bad” checks fall under the jurisdiction of the criminal courts. There are specific elements of the crime we must prove before we can begin prosecution. If you have any questions regarding the following information, please contact our office.

INTENT TO DEFRAUD: The issuance of the check must have caused you to give up something of value. It must not be for the payment of an existing debt. It must be marked “insufficient funds” or “account closed”.

JURISDICTION: The check must have been passed in Miami County, Kansas.

IDENTIFICATION: In order to prosecute a bad check case, we must prepare a complaint and issue a summons or warrant for the arrest of the check writer. Therefore, **we must have positive identification which will include driver's license number and date of birth.** The merchant must actually look at the driver's license of the check writer, compare the picture to the check writer and record the necessary information onto the check. The merchant should have some means of marking the check to indicate that this procedure was followed so the clerk can testify with certainty that he or she went through this process. Please be advised that bad check writers and forgers know which merchants do not require identification and will frequent those stores in order to obtain cash or merchandise for resale or return. Protect your business and your customers by requesting identification when accepting a check.

NOTIFICATION: You must send a certified and restricted letter, return receipts requested, to the person who signed the check. The letter must be sent to the address on the check. There is no exception to this requirement. You must give the person seven (7) days from their receipt of the letter to make restitution. A suggested “seven day letter” is attached. Keep a copy of the letter you send.

If you do not receive restitution within seven days of the letter's delivery or if the certified, restricted letter is returned to you marked “unclaimed”, you still may send the check to us for prosecution. We must, however, receive the check from you within **3 months** of the date written.

To present a check for prosecution, you must fill out the Affidavit for Prosecution, which is to be signed in the presence of a notary public. **The clerk of individual that actually took the check must fill out and sign the Offense Report.** One set of these forms is enclosed. Any check(s) submitted for prosecution must be for an amount in excess of **\$10.00**.

Bring the completed forms; original check; signed green card from certified/restricted letter or entire unclaimed, unopened, certified/restricted letter; and copy of seven day letter to the Miami County Attorney's Office, Miami County Courthouse, 120 S. Pearl St #300, Paola, Kansas.

PLEASE DO NOT HAVE ANY CONTACT WITH OR ACCEPT ANY RESTITUTION FROM THE BAD CHECK WRITER AFTER YOU HAVE SUBMITTED THE COMPLAINT TO OUR OFFICE.

AFFIDAVIT FOR PROSECUTION OF A WORTHLESS CHECK

(Please complete form fully)

STATE OF KANSAS, MIAMI COUNTY, SS:

COMES NOW, the undersigned and after being sworn on oath, states that:

Check(s) dated _____ drawn on the _____
Bank of _____, purporting to have been made and signed by
_____, was delivered to payee, _____
of _____, Miami County, Kansas, by a person identified as
_____, who in return received merchandise or cash or both at the time the
check(s) was passed, and said check(s) was personally received by
_____, who can positively identify the defendant in court
as the passer of the check(s). The names and addresses of other witnesses having knowledge thereof are:

There was no delay in depositing said check(s) or presentation for payment, said check(s) having been deposited or presented for payment in the usual course of business.

When said check(s) was returned unpaid from the bank, payee did on the _____ day of _____, 2_____, by certified and restricted letter, return receipt requested, advised the maker that said check(s) had been returned from drawee's bank unpaid and marked "_____ " and demanded that the maker pay the amount of the check(s), plus service charge, to payee within seven (7) days of receipt of letter. Seven (7) days have passed since said time and no restitution has been paid.

The check writer did no borrow any money from the payee; said check(s) was not given as security for a loan or debt; said check(s) was not given for a gambling debt; and said check(s) was not given for past due rent or payment on account.

The attached check(s) is submitted to the County Attorney's Office for the purpose of prosecution and not collection. It is to be understood and agreed that no payments on said check(s) are to accepted by payee, its agents, and employees; and dismissal shall not be proposed or agreed upon by payee without prior approval of the Miami County Attorney's Office; and that the determination of the manner of prosecution or dismissal thereof is at the sole discretion of the Miami County Attorney's Office.

Page Two, Affidavit for Prosecution of a Worthless Check

SUMMARY

Date check was passed: _____

Date check deposited: _____

Property/service obtained with check: _____

| | | |
|---|-----|----|
| Was this the full purchase price? | Yes | No |
| Has property been returned or complained about? | Yes | No |
| Have you been notified of bankruptcy proceedings? | Yes | No |
| Has check been referred to a collection agency? | Yes | No |

Certified letter was mailed on _____, 2_____.

Affiant

Company Name

Address

Phone Number

Submitted and sworn to before me this _____ day of _____, 2_____.

Notary Public

OFFENSE REPORT – WORTHLESS CHECK

**THE FOLLOWING FORM MUST BE COMPLETED AND SIGNED
BY PERSON WHO ACCEPTED CHECK.**

1. Name of person who accepted check: _____

2. How can you identify the check writer: _____

3. Did you look at the driver's license of the person presenting the check? Yes No

4. Did the photo on the driver's license match the person presenting the check? Yes No

5. Was the check postdated? Yes No

6. Did anyone agree to hold the check for deposit? Yes No

7. Did the passer say the check was not good? Yes No

8. Did you accept the check believing it was good? Yes No

9. Was the check signed in your presence? Yes No

10. Was the check made out before you saw it? Yes No

11. Have you done business with this person before? Yes No

12. Did anyone else mark or approve the check? Yes No
If yes, who? _____

13. Names of any witnesses to the passing of the check: _____

12. Name of person presenting check: _____

13. Male _____ Female _____

14. White _____ Black _____ Other _____

15. Date of birth _____ How obtained? _____

16. Drivers license no. _____ How obtained? _____

17. Height _____ Weight _____ Hair _____ Eye _____

18. Any peculiar marks or traits: _____

19. Any further information concerning passer of check: _____

Signature

Date

Suggested Seven Day Letter Form

Dear _____:

Please be advised that the check(s) you gave us, dated _____, for the amount of \$_____, and drawn on the _____ Bank of _____, has been returned to us marked “Insufficient Funds” or “Account Closed”.

Unless you take care of this matter within seven (7) days of your receipt of this notice, the check(s) will be turned over to the Miami County Attorney’s Office, whose decision for handling this matter we will accept.

This is done in accordance with K.S.A. 21-5821.