

PUBLIC SAFETY COMMITTEE

11-0439R

RESOLUTION AUTHORIZING AGREEMENT WITH CHECK DIVERSION PROGRAM, LLC FOR THE ADMINISTRATION OF THE WORTHLESS CHECK DIVERSION PROGRAM AT NO COST TO THE CITY.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Check Diversion Program, LLC, substantially the same as that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, for the administration of the worthless check diversion program for the city of Duluth, said program established by Minn. Stat. § 628.69.

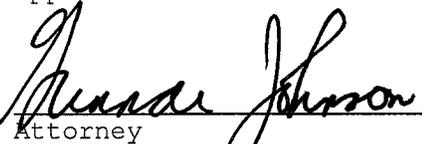
Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

DPD/ATTY TL:dma 08/16/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute a three (3) year agreement with Check Diversion Program, LLC for the administration of the worthless check diversion program ("program") for the city. The program, authorized by Minn. Stat. § 628.69, ensures that victims (merchants and vendors) are paid full restitution from the individuals who issue worthless checks. The program vendor also provides financial education and other services. This has been a successful program through Financial Crime Service, LLC, the vendor who previously administered the program on behalf of the city.

**CHECK DIVERSION PROGRAM, LLC  
WORTHLESS CHECK DIVERSION AGREEMENT**

**1. Contractual Agreement:**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2011, by and between the City of Duluth ("Jurisdiction" hereafter), State of Minnesota, and Check Diversion Program, LLC ("CDP Services" hereafter) of 415 Main Street, Red Wing, Minnesota, 55066.

**2. Purpose:**

The purpose of this Agreement shall be to implement a Worthless Check Diversion Program (Minnesota State Statute 628.69 attachment A) for the Jurisdiction.

This program provides an alternative to criminal prosecution of individuals who issue worthless check(s) to citizens, merchants and businesses. The program will assist the Jurisdiction and its law enforcement agency in processing worthless checks. CDP Services will also assist in the criminal investigation and prosecution of individuals issuing worthless checks. This program will provide that the victim is paid full restitution from the offender who has issued the worthless check along with financial training for the offender (offender defined in section 4, B). Individuals who have written a worthless check(s) may voluntarily participate or who have been court ordered to enroll in this Worthless Check Diversion Program. By enrolling into the Worthless Check Diversion Program offenders will be diverted (Minnesota State Statute 628.69) from criminal or civil prosecution, provided they make full restitution, pay all service fees (see section 4, D) and complete required training class. CDP Services will assist the Jurisdiction Attorney's office or designee and victims of worthless checks in working with individuals writing these worthless checks to obtain full restitution for victim(s) that are defined as non-sufficient funds (NSF) checks or account closed (AC) checks.

**3. Contract Terms:**

This Agreement shall be in force for a period of three (3) years, from the beginning date of Agreement signed by the Jurisdiction and shall be automatically renewed for one year terms.

**4. Definitions:**

A. Victim – the business or person who accepted a worthless check for goods or services and suffered the financial loss.

B. Offender – the individual or participant who passed the worthless check(s) and has enrolled in the Worthless Check Diversion Program voluntarily or has been ordered by the Court to complete the Worthless Check or other diversion programs.

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C. Restitution Recovery – Dollar recovery of face value (or written amount) of a dishonored check(s), property damage, as well as administrative fees, civil penalties, bank fees as appropriate and law enforcement costs.

