

**7th JUDICIAL DISTRICT, DISTRICT ATTORNEY'S OFFICE
NATRONA COUNTY SHERIFF'S OFFICE
CASPER POLICE DEPARTMENT
MILLS POLICE DEPARTMENT
EVANSVILLE POLICE DEPARTMENT**

**JOINT POLICY ON NON-SUFFICIENT FUNDS, ACCOUNT CLOSED
AND NO ACCOUNT CHECKS**

September 7, 2000

Checks are an important and often used medium of payment in our society today. Unfortunately, too many times checks are not honored by the bank upon presentment because of insufficient funds, no account, payment stopped, closed account or some other reason. The problem of non-payment usually lies with the issuer of the check and not with the bank denying payment.

The above named agencies recognize the importance of the problem of unpaid checks and want to do everything reasonable within our power, using the resources entrusted to us, to help the citizens of Natrona County and Casper address this problem.

In order to understand the type of assistance which can be rendered by the above agencies, a basic understanding of the different types of law is necessary. The law can be divided into two broad categories: Civil and Criminal. Civil law provides a remedy between private citizens, usually in the form of monetary damages, for a person who has been wronged. In order to enforce the civil law, the person who has been wronged must file suit against the wrongdoer. While one can file suit for himself, it is usually prudent to hire an attorney to file a suit.

Criminal law exists to provide a remedy for the State of Wyoming against the wrongdoer. The remedy is usually punishment in some form, i.e., fine, imprisonment, probation, etc.. The District Attorney is delegated the responsibility of bringing charges on behalf of the State of Wyoming to enforce the criminal statutes. The goal of a criminal law action is to punish the wrongdoer. In many situations, one act of a person can result in both civil and criminal liability.

When a check is returned unpaid, the holder of the check almost always has a civil law remedy against the person who issued the check under at least two legal theories.

First, when one signs a check and issues it, he makes a contract that the check will be paid. When the bank does not pay the check, the person who signed it can then be sued upon his contract. Under this theory, the holder of the check is entitled to recover the amount of the check, interest and costs but not attorney's fees.

Second, Wyoming Statutes Section 1-1-115 provides an extraordinary remedy to collect an unpaid check. This statute provides for giving notice to the person who signed the check telling him that the check was not paid. The person who signed the check then has fifteen days to pay the check and a collection fee of not more than \$15.00. If the check is not paid within the fifteen days, the holder of the check has the ability to sue for twice the amount of the check, plus interest and cost of collection, including reasonable attorney's fees. Additional procedural steps are required before initiating the suit. This second theory is very favorable to the holder of the check.

These two remedies can be used for almost every unpaid check.

The criminal law provides a remedy for some, but not all, unpaid checks. Since the purpose of the criminal law is to punish the wrongdoer for the wrong which he has committed against society instead of recovering damages for the holder of the check, additional requirements are imposed by Wyoming law before the District Attorney can file charges. The most stringent additional requirement is that the person who issued the check must have, at the time the check was issued, intended to defraud or deceive. If this requirement cannot be shown, the District Attorney cannot bring criminal action against the issuer of the check. It is this requirement which demands that the Sheriff's Department, appropriate Police Department and the District Attorney carefully screen the checks which are presented to them for prosecution and only accept those which meet all the requirements within the statutes for criminal prosecution.

The following types of unpaid checks will normally not be accepted for prosecution:

1. Checks older than sixty (60) days at the time they are turned over to law enforcement.
2. Post-dated checks or checks which you agreed to hold before depositing.
3. Checks which have been turned over to a collection agency; unless the collection agency refers the checks to law enforcement within forty five (45) days of receipt.
4. Checks on which full or partial payment has been accepted. If full or partial payment is accepted, then the case becomes civil and no criminal charges can be filed.
5. Two-party checks.
6. Check(s) turned over to law enforcement, from you (and others), that total less than \$100.00 within a 60 day period.

Exemptions to the above list will be made when the Sheriff's Department, appropriate Police Department or District Attorney are convinced that doing so will be of value in a criminal prosecution or sentencing.

