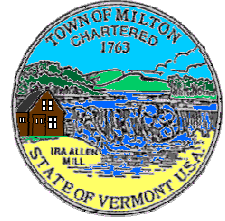




**Milton Police Department**  
37 Bombardier Road  
Milton, VT 05468  
(802) 893-6171 Voice  
(802) 893-6032 Fax



## **Milton Police Department Chittenden County State Attorney's Bad Check Policy**

### **THE LAW** **13 V.S.A. 2022**

It is a crime in Vermont for a person to issue or pass a check knowing that it will not be honored by the drawee (bank). The necessary intent may be inferred if the issuer gives a check on a non-existent account or fails to make the check good within ten days after receiving written notice that the payment was refused because of insufficient funds in his or her account. Notice can be shown by a receipt for certified mail.

### **PENALTY**

The maximum penalty for a bad check offense is imprisonment for one year and/or a fine of \$1,000.00. The Court shall order restitution in the amount of the check, together with a service charge not to exceed \$5.00, if it is established that the defendant has the ability to pay.

### **PROSECUTION**

A bad check can be the basis of a criminal prosecution only if the facts constitute a violation of 13 V.S.A. §2022 and the State can prove each and every essential element of the crime beyond a reasonable doubt. Not every bad check can form the basis of a criminal prosecution, but it may nevertheless represent a legal obligation, which can be enforced in a civil suit. The State's Attorney's Office has no authority to investigate civil matters and complainants should pursue civil remedies through their own attorney or small claims court.

### **MINIMUM CHECK AMOUNT FOR PROSECUTION**

The State's Attorney's Office has established a policy that it will not accept for prosecution a check in an amount of less than One Hundred dollars (\$100.00) unless it can be shown that the issuer has engaged in a course of conduct involving several bad checks the total of which is greater than One Hundred dollars (\$100.00).

## **PROSECUTION CRITERIA**

### **The State's Attorney's Office will not accept a check for prosecution if:**

1. The Complainant is unable to provide sufficient information to adequately identify the person who issued the check.
2. The ten day written notice has not been sent out to the issuer.
3. The check was not presented to the bank for payment within thirty (30) days after issue.
4. The check was postdated.
5. The check is more than a year old.
6. The check was drawn on an out-of-state bank, unless the complainant is willing to pay the cost and expenses of bringing the out-of-state bank's bookkeeper to court and so states in writing.
7. Partial payment has been accepted on the check.
8. The check was received by the complainant through the mail.
9. The complainant took and held the check at the request of the issuer or passer for a period of time before presenting it.
10. The check is marked "payment stopped" unless complainant gave cash for the check or it was drawn on a nonexistent account.
11. The check is a "three-party" check, i.e., written to one person who in turn endorsed it to the complainant.
12. The check is written in an amount of less than one hundred dollars (\$100.00), unless it can be established that the issuer has engaged in a course of conduct writing several checks the total of which is more than one hundred dollars (\$100.00).

## **COMPLAINT PROCEDURE**

- A. Present the check to the bank for payment within thirty (30) days of receipt, even if the check is known to be "no good."
- B. Notify the passer or issuer of the bad check in writing, advising that the check was not honored and why, and telling him or her that he or she has ten (10) days to pay. The following form letter should be sufficient:

(DATE)

Dear

The check, which you presented to us in payment for merchandise, which you purchased at

our store on \_\_\_\_\_ drawn on the \_\_\_\_\_  
(Date) (Name of Bank)

in the amount of \$ \_\_\_\_\_ has been returned marked (insufficient funds) / (no account).  
(Amount)

Be advised that pursuant to Vermont Law you have ten (10) days within which to make your check good, or this matter will be referred to the Chittenden County state's Attorney's Office for the purpose of prosecution.

Very truly yours,

\_\_\_\_\_

- 
- C. Send the letter by certified mail and ask the postmaster for a return receipt. Keep the receipt with a copy of the letter.
- D. Wait ten days for the date of receipt of the notice by the addressee. If the check is not made good by then, lodge a complaint with the proper law enforcement agency as indicated below:
- If the incident occurred in Burlington, call: Burlington Police Department, 658-2700
  - If the incident occurred in Colchester, call: Colchester Police Department, 655-1412
  - If the incident occurred in Essex, call: Essex Police Department, 878-8331
  - If the incident occurred in Milton, call: Milton Police Department, 893-2424
  - If the incident occurred in Richmond, call: Richmond Police Department, 434-2153
  - If the incident occurred in Williston, call: Williston Police Department, 878-6611
  - If the incident occurred in Winooski, call: Winooski Police Department, 655-0221
  - If the incident occurred in S. Burlington, call: S. Burlington Police Department, 658-1050
  - If the incident occurred in Shelburne, call: Shelburne Police Department, 985-8051
  - If the incident occurred in Hinesburg, call: Hinesburg Police Department, 482-3397
  - For the rest of Chittenden County, call: Vermont State Police, 878-7111



- E. Take the check and the return receipt or the unopened letter, in person to one of the above law enforcement agencies. The person requesting prosecution must make a written complaint and the bad check MUST be furnished with the following items and information:
- Bank "flag" or other proof of dishonor.
  - A copy of the ten day notice letter with the return receipt or the returned letter unopened.
  - The name of the person who accepted the check and can identify the issuer of passer.
- F. Once prosecution is commenced, witnesses will be notified when and if a court appearance becomes necessary. The victim will be notified if the Defendant pleads guilty or is never found.
- G. The Chittenden County state's Attorney's Office is not a collection agency. Its function is to prosecute when a criminal law is violated. It is the policy of this office to recommend restitution when a sentence to be served is not recommended. If you receive payment on a check after prosecution is requested, you should notify, the State's Attorney's office, 32 Cherry Street, suite 305, Burlington, VT, telephone: 863-2865.

**Title 13: Crimes and Criminal Procedure**  
**Chapter 47: FRAUDS**  
**13 V.S.A. § 2022. Bad checks**

§ 2022. Bad checks

A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, shall be imprisoned for not more than one year or fined not more than \$1,000.00 or both. The court shall order restitution in the amount of the check or order, together with a service charge not to exceed \$5.00, if it is established that the defendant has the ability to pay. For the purposes of this section, it may be inferred that the issuer knew that the check or order, other than a post-dated check or order, would not be paid if:

- (1) the issuer had no account with the drawee at the time the check or order was issued; or
- (2) the issuer had insufficient funds with the drawee at the time the check or order was issued or presented for payment, and
  - (A) the check or order was presented to the drawee for payment not more than 30 days after the date of issuance, and
  - (B) payment was refused by the drawee for reasons other than seizure or attachment of the issuer's funds by order of a court or authorized governmental agency, and
  - (C) the issuer or a person acting in his behalf failed to make full satisfaction of the amount of the check or order within 10 days after receiving notice of its dishonor by the drawee.