



# Hill County Attorney's Office Bad Check Program

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As your County Attorney, I'm always concerned about the negative impact of bad checks passed to local businesses and citizens. In Hill County, merchants and individual citizens lose thousands of dollars because of bad checks. Bad checks affect everyone in terms of higher consumer costs that must be passed on to offset losses, and increased taxes to cover the additional costs for law enforcement and prosecution.

For several years, the Hill County Attorney's Office has had a bad check policy where we have prosecuted many individuals for issuing bad checks. However, our criminal justice system is increasingly becoming more burdened. In an effort to combat this continuing problem, we have organized the Hill County Bad Check Program to assist local merchants with bad check losses. The primary goal of the program is to obtain full restitution for the victim without adding to the financial burden of the criminal justice system. The program also will deter future offenses with, among other options, possible criminal prosecution.

Along with benefitting the merchants and consumers, this program is designed to remove some of the load from the overburdened local law enforcement officers and the courts. This program is for anyone who has received a bad check in Hill County, be that a large business, a small business, or an individual. The program operates at no additional cost to the county or the taxpayers. This program provides new avenues to obtain restitution, to protect the public and to seek justice.

## Eligibility

Any person who receives a bad check in Hill County is eligible to participate in the program if the following conditions are met:

**If the check was issued within the city limits of Havre, the Bad Check Program forms can be used but due to jurisdictional issues, the forms need to be submitted to the City Prosecutor, Tamara Barkus, 228 4th Avenue, (Credit Bureau) Havre, MT.**

1. The check must have been received in Hill County, deposited in a bank and presumed "good" at the time of acceptance.
2. The victim must submit the check when it has been returned by the bank indicating "Non-Sufficient Funds" or "Closed Account", along with a signed and completed Bad Check Affidavit, to the Bad Check Program. This program works most efficiently with

- checks that are no older than sixty (60) days.
3. The amount of the check is no more than \$1,500 (or multiple checks not exceeding this limit). If the amount of the check(s) is more than \$1,500, the victim should report the check writer to the Havre Police Department or Hill County Sheriff's Office for felony prosecution.

#### **Ineligible Bad Checks**

1. Postdated checks. ( Postdated checks constitute promissory notes.)
2. Checks held for an agreed time. (Checks held for an agreed time period constitute credit to the check-writer.)
3. Checks where both parties knew there were insufficient funds at the time of transaction.
4. Checks for which partial restitution has been received.
5. Checks which have already been given to a private collection agency for collection.
6. Checks issued for a gambling debt.
7. Checks issued for any illegal transaction.
8. Two party checks or counter-checks.
9. The identity of the check writer is unknown.
10. There is no amount, date, or signature on the check.
11. The check has not been processed by a bank.
12. Electronic checks.

#### **How to Apply**

To participate in the program, victims should obtain a Bad Check Affidavit, available from the Hill County Attorney's Office or requested by mail. This should be completed, signed and returned, along with the *original* bad check, to the Hill County Attorney's Office Bad Check Program. Keep a photocopy of the check for your records. A separate Bad Check Affidavit should be completed for each individual bad check writer, with up to ten multiple checks from a single writer listed on one form. Examples of collection efforts must be noted on the affidavit, for example, copies of demand letters and/or logs of phone calls to the bad check writer. (Note: A "Courtesy Notice" must be sent to the check writer allowing 5 days to make the check good.) Incomplete affidavits will be returned and will cause a delay in processing the case.

#### **How the Program Works**

After a Bad Check Affidavit is received by the Bad Check Program, the County Attorney's Office will review the evidence to determine jurisdiction. If the check was issued within the city limits of Havre, the information should be submitted to the City of Havre prosecutor. If the check was issued outside the city limits of Havre, a letter will be sent, via 1st class U.S. mail, to the writer requesting payment be made to the Hill County Attorney's Office within ten (10) days. The request for payment will include victim-incurred collections fees (usually the certified mailing cost provided receipts are provided with the Affidavit and/or bank fees) and a processing fee to be paid per bad check. The processing fee will be collected on behalf of the Hill County Attorney's Office to defray the costs of the Bad Check Program.

