

Summary of State Bad Check Laws

Compiled as of July, 2000

By:
Commercial Collection Agency Section
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To All Clients

The enclosed Summary of State Bad Check Laws will provide you with a handy guide to the various State Laws concerning the issuance of bad checks.

As you will not the table of bad check laws indicates whether a felony or a misdemeanor may be involved, as well as specific information regarding the dollar amount of service fees and/or civil penalties which may be recoverable.

Sections 6 and 7 dealing with post-dated checks and checks tendered in payment of pre-existing debts should be examined.

Otherwise, if a check remains unpaid after re-depositing, it is recommended in the summary that you send a letter (certified, return receipt requested on larger checks) notifying the maker of the potential legal consequences involved.

For example, assume you receive a check from an California debtor drawn on an California bank. After referring to the information regarding California in the report you may choose to send the following notice:

“We have received your check No. 100 dated 8/1/00 in the amount of \$1,000.00. The check has been returned to us twice by your bank, unpaid.

Unless we receive a certified check in the amount of \$1,010.00 – including our bank’s service fee for returned checks – by Monday, August 13, 2000 (twelve days from the date of the letter being sent) we will be forced to seek the immediate aid of a collection agency or attorney.

Be advised that under California Law you may be criminally liable for a felony and also civilly liable for \$25 (or \$35 for each additional subsequent check) plus damages equal to treble the amount of the check and service fees which shall not be less than \$100 or greater than \$1500.”

In the event the maker is unresponsive to this notice it is recommended that a reputable collection agency or attorney be contacted.

Very truly yours,

George Stella
GS:sh

SUMMARY OF STATE BAD CHECK LAWS

May, 2000

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Commercial Collection Agency Association

Commercial Law League of America

This publication contains a **Table of Bad Check Laws** that summarize various state laws concerning the issuance of bad checks. In addition, the Table provides information on service charges and civil penalties that the holder of a bad check or the courts may impose on the check's issuer. Legal proceedings may be necessary to collect service charges, and are necessary to collect civil penalties.

The **Summary** is intended only as a general guide and in the main addresses' checks presented in payment of business or commercial transactions. When a check is taken in connection with a consumer transaction, it is generally a violation of the **Fair Debt Collection Practices Act** to threaten criminal action without the intent or ability to do so. The **Commercial Law League of America (CLLA)** or the **Commercial Collection Agency Association of the CLLA** does not make any representation as to the accuracy of the contents of this publication. *Any person with a bad check problem should consult legal counsel for full details on the law of a particular state.*

While there are differences among the states as to how bad checks are viewed (whether a misdemeanor or a felony) and the remedies available to holders of the ad check against the drawer, there are several general factors that run through the majority of state laws.

1. In all states the maker of a check, who tenders a check knowing there is insufficient funds or credit behind the check, may be guilty of a crime and may be subject to civil penalties.
2. In the majority of states the crime is treated as a misdemeanor. In states that make a distinction regarding a felony or misdemeanor, the amount of the check usually determines if the crime is a misdemeanor or a felony. In several states the law provides for fines and or imprisonment, but does not specify if the crime is misdemeanor or felony.
3. In some states there is a criminal offense only when the bad check is given in exchange for property or for a present consideration. In other states it is a criminal offense to issue a bad check with intent to defraud or with knowledge of insufficient funds.
4. The intent to defraud and knowledge of insufficient funds is required to be present by most states' bad check laws. The intent to defraud is sufficient. It is not necessary for the payee to have actually been defrauded.