If you have accepted a check and it is returned by the bank, you must make a decision as to which remedy you will seek. If you believe that the person passing the check did intend to defraud or deceive you at the time the check was passed and your emphasis is in seeing that person punished, then you should contact the appropriate law enforcement agency about pursuing criminal prosecution. If you pursue criminal prosecution, you must understand that the purpose of the criminal action will be to seek punishment for the wrongdoer and not necessarily to recover the amount of the check. You must also understand that once the criminal action is filed, it will not be dismissed because the person who passed the check desires to pay it off. You must also agree not to accept payment for the check or to set up a payment plan unless the District Attorney's office consents.

Criminal prosecution will be pursued in order to achieve the goal of punishing the wrongdoer. Once the person who passed the check is convicted or pleads guilty, the court may order restitution as part of that person's sentence or probation. In such cases, the normal method of payment is for the defendant to make regular payments until the amount of the check is paid in full.

If you do not believe that the person who passed the check intended to defraud or deceive you at the time the check was passed, or if your main goal is to recover the amount of the check, you should consider pursuing your civil remedies. You can do this yourself, or through an attorney, or refer the check to a collection agency. An attorney can give you the best advice possible since he/she will be familiar with the precise facts of your situation. You also have the option of proceeding through Small Claims Court which you may do with or without an attorney. Information about filing through Small Claims Court can be obtained at the Natrona County Court Office.

The acceptance of checks is an area where a person can successfully institute procedures to minimize losses from unpaid checks.

1. Get proper identification from the people giving you checks.
2. Look at the person's driver's license and compare the photograph on it with the person passing the check.
3. Note on the check if the appearance of the person passing the check matches the photograph on that person's driver's license.
4. Ask for and record on the check the address, phone number, driver's license number, social security number and place of employment of the person.
5. Employees who accept checks should place their initials on the checks.
6. Be especially careful of and refer people attempting to cash two-party checks to the bank. *Banks have the means of verifying accounts and their balances.*
7. Be especially careful of employment and government checks presented by people you do not know and from businesses or employers you do not know. Refer these to the bank. *Banks have the means of verifying accounts and their balances.*
8. Larger stores that cash a lot of checks should consider a check cashing courtesy card system.
9. Systems for identifying frequently abused checking accounts may be available through local collection agencies.

These are just a few things which you can incorporate into your check cashing procedure to help minimize losses from unpaid checks. We hope that this Joint Policy will help you understand your remedies and the responsibilities of your law enforcement agencies.

NATRONA COUNTY, WYOMING
NON-SUFFICIENT FUNDS/ACCOUNT CLOSED CHECKS

INSTRUCTIONS
(please follow carefully)

