

TO: Individuals & Businesses Filing Check Deception Complaints

FROM: Elkhart County Prosecutor's Office, Check Deception Division

Victims of bad checks may file a report with the Elkhart County Prosecuting Attorney, provided there is sufficient information and the complaint meets all eligibility guidelines. The Check Deception Division is designed to aid you in recovering restitution from the writers of bad checks whenever possible. "Restitution" refers to the face value of the checks written along with reasonable "returned item" charges assessed by the bank. (A copy of the NSF charge must be included with your packet.)

It is our desire to assist local individuals and businesses that are the unfortunate recipients of bad checks. Please be aware that in some cases we will not be able to collect, and in some cases formal criminal charges may be imposed.

The following is an outline of the procedure that must be followed in order for the Court to process your complaint. If you obtain more than one check from the same individual you must complete a Bad Check Packet per bad check that you receive.

- 1) **SEND A CERTIFIED LETTER TO THE WRITER OF THE BAD CHECK, WITH RETURN RECEIPT REQUESTED.** You must mail a letter to the writer of the bad check. A sample letter is enclosed with this packet. Include a copy of this letter with your packet to our office. (It is also necessary for you to include the *original white receipt* for certified mail and the *original green return* receipt from the Post Office.)
- 2) **WAIT TEN (10) DAYS.** You must allow the writer of the bad check ten (10) days to respond to your certified letter. If they fail to respond, forward the appropriate information to the Check Deception Division for processing.

Continued...

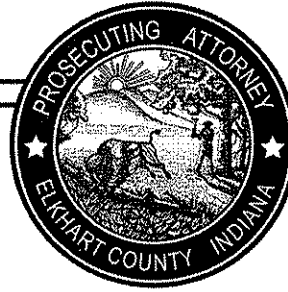
- 3) **COMPLETE AND SUBMIT REQUIRED DOCUMENTATION.** Please print legibly or type a complete set of the attached forms. (If we do not receive all of this information the Courts will not allow a complaint to be filed and your paperwork will be returned to you unprocessed.) For your packet to be complete the following information must be included.
- a) The Bad Check Report form.
 - b) A copy of the original letter that was sent to the writer of the bad check. (If the letter is returned, include the letter unopened with your packet. The envelope must remain sealed.)
 - c) The *original white receipt* for certified mail and the *original green return receipt* from the Post Office.
 - d.) The Affidavit to Show Probable Cause form.
 - e.) The Information Charging Check Deception form.
 - f.) The Original Check.
 - g.) One or all of the following identifiers: date of birth, driver's license number, and Social Security number. *The courts will not accept a complaint without at least one of the above.*

MAIL OR DELIVER FORM TO:

**Elkhart County Prosecutor's Office
Check Deception Division
301 South Main Street, Suite 100
Elkhart, IN 46516**

- 4) **DO NOT ACCEPT PAYMENT.** After reviewing the information submitted we will submit your paperwork to the Court for processing. *Once you file a report with our office you must agree not to accept payment from the bad check writer unless they present a form from the court which requires your signature.* If you have any questions about the Bad Check Program, please contact the Program Coordinator at (574) 296-1837, Monday through Friday 8:00 a.m. – 4:00 p.m.

Thank you for your time and cooperation in this matter.



**CHECK DECEPTION / BAD CHECK REPORT
ELKHART COUNTY PROSECUTING ATTORNEY**

PLEASE ANSWER THE FOLLOWING QUESTIONS:

- | | | |
|---|-----|----|
| 1) Was the check post-dated at the time of acceptance? | YES | NO |
| 2) Does this matter involve a two-party check? | YES | NO |
| 3) Did you agree to hold or delay depositing the check? | YES | NO |

A "YES" answer to any of the above questions indicates this is a civil matter and is therefore ineligible for filing with the Prosecuting Attorney. Please contact Small Claims Court at 315 South Second Street, Elkhart, Indiana for more instructions on how to proceed with a civil matter.

BAD CHECK WRITER:

FULL NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE _____ DATE OF BIRTH _____

EMPLOYMENT _____

HOW DID YOU OBTAIN THE CHECK WRITER'S IDENTIFICATION:

*** It is very important for you to obtain any of the following information. If the Prosecutor's Office does not have any of the following information we cannot guarantee you will receive any restitution. Identifiers are required!!