D. Worthless Check Diversion Fees Defined

1) Financial Training Class Fee, 4-6 Hours	\$140.00
2) NSF Merchant Service Fee (Gifted to CDP Services, as Provided in Section 8, A)	\$ 30.00
3) Individual Requests a Payment Plan Beyond 30 Days (One-time Account Set-up Fee)	\$ 25.00
4) Late Payment Fees (Discretion Used and Not Accumulative Over \$75.00)	\$ 25.00
5) Internet/Electronic NSF Return Processing Fee (Returned Restitution Payment as NSF)	\$ 32.50
6) Creating a monthly payment book or pre-authorized debit payment book (Optional)	\$ 15.00
7) Credit Card Payment Processing Fee ((Optional)	\$ 7.50
8) Electronic Check Processing Fee (Optional)	\$ 7.50
9) Rescheduling of Training Class Fee (Number Times Permitted is Three Times)	\$ 20.00
10) Home Study CD or online training	\$ 20.00
11) Mailing fees incurred by CDP services	(US Postal Rates)

In addition to the fees set forth above, CDP Services acknowledges that Jurisdiction desires to recover its costs, as allowed by Minnesota Statutes §604.113, incurred in participating in this program. CDP Services agrees to work with the Jurisdiction, in good faith, to try to effectuate this goal.

**5. Jurisdiction Requirement:**

The Jurisdiction's Attorneys Office (including designated personnel) retains the sole discretion and authority (as defined in the "Financial Services Regulatory Relief Act of 2006 attachment A) to decide which worthless check(s) submissions shall be placed in the Worthless Check Diversion Program and which shall be retained for criminal investigation and/or prosecution.

**6. CDP Requirement:**

CDP Services agrees to provide the following professional services to the Jurisdiction in a timely and efficient manner:

A. Perform daily operations and management of all clerical and accounting functions related to processing worthless check writers (NSF checks and account closed checks) submitted by the Jurisdiction's Worthless Check Diversion Program.

B. Generate letters to worthless check writers and follow through with respect to processing payments for restitution. Disburse recovered restitution funds for the victims. Restitution also includes payment of all administrative fees, and the payment of CDP Services education training class fees. (See Section 4, D)

All offender payments shall be deposited into a designated bank trust account on behalf of the Jurisdiction Victims. This account and all its funds are to be disbursed as defined in section 4 item "C" of this agreement.

**CHECK DIVERSION PROGRAM, LLC**  
**WORTHLESS CHECK DIVERSION AGREEMENT**

- C. Provide necessary correspondence and follow-up, if needed, by telephone and responding to inquiries of victims and offenders.
  - D. Properly maintain all physical files, financial records, documentation, reports, computer files, etc. for a period of no more than six (6) years or as required by law.
  - E. Provide voluntary in person, online, or home study check offender financial management education classes with meaningful information and lessons for offenders regarding criminal consequences of property crimes, as well as focus on personal management of checking accounts and basic budgeting
  - F. Schedule offender training classes and/or provide home study course.
  - G. Maintain records of offenders making restitution, payment of fees, attendance records of offenders completing as well as failing to attend the training session.
  - H. Maintain records of payment to the victims.
  - I. Provide reports to the Jurisdiction; annual offender report, completed offender classes, and related reports as required by the Jurisdiction and law enforcement.
  - J. Worthless check writers who fail to respond to the Worthless Check Program or refuse to voluntarily enroll into the program or to complete the training program as voluntarily agreed upon or by court ordered and/or who fails to make full restitution are considered to be non-compliant individuals. These individual listings will also be made available to the Jurisdiction and its designees for follow-up and for further review and appropriate action.
  - K. CDP Services on behalf of the Jurisdiction will provide reports as required by MN Statute 628.69 Subd 7.
  - L. CDP to provide letters for Jurisdiction for its review, approval and sign off
- 7. Victim recovery:**
- A. Face value of the worthless check(s) submitted and related victim expenses (bank fees and any mailing cost) identified at the time the worthless check is submitted to CDP Services and when recovery of restitution is made from the individual responsible for the worthless check.
- 8. Check Diversion Program governed by (attachment A):**
- A. Minnesota Statutes, section 604.113.
  - B. Minnesota Statute 609.535
  - C. Minnesota Statute 628.69

**CHECK DIVERSION PROGRAM, LLC  
WORTHLESS CHECK DIVERSION AGREEMENT**

D. Financial Services Regulatory Relief Act of 2006

**9. Jurisdiction has no financial liability:**

It is understood and agreed by and between the parties that CDP Services will bear all financial liability for all aspects of its operations under this Agreement.