1. The entire report enclosed must be completed legibly for each check submitted. Please print or type.
2. The report must be signed by a person in a position of authority; i.e. manager, owner, etc., or the payee named on the check.
3. Unlike suing in civil court, be aware that you or your business may never receive restitution as a result of criminal prosecution. Furthermore, unlike suing in civil court, a successful prosecution can result only if it can be shown that the check passer intended to defraud you. If the account was closed when the check was written - intent to defraud is shown. If this is not true, you can still pursue your case civilly.
4. A five-day statutory demand notice must be sent to the passer in each NSF check case. This notification should be sent by certified mail, return receipt requested, and you should retain a copy of the notice letter sent along with proof that the letter was received by the issuer of the check. Use one notice for each check. In addition, you should attempt to make personal "face to face" contact with the passer concerning the check and document your efforts. If you are not successful in obtaining a return receipt, the Sheriffs Department will attempt to serve the notice. This service will be charged at the Sheriffs current rate for paper service.
5. Submit with this report: 1. The original check. 2. A copy of the fifteen-day notice you sent. 3. The Post Office return receipt showing it's delivery or a Sheriffs return showing service of the notice.
Do not submit a report and this check for possible prosecution unless you are satisfied that the passer intended to defraud you and you are willing to participate in prosecution even if the passer attempted to pay for the check at a future date.
6. Checks are accepted for prosecution only and are not returned if civil proceedings are initiated.
7. Certain types of checks will normally not be accepted for prosecution. These include:
 - A. Checks dated more than 60 days prior to the date this report is submitted to law enforcement. (Complete Part III only)
 - B. Post-dated checks or checks which you agreed to hold before depositing.
 - C. Checks that have been turned over to a collection agency, unless the collection agency refers the check to law enforcement within forty-five (45) days of receipt.
 - D. Checks that you have accepted full or partial payment on.
 - E. Two party checks.
8. Please return the report and required documents to the appropriate law enforcement agency:
 - A. For checks received outside the city limits of Casper, Mills or Evansville, Wyoming. Natrona County Sheriffs Department, 201 N. David, Casper, WY 82601 Attention: Investigations
 - B. For checks received inside the city limits of Casper, Wyoming. Casper Police Department, 201 N. David, Casper, WY 82601 Attention: Investigations.
 - C. For checks received inside the town limits of Mills, Wyoming. Mills Police Department, P.O. Box 2379 4800 W. Yellowstone Hwy, Mills, WY 82644 Attention: Investigations
 - D. For checks received inside the town limits of Evansville, Wyoming. Evansville Police Department, P.O. Drawer 158, Evansville, WY 82636 Attention: Investigations

(copy as needed)

Date Received:	Case Number:	
NSF:	Acct Closed:	Other:
Name(s) on the account:		

Law Enforcement Use Only – Make No Marks Above This Line

REPORT

PART I

To be completed by person making this report

The following report should be completed for each check submitted to the Sheriff's Office or appropriate Police Department. Please make a reasonable effort to fully complete the form. If the answer to a question is not known, write "unknown".

1.

Business Name	
Business Address	
Business Phone	

2.

Person Making Report	
Home Address	
Home Phone	

3. Full Name & Address of Business, Branch or place where check was accepted

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4.

Check Number	Date check was accepted	Amount
		\$

5. Name of person who presented the check

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6. Please detail what steps you or your employees have taken to contact the passer and/or recover your loss.

Was the passer contacted? Yes No By whom & when? _____

Where? _____

7. Has the passer attempted to make restitution? If so, please detail the circumstances.

8. Have you successfully served a five-day statutory demand notice on the passer? Yes No

If yes, how? Certified Mail / Sheriff's Service / Personal Service / Other: _____

9. Do you feel you have exhausted your ability to collect this check? Yes No

10. Do you feel that the passer of the check intended to defraud you when he/she passed the checks? Yes No

11. Have you retained an attorney or turned this matter over to a collection agency in an attempt to collect this check? Yes No

If so, whom? _____

12. Please note any information you feel would help in locating & prosecuting this person.

The decision whether or not to prosecute this individual will be made by a representative of the Natrona County District Attorney's Office who will take into account numerous factors, including: what evidence exists showing intent to defraud, the availability of necessary bank records, etc. Criminal prosecution does not guarantee restitution since prosecution is designed to punish the criminal offender, not to collect debts. If you agree to prosecute this individual, you can not drop the charge if he/she offers to pay off the check. If a violation of criminal law cannot be proven, the check will be returned to you upon request.

I hereby understand and agree that all the information contained in these report may be used by and disseminated among all law Enforcement Agencies, the Office of the District Attorney and the Courts. I also understand and agree that this check is being submitted for criminal prosecution and that if criminal prosecution is initiated, it may be necessary for those persons having knowledge of the facts to appear and testify in court.

I hereby certify that no one has accepted full or partial restitution for this particular check as of this date and I further agree not to accept restitution without obtaining the consent of the District Attorney's Office.

I hereby certify that I have read and understand the instructions for this report and that all of the facts contained herein are to the best of my knowledge, true, accurate and complete.