5. In most states statutory provisions provide that it is prima facie evidence of insufficient funds (or of intent to defraud) if: (1) the check was not paid by the drawee (bank) on presentation for payment and (b) the drawer did not pay the check within a specified number of days after written notice to the drawer of dishonor of the check. The prescribed numbers of days for the various states are:

Alabama	10	D.C.	5	Kansas	14
Alaska	15	Florida	30	Kentucky	10
Arizona	12	Georgia	10	Louisiana	15
Arkansas	15	Hawaii	10	Maine	10
California	30	Idaho	10	Maryland	10
Colorado	15	Illinois	30	Massachusetts	30
Connecticut	30	Indiana	30	Michigan	7
Delaware	30	Iowa	30	Minnesota	30
Mississippi	15	No. Carolina	30	Tennessee	10
Missouri	30	No. Dakota	10	Texas	10
Montana	10	Ohio	30	Utah	15
Nebraska	10	Oklahoma	5	Vermont	30
Nevada	30	Oregon	30	Virginia	30
New Hampshire	10	Pennsylvania	10	Washington	15
New Jersey	35	Rhode Island	10	West Virginia	10
New Mexico	10	So. Carolina	10	Wisconsin	30
New York	30	So. Dakota	30	Wyoming	30

6. In many states the criminal provisions regarding bad checks do not apply to post-dated checks. Because post-dated checks are a promise to pay in the future, they are not technically viewed as checks. It has generally been held that post-dated checks are not within the scope of most states' bad check laws.
7. It is generally held that the giving of a bad check in payment of a preexisting debt does not fall within the purview of most states' bad check laws. Since the debt is preexisting the maker of the check did not deprive the payee of any right; procure anything of the value from the payee or wrongfully appropriate anything belonging to the payee.

On paper, the legal consequences for the maker of a bad check are usually quite severe, however, as a practical matter the holder of a bad check may find it difficult to put into effect available remedies.

In most localities it is necessary to file a complaint with the appropriate criminal justice officer such as a sheriff or district attorney to initiate criminal legal action. In the main most of these criminal justice officers are just too busy with other more serious crimes against the community. Therefore, the filing of a bad check criminal action will usually not be promptly acted upon, except in cases involving significant amount of money.

However, as a credit grantor you can effectively deal with the majority of routine bad check situations encountered by putting into practice the following procedures:

- Instruct your bank to re deposit any checks returned for insufficient or uncollected funds. This procedure will effectively address any clerical errors the check's maker may have made regarding their bank account balance.
- On checks still unpaid after re depositing or returned because payment was stopped, you should write to the maker advising them of the non-payment, provide details of the check and request in addition to the amount of the check any appropriate service charges.
It is suggested that the letter be sent certified mail with a return receipt requested. However, on small balance bad checks the letter may be sent regular mail.
- If the maker of a bad check does not respond to your notice and fails to make the check good you should contact a member of the **Commercial Collection Agency Association of the CLLA** to discuss the situation with them. They will be able to offer you assistance with the collection of the bad check and put you in touch with legal counsel if you desire to discuss legal remedies that may be available to you.

COMMERCIAL COLLECTION AGENCY ASSOCIATION
COMMERCIAL LAW LEAGUE OF AMERICA
TABLE OF BAD CHECK LAWS

<u>STATE</u>	<u>FELONY</u>	<u>MISDEMEANOR</u>	<u>SERVICE FEES</u>	<u>CIVIL PENALTIES</u>
Alabama	--	All Amounts	The greater, either \$26 or actual charge by bank for returned check.	None
Alaska	>\$500	<\$500	\$25	\$100, or triple the amount of the check, whichever is greater, except maximum is \$1,000.00.
Arizona	>\$25	<\$25	\$25, or actual bank charge for returned check.	Twice the amount of the check or \$50, whichever is greater plus costs and reasonable attorney's fees awarded by the court.
Arkansas	>\$200	<\$200	\$20	Twice the amount of the check, but in no case less than \$50 plus interest, court costs and reasonable attorney's fee.
California	All amounts	(1)	\$25 for the first check and \$35 for each subsequent check	If check and service fees not paid in full within 30 days of written notice, the maker of the check is liable for damages equal to treble the amount for the check and services fees, which shall not be less than \$100 or greater than \$1,500.
Colorado	>\$200	<\$200	\$20	\$100 or, if higher three times the amount of the check plus court cost and reasonable attorney's fees awarded by the court.