CREDIT CARD# AND TYPE OF CARD _____

EXPIRE DATE _____

SOCIAL SECURITY # _____

DRIVER'S LICENSE # _____ EXPIRE DATE _____

DATE OF BIRTH _____

CAN THE PERSON WHO ACCEPTED THE CHECK IDENTIFY THE CHECK WRITER? YES / NO

IS VIDEO TAPE AVAILABLE FOR REVIEW IF NEEDED? YES / NO

CHECK INFORMATION:

| Check# | Date Received | What was check for? | Person Accepting Check? | Amount |
|--------|---------------|---------------------|-------------------------|--------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(Add additional pages if needed)

COMPLAINANT INFORMATION:

YOUR NAME _____

COMPANY NAME (If applicable) _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE# _____ FAX# _____

E-MAIL ADDRESS _____

DATE YOU MAILED YOUR DEMAND LETTER _____

Public Law 85, which amends IC 35-43-5-5 allows the offended party to charge the greater of \$27.50 (twenty-seven dollars and fifty cents) or 5% (five percent) of the amount of the check, whichever is greater. However, the amount of the service charge may not exceed \$250.00 (two hundred fifty dollars).

I understand that I must NOT accept restitution from the check writer until further notice from the Court.

I have read all filing instructions, and hereby certify that under penalty of perjury that all information in this report is true to the best of my knowledge.

Signature of Person Filing

Printed Name

Date Filed

STATE OF INDIANA)
)SS:
COUNTY OF ELKHART)
)
)
STATE OF INDIANA)
)
VS.)
)
)
_____)

IN THE _____
CAUSE NO: _____

**AFFIDAVIT TO SHOW
PROBABLE CAUSE**

COMES NOW the undersigned Affiant, _____, being first duly sworn, upon his (her) oath, states:

1. That he (she) is an individual or authorized representative of _____ a business or individual located in Elkhart County, Indiana.
(Name of Business: if applicable)
2. That on _____ day of _____, 200____, said business or individual accepted from _____ a check # _____
(Name of Defendant)
in the amount of _____ drawn upon account # _____ of _____ Bank, and that said person's last known address is _____.
3. That said check was deposited by said business or individual and was returned by the drawee bank for _____ which check is
(Reason)
attached hereto.
4. That a certified letter, return receipt requested, receipt # _____, was sent to said person on the _____ day of _____, 200____, said receipt showing receipt thereof, or the original letter being attached hereto, notifying said person that said check was not honored by the drawee bank.
5. That said person has not reclaimed said check nor paid any part hereof to said business. Further affiant sayeth not.

(Signature of Complainant)

I hereby affirm under the Pains of Penalty and Perjury that the foregoing facts are true.

(Signature of Complainant)

STATE OF INDIANA)
)SS:
COUNTY OF ELKHART)
)
)
STATE OF INDIANA)
)
VS.)
)
)
)

IN THE _____
CAUSE NO: _____

INFORMATION CHARGING
CHECK DECEPTION

OLN: _____
DOB: _____

On or about the _____ day of _____, 200____, in Elkhart County, State of Indiana, one _____ (**Defendant's name**) did knowingly issue or deliver to one _____ (**Name of Business**) a certain check drawn upon _____ for the payment of property, to-wit: _____ which check is of the following tenor:
check # _____ amount \$ _____ service charge \$ _____ knowing that said check would not be paid or honored by said _____, the bank upon which said check is drawn.

All of which in contrary to the form of the statute in such cases made and provided, to-wit: I.C. § 35-44-5-5 and against the peace and dignity of the State of Indiana.

I, _____ swear under the penalties of perjury as specified by IC 35-44-2-1, that the forgoing representations are true.

Approved by:

Deputy Prosecuting Attorney

**“Sample Letter”
To Bad Check Writer**

TO: Name
Address
City

You are hereby notified that your check dated _____ drawn on the _____ (bank), in the amount of \$ _____ made payable to _____ has been returned for the following reason: _____.

FOR YOUR INFORMATION: INDIANA PENAL CODE I.C. 34-43-5-5 PROVIDES:

A person who knowingly or intentionally issues or delivers a check, draft, or an order on a credit institution for the payment of or to acquire money or other property, knowing that it will not be paid or honored by the credit institution upon presentment in the usual course of business commits check deception a class A misdemeanor. The fact that a person issued or delivered a check, draft, or order, payment of which was refused by the drawee constitutes prima facie evidence that the person knew that it would not be paid or honored. In addition, evidence that a person had insufficient funds in or no account with a drawee credit institution constitutes prima facie evidence that the person knew that the check, draft or order would not be paid or honored. Provided, that such maker or drawer shall not have paid the payee or holder the amount due thereon, together with protest fees, within ten (10) days from the day notice was mailed to the maker or drawer.

Penalties: A person convicted of a crime under Indiana Penal Code I.C. 34-43-5-5 shall be fined not more than five thousand dollars (\$5,000.00) or imprisoned for not more than one (1) year, or both.

This check, along with a \$ _____ protest fee PER CHECK, must be paid to _____.

**THIS IS THE LAST NOTICE YOU WILL RECEIVE FROM
_____ PRIOR TO FURTHER ACTION BEING TAKEN.**

PLEASE PAY WITH CASH OR MONEY ORDER.

Total Due: \$ _____

Sincerely,