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Signature of Person Making Report

Date

PART II

To be completed by person who actually took the check

1. Name

2. Address

Phone Number

About the passer:

3. *Description*

Race

Sex

Age

Height

Weight

Hair Color

Hair Length

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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4. Name Given:

5. Address Given:

6. Phone Number Given:

7. Claimed employment at:

8. Driver's License Number:

9. Did photo on driver's license match the passer? Yes No

10. Other ID & Number:

11. Description of vehicle involved (if any):

Make

Model

Color

<input type="text"/>	<input type="text"/>	<input type="text"/>
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12. Names (if known) & descriptions of any persons who accompanied the passer:

13. Names of other persons who witnessed the transaction and their phone numbers:

14. Do you recall the transaction? Yes No

15. Was the passer known to you? Yes No If yes, how? _____

16. As the person who accepted the check, can you identify the passer? Yes No If yes, how? _____

17. What did the passer receive in exchange for the check?

Cash (amount) \$ _____ Services (value) \$ _____ Credit (value) \$ _____

18. Was the check post dated? Yes No

Did the passer ask you to hold the check to a future date? Yes No

Did the passer ask you not to deposit the check until a future date? Yes No

Did the passer indicate there might not have been enough money in the bank to cover the amount of the check? Yes No

If yes to any of the above, what did the passer say? _____

19. Did you see the passer write out the entire check and endorse it? Yes No

20. Was the check either entirely or partially pre-written? Yes No

If yes, what part was pre-written and what part did you see the passer write? _____

21. Did you initial, mark upon, or write upon the check at the time you accepted it? Yes No

If yes, what? _____

I hereby certify that all of the facts contained herein are to the best of my knowledge, true, accurate and complete.

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Signature of Person who accepted the check

Date

PART III

To be completed by person making the report

This portion of the report should only be completed for each check received which has been dated more than 60 days prior to the date this report is submitted to law enforcement. Part I & II need not be submitted for checks over 60 days old unless requested by a law enforcement agency or district attorney's office.

The information provided in this part will be used for police and court purposes, i.e. sentencing, screening, Department of Probation & Parole, etc. The information may not result in prosecution.

1.

Business Name	
Business Address	
Business Phone	

2.

Person Making Report	
Home Address	
Home Phone	

3. Full Name & Address of Business, Branch or place where check was accepted

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4.

Check Number	Check Dated	Amount
		\$

5. Date check was accepted:

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6. Name(s), address, phone, etc. for the account as imprinted or written on the check:

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7. Name of person who presented the check

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8. Name endorsed on the signature line:

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9.

Name of Bank:	Account Number

DO NOT SUBMIT CHECK IF COMPLETING PART III ONLY.

(copy as needed)

FIVE DAY STATUTORY DEMAND NOTICE

To: _____

Date: _____

This letter is to advise you and give you notice of a nonpayment and dishonor of a check written by you. Said check is described more fully below. This check was returned by your bank to the payee with “ _____ ” stamped or noted on the face of the check.

Check Number	Date	Amount
		\$
Pay to	Signed	Bank

You are further notified that Wyoming Statute Section 6-3-703 provides:

- (a) Any of the following is Prima Facie evidence that the person at the time he/she issued the check or other order for payment of money intended that it should not be paid:
 - (i) Proof that at the time of issuance he/she did not have an account with the drawee;
 - (ii) Proof that at the time of issuance he/she did not have sufficient funds with the drawee and that he/she failed to pay the check or other order within five (5) days after receiving notice of nonpayment or dishonor, personally given or sent to the address shown on the check or other order, or
 - (iii) Proof that when presentment was made in a reasonable time the issuer did not have sufficient funds with the drawee and he/she failed to pay the check or other order within five (5) days after receiving notice of nonpayment or dishonor, personally given or sent to the address shown on the check or other order.
- (b) Proof that the drawer opened an account with the drawee on a certain date shall be considered evidence of the drawer's knowledge of the account balance on that date.

You are also notified that if you do not pay the above described check within five (5) days of receiving this notice, excluding the date of receipt, this matter will be referred to the Natrona County District Attorney's Office for prosecution. Restitution must be made to the person or organization listed below.

Sincerely,

Name: _____

Address: _____

Phone: _____