**10. Termination of this agreement:**

A. This Agreement may be terminated at any time, without cause, by either party upon 30 days written notice to the authorized agent of the Jurisdiction or CDP Services.

B. This Agreement may be immediately terminated by the Jurisdiction at any time if the Jurisdiction determines that CDP Services, (see section 18 of this Agreement) is acting, or has acted at any time during the term of this Agreement, in direct and clear violation of state or federal law.

**11. Amendments or Material Modification or Notices:**

a. All amendments or modifications to this Agreement must be in writing and approved by both parties. Any notice to be given hereafter by either party to the other, shall be in writing and may be effected by personal delivery, or by registered mail, return receipt requested, addressed to the proper party at the address listed below.

(fill in mailing address)

City of Duluth 411 West 1 <sup>st</sup> Street Duluth, MN 55802 Attn: Steve Stracek
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Check Diversion Program, LLC 415 Main Street Red Wing, MN 55066 Att: Scott Adkisson
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b. The parties agree that email may be utilized for the transmittal of ordinary course transactional information.

**12. Jurisdiction Has No Obligation to Victims:**

CDP Services and victims who participate in this program fully understand that the Worthless Check Diversion Program is providing a public service and the Jurisdiction is held harmless and has no liability to make recovery of any check(s) or obligated to take criminal action against offender(s).

**13. Criminal Action:**

The Jurisdiction's Attorney's office may choose to prosecute offender(s) at its sole discretion. In the case where the offender fails to participate or complete Agreements with CDP Services and victim(s) the Jurisdiction shall determine appropriate action to take with the worthless check writer, including criminal prosecution or other action determined by the Jurisdiction's Attorney's.

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**14. Hold Harmless and Indemnification:**

CDP Services and its subcontractors shall save and protect, hold harmless, indemnify and defend the Jurisdiction and its Attorney's Office including their officers and employees against any and all claims, causes of action, suits, liabilities, losses, charges, damages or costs and expenses arising from or allegedly arising from, or resulting directly or indirectly from any errors and omissions and/or negligent or willful acts or omissions of CDP Services and its employees and agents, in the performance of this Agreement.

**15. CDP SERVICES as Independent Contractor:**

A. Nothing contained in this Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between the parties. CDP Services shall at all times remain as independent contractor with respect to the services to be provided under this Agreement.

B. The Jurisdiction shall be exempt from payment of all unemployment insurance, FICA, retirement, life and medical insurance and workers' compensation insurance for any and all of CDP Services employees and agents or subcontractors. Payment of insurance premiums, tax withholding, and all other benefits are strictly CDP Services responsibility.

**16. Subcontractor:**

CDP Services shall retain the right to subcontract any portion of the work to be performed under this Agreement. CDP Services may specifically subcontract to Advent FS processing of checks or payment processing operations (credit, check, debit electronic check, remote deposit, wire transfers, check representment processors, invoicing or billing processors) to increase efficiencies. In addition CDP Services may assign this complete Agreement to a new company, provided the Jurisdiction Attorney agrees in writing to the assignment. CDP Services shall be the sole responsible party for any and all expenses relating to an assignment of this Agreement

**17. Data Practice:**

CDP Services agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentially.

CDP Services will immediately report to the department head signing this agreement any request from third parties for information relating to this agreement. The Jurisdiction agrees to promptly respond to inquiries from CDP Services concerning data request. CDP Services agrees to defend and hold harmless the Jurisdiction, its officers, department head and employees from any claims resulting from the CDP Services unlawful disclosure or use of data protected under state and federal laws.

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**18. Compliance with the Law:**

CDP Services agrees to abide by the requirements and regulations of The American with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363). Civil Rights Ordinance (Ch. 139), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disabilities, religion, and with sexual harassment. Violation of any of the above can lead to the termination of this Agreement.