TABLE OF BAD CHECK LAWS, CONTINUED

<u>STATES</u>	<u>FELONY</u>	<u>MISDEMEANOR</u>	<u>SERVICE FEES</u>	<u>CIVIL PENALTIES</u>
Connecticut	>\$1,000	<\$1,000	--*	For an NSF check: determined by the court but in no even shall the amount be greater than the amount of the check or \$400, whichever is less. For a check drawn on a non existent account: determined by the court but in no even shall the amount be greater than the amount of the check or \$750.
Delaware	>\$300	<\$300	--*	\$100 or three times the amount of the check not to exceed \$500.
District of Columbia	>\$100	<\$100	--*	None
Florida	>\$50	<\$50	\$20 or 5% of check face value, whichever is greater.	Double the amount of the check not exceed \$500, plus any court cost incurred.
Georgia	>\$500	<\$500	\$25 or 5% of check face value, whichever is greater.	Double the amount of the check not to exceed \$500, plus any court cost incurred.
Hawaii	--	All Amounts	--*	\$100 or triple the amount of the check whichever is greater, not to exceed \$500.
Idaho	--	All Amounts	\$20, provided prior notice given at point of sale.	\$100 or triple the amount of the check, whichever is greater, not to exceed \$500.

TABLE OF BAD CHECK LAWS, CONTINUED

STATES	FELONY	MISDEMEANOR	SERVICE FEES	CIVIL PENALTIES
Illinois	(2)	All Amounts	\$25 or all costs and expenses, including reasonable attorney's fees necessary to collect the check.	\$100 or triple the amount of the check whichever is greater, not to exceed \$1,500 plus attorney's fees and court costs.
Indiana	All Amounts	--	\$20	Treble the face amount of the check, not to exceed \$500. In addition: interest, court costs, reasonable attorney's fees and other miscellaneous expenses.
Iowa	>\$20	<\$20	\$20	Treble the face amount of the check, not to exceed \$500.
Kansas	>\$50	<\$50	\$30	\$100, or three times the amount of the check, not to exceed \$500.
Kentucky	>\$100	<\$100	--*	None
Louisiana	>\$100	<\$100	\$25 or 5% of check amount	Minimum of \$100, or twice the amount of the check plus attorney's fees and court costs.
Maine	All Amounts	--	--*	Amount of check, plus court costs, service costs, collection costs and processing charges incurred by the holder.
Maryland	>\$300 (3)	<\$300 (3)	\$25 maximum	Collection fee of up to \$25, plus an amount up to double the amount of the check, but not more than \$1,000.

TABLE OF BAD CHECK LAWS, CONTINUED

<u>STATES</u>	<u>FELONY</u>	<u>MISDEMEANOR</u>	<u>SERVICE FEES</u>	<u>CIVIL PENALTIES</u>
Massachusetts	>\$100	<\$100	\$20	Minimum of \$100 nor more than \$500, as determined by the court.
Michigan	--	<\$50	\$25	Double the amount of the check, with a minimum of \$50 and a maximum of \$500. If check is over \$500 the maker is responsible only for the amount of the check.
Minnesota	--	All Amounts	\$20	Up to \$100 or up to 100% of the value of the check, whichever is greater. Interest at the rate payable on judgments and reasonable attorney's fees.
Mississippi	>\$100	<\$100	\$30	Varies by face amount of check: Up to \$25 – 100% of the check amount; from \$25 to \$200—50% of the amount of the check over \$200—25% of the check amount.
Missouri	>\$150	<\$150	--*	Treble the amount of the check or \$100, whichever is greater.
Montana	>\$300	<\$300	\$30	The greater of \$100 or three times the amount of the check, however, damages may not exceed the amount of the check by more than \$500.
Nebraska	>\$300 (3)	<\$300 (3)	--*	\$10 plus any reasonable handling fee imposed upon the holder by the bank.
Nevada	<\$100	>\$100	--*	Three times the amount of the check, but not less than \$100 nor more than \$500.