If full restitution is not received, the Bad Check Program forwards the bad check to a Deputy County Attorney to determine whether to file Issuing a Bad Check charges. If charges are filed, the victim or victim's employees may be called upon as a witness to appear in court.

#### **Restitution**

When a bad check writer pays restitution to the Bad Check Program, the victim will be issued a check by the Hill County Attorney Office for the face value of the check plus any additional expenses (i.e. certified mailing fees) the victim has shown the victim has incurred.

Once the victim has submitted a bad check to the Bad Check Program, restitution cannot be accepted by anyone other than the Bad Check Program.

If a case goes to Court, restitution will be paid through the Court, not the Bad Check Program.

#### **Safeguards Against Bad Checks**

It is important that you take the time to educate employees about a set policy for accepting checks. If your company has set procedures for ALL customers, no one customer will feel as though they are being treated unfairly.

Take the time to protect yourself. Adopt a firm, but courteous policy of accepting checks.

Display a sign in your store or place of business, showing your cooperation with the Hill County Attorney's Office. Not only will this put bad check writers on notice, but it may make your honest, regular customers a little more patient with your procedures.

**Always** require your employee to verify the identity of the check writer by checking a picture identification and writing the person's driver's license number AND date of birth on the FACE of the check at the time the check was issued and accepted. A telephone number is also helpful in attempting to trace the writer, along with any identifiers, such as description, ( i.e. male, 6 feet tall, brown hair, brown eyes, etc.). If the identification is not on the check, the Hill County Attorney's Office may not be able to file criminal charges. Remember: if the acceptor of the check cannot verify identification of the writer at the time the check was issued, identification cannot be verified for issuance of a warrant or trial testimony. The presence of your employee's handwriting on the check may be another way for you or your employee to identify the check and check writer at a later date, which is required for prosecution.

Compare all information on the check with that on the writer's I.D., including name, address and identifiers.

Make sure the check is completely filled out. The check must be signed in your presence.

Do not accept a Post Office Box for an address. (Warrants can't be served to a Post Office Box.) Ask for the street address.

Do not accept the check if the name printed is not the same as the name of the person issuing the

check.

The initials of the person accepting the check should be recorded on the check at the time of acceptance. This will assist merchants in determining if an employee can identify the bad check writer if and when charges are filed.

Be cautious when accepting checks with low check numbers, alterations and erasures.

Do not accept two-party checks or counter checks.

Do not agree to hold a check or take a postdated check. Postdated checks are civil matters and are not accepted in the Hill County Attorney's Bad Check Program.

We urge you not to accept checks from persons who live or bank out of state. It is difficult to obtain bank records from another state. In addition, extradition from other states is extremely expensive, and sometimes declined in cases, such as Issuing a Bad Checks, where public safety is not a concern.

#### **Types of Identification**

**Driver's Licenses, Military IDs, State I.D. Cards or Check Cashing Cards** Instruct your employees to compare the photo with the check writer's real appearance. Hair color and weight can always change, but check the age, race and sex. Is the address on the license the same as on the check? If not, ask for the correct address. Is the license valid, or has it expired? Never accept an expired license.

#### **Remember . . .**

1. Use common sense: If in doubt, call the bank and verify that the check is good.
2. Weigh the possible loss you may take against the possible gain.
3. Do not permit yourself to become flustered by the shopper who is in a rush.
4. Keep a log of all checks submitted to the Bad Check Program for your records.
5. If a person's check has bounced before, do not take another check. Make a list of bad check writers for your employees.
6. Trust your instincts! If something doesn't seem right, ask questions or ask for another form of payment. You are not obligated to accept a check.

#### **For Further Information or to Request Forms, Please Contact:**

Hill County Attorney's Office

Bad Check Program Hill County Courthouse

315 Fourth Street Havre, Montana 59501

406-265-5418, ext. 211

406-265-3638 (fax)

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