**19. Entire Agreement:**

This entire Agreement supersedes any and all other Agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, and contains all of the Agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or Agreements, oral or otherwise, have been made by either party which is not embodied herein, and that no other Agreements, statements, or promises not contained within this Agreement shall be valid or binding. All provision contained within this Agreement shall be valid or binding. The laws of Minnesota and the United States of America shall govern all provisions within this Agreement.

**20. Audits and Inspections:**

The Jurisdiction's Attorney's office or designated representative or other governmental agency exercising regulatory function over the business activities, while exercising reasonable, non-disruptive procedures, may inspect CDP Services records at anytime.

**21. Insurance:**

CDP Services and/or its subcontractors agree to provide and maintain, at its own cost and at all times during its performance under this contract until completion of the work, such liability insurance coverage as is set forth below, and to otherwise comply with the provisions that follow:

A. Workers Compensation: Workers Compensation insurance in compliance with all applicable statutes.

B. Auto Insurance (Owned and un-owned auto)

C. General Liability: "Commercial General Liability Insurance" (Insurance Service Office policy form title), or equivalent policy form, providing coverage on an "occurrence", rather than on a claims made basis, the policy for which shall include, but not limited to, coverage for bodily injury, property damage, personal injury, contractual liability (applying to this contract), Independent Contractors, and Products-Completed Operations Liability. Coverage for explosions, collapse and underground Hazards shall not be included.

## **CHECK DIVERSION PROGRAM, LLC WORTHLESS CHECK DIVERSION AGREEMENT**

Such a policy shall name the Jurisdiction as additional insured hereunder, and shall apply on a primary basis with respect to any similar insurance maintained by the Jurisdiction, which other insurance of the Jurisdiction, if any, shall apply excess of CDP Services insurance and not contributed therewith. CDP Services

Such Commercial General Liability insurance policy shall provide a combined single limit in the amount of at least \$2,000,000 (two million) Each Occurrence, applying to liability for bodily injury and property damage, and a combined single limit of at least the same amount applying to liability for Personal injury and Advertising injury. Such minimum limits may be satisfied by the limit afforded under Firm's Commercial General Liability Insurance Policy, or by such Policy in combination with limits afforded by a Umbrella or Excess Liability Policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Policy is at least in all material respects as broad as that afforded by the underlying Commercial Liability Policy, and further that the Jurisdiction is included as an additional Insured thereunder. The policy cannot be cancelled without 30 days written notice to the City.

Such Commercial General Liability Policy and Umbrella or Excess Liability Policy (or policies) may provide aggregate limits for some or all of the coverage afforded thereunder, so long as such aggregated limits are not at any time during which such coverage is required to be maintained hereunder reduced to less than the required Each Occurrence limited stated above, and further, that the Umbrella or Excess Liability provides from the point that such aggregate limits in the underlying Commercial General Liability Policy become reduced or exhausted. An Umbrella or Excess Liability Policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention amount does not cause the firm total deductibles or retention for Each Occurrence to exceed \$10,000.

D. Professional Liability: Professional or ("Errors & Omissions") Liability Insurance in the amount of at least \$1,000,000 Each Occurrence (or "Wrongful Act" or equivalent) and if applicable, Aggregate, covering CDP Services Liability for negligent acts, errors, or omissions in the performance of professional services in connection with this Agreement. CDP Services Professional Liability Insurance may afford coverage on an occurrence basis or on a claims basis. It is however, acknowledged and agreed by the CDP Services that under claims-made coverage changes in insurers or in insurance policy forms could result in the impairment of the liability insurance protection intended for the Jurisdiction hereunder. CDP Services therefore agrees that it will not seek or voluntarily accept any such change in its Professional Liability Insurance coverage if such impairment of the protection for the Jurisdiction could result: and further, that it will exercise its right under any Extended Reporting Period" ("tail coverage") or similar claims-made policy option if necessary or appropriate to avoiding impairment of such protection.