TABLE OF BAD CHECK LAWS, CONTINUED

<u>STATES</u>	<u>FELONY</u>	<u>MISDEMEANOR</u>	<u>SERVICE FEES</u>	<u>CIVIL PENALTIES</u>
New Hampshire	>\$500	<\$500	--*	Court costs, service costs, and collection costs. If judgment obtained and not paid on judgment date, \$10 per business day up to \$500, plus reasonable attorney's fees.
New Jersey	>\$200	<\$200	--*	\$10 or triple the amount of checks to \$500, maximum
New Mexico	>\$25	<\$25	--*	\$100 or triple the check amount up to a limit of \$500
New York	--	All Amounts	\$20 or a lesser amount contracted for.	If reason for bad check is not existing bank account damages can be twice the face amount of the check or \$750, whichever is less. If reason for bad check is NSF, damages can be twice amount of the check or \$400, whichever is less. Notice must be posted at point of sale.
North Carolina	--	All Amounts	\$20	Treble the amount of the check, with a minimum of \$100 and maximum of \$500.
North Dakota	All Amounts	All Amounts	\$20	The lesser of \$100 or three times the amount of the check.
Ohio	>\$150	<\$150	--*	None.
Oklahoma	>\$20	<\$20	--*	None.
Oregon	>\$75	<\$75	\$25	\$100 or triple the amount of the check not to exceed \$500.

TABLE OF BAD CHECK LAWS, CONTINUED

<u>STATES</u>	<u>FELONY</u>	<u>MISDEMEANOR</u>	<u>SERVICE FEES</u>	<u>CIVIL PENALTIES</u>
Pennsylvania	--	>\$200	\$20 provided that prior written notice is given at the time check is issued.	\$100 or triple the amount of the check not to exceed \$500.
Rhode Island	>\$100	<\$1,000	--*	A collection fee of \$25, and an amount equal to three times the amount of the check, but in no case less than \$200 but no more than \$1,000.
South Carolina	--	All Amounts	\$25	Treble the amount of the check or \$500, whichever is less.
South Dakota	<\$500	<\$500	\$30	All reasonable costs and expenses of collection.
Tennessee	<\$100	<\$100	\$20	Treble the face amount of the check, not to exceed \$500. In addition, interest at the rate of 10% per annum; service charges; court costs and reasonable attorney's fee.
Texas	\$50	<\$50	\$25	None
Utah	>\$300	<\$300	\$20	Interest and all costs of collection, including all court costs, reasonable attorney's fees and reasonable compensation to the check's holder if collection is pursued personally by the holder.
Vermont	--	All Amounts	--*	Court cost, cost of service, bank fees, interest, attorney's fees and damages in the amount of \$50.

TABLE OF BAD CHECK LAWS, CONTINUED

STATES	FELONY	MISDEMEANOR	SERVICE FEES	CIVIL PENALTIES
Virginia	<\$200	<\$200	--*	Legal interest from the date of the check, bank fees, and a processing charge of \$20. In addition, the lesser of \$250 or three times the amount of the check.
Washington	<\$250	<\$250	\$40 (4)	Reasonable attorney's fees and three times the amount of the check or \$300, whichever is less.
West Virginia	>\$200 (3)	<\$200	\$15	None
Wisconsin	--	All Amounts	All reasonable expenses necessary to collect worthless check.	Three times the amount of the check, and all actual costs of legal action, including attorney's fees. The total amount of the foregoing damages cannot exceed \$500.
Wyoming	>\$200	<\$200	\$30	Thrice the amount of the check, but in no case less than \$100, plus costs of collection including reasonable attorney's fees.

*Our research fails to reveal a service charge designated by state statute. **We suggest you explore with legal counsel charging a reasonable fee of \$15 to \$20.**

- (1) *An offense may be deemed a misdemeanor at the discretion of the court.*
- (2) *The offense is considered a felony, if it represents subsequent offenses over \$150.*
- (3) *Both misdemeanors and felonies are concerned with the acquisition of property.*
- (4) *A reasonable fee not to exceed \$40, or face amount of check whichever is less and interest at 12% per annum provided check does not provide for payment of interest, collection costs or attorney's fees.*