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**22. CDP Services further agrees that it will, throughout the entire period that this Agreement is in effect:**

1. Advise the Jurisdiction with at least 30 days written notice on any intended or pending change in Professional Liability insurance or in policy forms, and provide the Jurisdiction with all pertinent information that the Jurisdiction may reasonably request to determine compliance with this paragraph.
  
2. Advise the Jurisdiction of any claims or threat of claims that might reasonably be expected to reduce the amount of such insurance remains available for the protection of the Jurisdiction.

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

**CHECK DIVERSION PROGRAM, LLC  
WORTHLESS CHECK DIVERSION AGREEMENT**

THEREFORE: IN WITNESS OF, the parties have executed the Agreement as of the date first written above

Check Diversion Program, LLC, (CDP Services)

City of Duluth

By \_\_\_\_\_  
(Scott Adkisson , President)

By \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk  
Date \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Approved As to Form

\_\_\_\_\_  
City Attorney

Attachment A Laws

Attachment A  
16 pages

## **2010 Minnesota Statutes**

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### **628.69 PRETRIAL DIVERSION PROGRAM FOR WRITERS OF DISHONORED CHECKS.**

Subdivision 1. **Definitions.** As used in this section:

(1) a person is an "offender" if the person is charged with, or probable cause exists to arrest or charge the person with, a violation of section 609.535, but the person has not yet entered a plea in the proceedings;

(2) "pretrial diversion" means the decision of a prosecutor to refer an offender to a diversion program on condition that the criminal charges against the offender will be dismissed after a specified period of time, or the case will not be charged, if the offender successfully completes the program; and

(3) "prosecutor" means a city or county attorney.

Subd. 2. **Establishment of program.** A prosecutor may establish a pretrial diversion program for offenders. The program may be conducted by the prosecutor or by a private entity under contract with the prosecutor.

Subd. 3. **Diversion of offender.** In determining whether to accept an offender for pretrial diversion, the prosecutor shall consider:

(1) the value of the dishonored check or checks;

(2) whether the offender has a criminal record or has previously been diverted under this section or any other diversion program;

(3) the number of dishonored check grievances against the offender previously received by the prosecutor;

(4) whether there are other dishonored check grievances currently pending against the offender;

(5) the strength of the evidence, if any, of intent to defraud the victim; and

(6) the wishes of the victim regarding placement in the program.

Subd. 4. **Program components.** (a) At a minimum, the pretrial diversion program must require offenders to:

(1) successfully complete an appropriate educational class or classes at their own expense which includes information on writing checks and managing money;

(2) make full restitution to the victim of the offense; and

(3) pay appropriate penalties under section 604.113, subdivision 2, paragraph (a).

(b) If the prosecutor determines that requiring an offender to pay for the educational class described in paragraph (a), clause (1), would result in an economic hardship to the offender or the offender's family, the prosecutor may waive the requirement.

Subd. 5. **No civil liability.** A victim of an offender who successfully completes a pretrial diversion program under this section may not recover the penalties described in section 604.113,

subdivision 2, paragraph (b), if the penalties relate to the offense resulting in completion of the diversion program.

**Subd. 6. Reporting of data to Bureau of Criminal Apprehension.** Every county attorney who has established a pretrial diversion program under this section shall report the following information to the Bureau of Criminal Apprehension:

- (1) the name and date of birth of each diversion program participant, and any other identifying information the superintendent considers necessary;
- (2) the date on which the individual began to participate in the diversion program;
- (3) the date on which the individual is expected to complete the diversion program;
- (4) the date on which the individual successfully completed the diversion program, where applicable; and
- (5) the date on which the individual was removed from the diversion program for failure to successfully complete the individual's goals, where applicable.

The superintendent shall cause the information described in this subdivision to be entered into and maintained in the criminal history file as defined in section 13.87.

**Subd. 7. Reports.** By January 15 of each odd-numbered year, each prosecutor shall report to the Supreme Court and the chairs of the senate and house of representatives committees having jurisdiction over criminal justice policy on the operation of any pretrial diversion program established under this section. The report must include a description of the program, the number of offenders participating in the program, the number and characteristics of the offenders who successfully complete the program, the number and characteristics of the offenders who fail to complete the program, and an evaluation of the program's effect on the operation of the criminal justice system within the prosecutor's jurisdiction.

**History:** 1999 c 218 s 6; 2009 c 59 art 6 s 24

## 2010 Minnesota Statutes

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### 609.535 ISSUANCE OF DISHONORED CHECKS.

Subdivision 1. **Definitions.** For the purpose of this section, the following terms have the meanings given them.

(a) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(b) "Credit" means an arrangement or understanding with the drawee for the payment of a check.

Subd. 2. **Acts constituting.** Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check and may be sentenced as provided in subdivision 2a. In addition, restitution may be ordered by the court.

Subd. 2a. **Penalties.** (a) A person who is convicted of issuing a dishonored check under subdivision 2 may be sentenced as follows:

(1) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than \$500;

(2) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than \$250 but not more than \$500; or

(3) to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is not more than \$250.

(b) In a prosecution under this subdivision, the value of dishonored checks issued by the defendant in violation of this subdivision within any six-month period may be aggregated and the defendant charged accordingly in applying this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the dishonored checks was issued for all of the offenses aggregated under this paragraph.

Subd. 3. **Proof of intent.** Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision.

Notice of nonpayment or dishonor that includes a citation to and a description of the penalties in this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within five business days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

**Subd. 4. Proof of lack of funds or credit.** If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

**Subd. 5. Exceptions.** This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

**Subd. 6. Release of account information to law enforcement authorities.** A drawee shall release the information specified below to any state, county, or local law enforcement or prosecuting authority which certifies in writing that it is investigating or prosecuting a complaint against the drawer under this section or section 609.52, subdivision 2, clause (3), item (i), and that 15 days have elapsed since the mailing of the notice of dishonor required by subdivisions 3 and 8. This subdivision applies to the following information relating to the drawer's account:

(1) documents relating to the opening of the account by the drawer and to the closing of the account;

(2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn on the account within a period of six months of the date of request;

(3) periodic statements mailed to the drawer by the drawee for the periods immediately prior to, during, and subsequent to the issuance of any check which is the subject of the investigation or prosecution; or

(4) the last known home and business addresses and telephone numbers of the drawer.

The drawee shall release all of the information described in clauses (1) to (4) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may not impose a fee for furnishing this information to law enforcement or prosecuting authorities.

A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

**Subd. 7. Release of account information to payee or holder.** (a) A drawee shall release the information specified in paragraph (b), clauses (1) to (3) to the payee or holder of a check that has been dishonored who makes a written request for this information and states in writing that the check has been dishonored and that 30 days have elapsed since the mailing of the notice described

in subdivision 8 and who accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.

The requesting payee or holder shall notify the drawee immediately to cancel this request if payment is made before the drawee has released this information.

(b) This subdivision applies to the following information relating to the drawer's account:

(1) whether at the time the check was issued or presented for payment the drawer had sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or restricted for any reason and the date it was closed or restricted;

(2) the last known home address and telephone number of the drawer. The drawee may not release the address or telephone number of the place of employment of the drawer unless the drawer is a business entity or the place of employment is the home; and

(3) a statement as to whether the aggregated value of dishonored checks attributable to the drawer within six months before or after the date of the dishonored check exceeds \$250; for purposes of this clause, a check is not dishonored if payment was not made pursuant to a stop payment order.

The drawee shall release all of the information described in clauses (1) to (3) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may require the person requesting the information to pay the reasonable costs, not to exceed 15 cents per page, of reproducing and mailing the requested information.

(c) A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

**Subd. 8. Notice.** The provisions of subdivisions 6 and 7 are not applicable unless the notice to the maker or drawer required by subdivision 3 states that if the check is not paid in full within five business days after mailing of the notice, the drawee will be authorized to release information relating to the account to the payee or holder of the check and may also release this information to law enforcement or prosecuting authorities.

**History:** 1963 c 753 art 1 s 609.535; 1967 c 466 s 1; 1971 c 23 s 56; 1974 c 106 s 1,2; 1981 c 202 s 1; 1981 c 247 s 1-3; 1983 c 225 s 10; 1984 c 436 s 34; 1985 c 140 s 3; 1986 c 444; 1988 c 527 s 2,3; 1991 c 256 s 11-13; 1992 c 569 s 26; 1999 c 218 s 3; 2004 c 228 art 1 s 72

## **2010 Minnesota Statutes**

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### **604.113 ISSUANCE OF WORTHLESS CHECK.**

Subdivision 1. **Definitions.** (a) The definitions provided in this subdivision apply to this section.

(b) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(c) "Credit" means an arrangement or understanding with the drawee for the payment of the check.

(d) "Dishonor" has the meaning given in section 336.3-502, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.

(e) "Payee" or "holder" includes an agent of the payee or holder.

Subd. 2. **Acts constituting.** Whoever issues any check that is dishonored is liable for the following penalties:

(a) A service charge, not to exceed \$30, may be imposed immediately on any dishonored check by the payee or holder of the check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check on behalf of the payee or holder, up to the entire amount of the service charge may be retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check. The displayed notice must also include a provision notifying the issuer of the check that civil penalties may be imposed for nonpayment.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the check and the reason for nonpayment. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for nonpayment after 30 days;

(2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and

(3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

**Subd. 3. Notice of dishonor required.** Notice of nonpayment or dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check.

The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

**Subd. 4. Proof of identity.** The check is prima facie evidence of the identity of the issuer if the person receiving the check:

(a) records the following information about the issuer on the check, unless it is printed on the face of the check:

- (1) name;
- (2) home or work address;
- (3) home or work telephone number; and
- (4) identification number issued pursuant to section 171.07;

(b) compares the issuer's physical appearance, signature, and the personal information recorded on the check with the issuer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

**Subd. 5. Defenses.** Any defense otherwise available to the issuer also applies to liability under this section.

**History:** 1983 c 225 s 6; 1984 c 576 s 26; 1985 c 140 s 1,2; 1991 c 256 s 8,9; 1992 c 565 s 113; 1996 c 414 art 1 s 41; 1997 c 157 s 65,66; 1999 c 218 s 1; 2001 c 204 s 1; 2004 c 174 s 3



**“Financial Services Regulatory Relief Act of 2006”**  
**Pages 105 thru 111**  
**As related to a Check Diversion Program**

1           “(3) TIMING.—A model form required to be de-  
2           veloped by this subsection shall be issued in pro-  
3           posed form for public comment not later than 180  
4           days after the date of enactment of this subsection.  
5           “(4) SAFE HARBOR.—Any financial institution  
6           that elects to provide the model form developed by  
7           the agencies under this subsection shall be deemed  
8           to be in compliance with the disclosures required  
9           under this section.”

10 **TITLE VIII—FAIR DEBT COLLEC-**  
11 **TION PRACTICES ACT AMEND-**  
12 **MENTS**

13 **SEC. 801. EXCEPTION FOR CERTAIN BAD CHECK ENFORCE-**  
14 **MENT PROGRAMS.**

15           (a) IN GENERAL.—The Fair Debt Collection Prac-  
16 tices Act (15 U.S.C. 1692 et seq.) is amended—

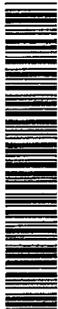
17           (1) by redesignating section 818 as section 819;  
18           and

19           (2) by inserting after section 817 the following:

20 **“§ 818. Exception for certain bad check enforcement**  
21 **programs operated by private entities**

22           “(a) IN GENERAL.—

23           “(1) TREATMENT OF CERTAIN PRIVATE ENTI-  
24 TIES.—Subject to paragraph (2), a private entity  
25 shall be excluded from the definition of a debt col-



1       lector, pursuant to the exception provided in section  
2       803(6), with respect to the operation by the entity  
3       of a program described in paragraph (2)(A) under  
4       a contract described in paragraph (2)(B).

5               “(2) CONDITIONS OF APPLICABILITY.—Para-  
6       graph (1) shall apply if—

7               “(A) a State or district attorney estab-  
8       lishes, within the jurisdiction of such State or  
9       district attorney and with respect to alleged bad  
10      check violations that do not involve a check de-  
11      scribed in subsection (b), a pretrial diversion  
12      program for alleged bad check offenders who  
13      agree to participate voluntarily in such program  
14      to avoid criminal prosecution;

15              “(B) a private entity, that is subject to an  
16      administrative support services contract with a  
17      State or district attorney and operates under  
18      the direction, supervision, and control of such  
19      State or district attorney, operates the pretrial  
20      diversion program described in subparagraph  
21      (A); and

22              “(C) in the course of performing duties  
23      delegated to it by a State or district attorney  
24      under the contract, the private entity referred  
25      to in subparagraph (B)—



1                   “(i) complies with the penal laws of  
2 the State;

3                   “(ii) conforms with the terms of the  
4 contract and directives of the State or dis-  
5 trict attorney;

6                   “(iii) does not exercise independent  
7 prosecutorial discretion;

8                   “(iv) contacts any alleged offender re-  
9 ferred to in subparagraph (A) for purposes  
10 of participating in a program referred to in  
11 such paragraph—

12                   “(I) only as a result of any deter-  
13 mination by the State or district at-  
14 torney that probable cause of a bad  
15 check violation under State penal law  
16 exists, and that contact with the al-  
17 leged offender for purposes of partici-  
18 pation in the program is appropriate;  
19 and

20                   “(II) the alleged offender has  
21 failed to pay the bad check after de-  
22 mand for payment, pursuant to State  
23 law, is made for payment of the check  
24 amount;



1           “(v) includes as part of an initial writ-  
2           ten communication with an alleged of-  
3           fender a clear and conspicuous statement  
4           that—

5                   “(I) the alleged offender may dis-  
6                   pute the validity of any alleged bad  
7                   check violation;

8                   “(II) where the alleged offender  
9                   knows, or has reasonable cause to be-  
10                  lieve, that the alleged bad check viola-  
11                  tion is the result of theft or forgery of  
12                  the check, identity theft, or other  
13                  fraud that is not the result of the con-  
14                  duct of the alleged offender, the al-  
15                  leged offender may file a crime report  
16                  with the appropriate law enforcement  
17                  agency; and

18                  “(III) if the alleged offender noti-  
19                  fies the private entity or the district  
20                  attorney in writing, not later than 30  
21                  days after being contacted for the  
22                  first time pursuant to clause (iv), that  
23                  there is a dispute pursuant to this  
24                  subsection, before further restitution  
25                  efforts are pursued, the district attor-



1           ney or an employee of the district at-  
2           torney authorized to make such a de-  
3           termination makes a determination  
4           that there is probable cause to believe  
5           that a crime has been committed; and  
6           “(vi) charges only fees in connection  
7           with services under the contract that have  
8           been authorized by the contract with the  
9           State or district attorney.

10          “(b) CERTAIN CHECKS EXCLUDED.—A check is de-  
11       scribed in this subsection if the check involves, or is subse-  
12       quently found to involve—

13               “(1) a postdated check presented in connection  
14       with a payday loan, or other similar transaction,  
15       where the payee of the check knew that the issuer  
16       had insufficient funds at the time the check was  
17       made, drawn, or delivered;

18               “(2) a stop payment order where the issuer  
19       acted in good faith and with reasonable cause in  
20       stopping payment on the check;

21               “(3) a check dishonored because of an adjust-  
22       ment to the issuer’s account by the financial institu-  
23       tion holding such account without providing notice  
24       to the person at the time the check was made,  
25       drawn, or delivered;



1           “(4) a check for partial payment of a debt  
2 where the payee had previously accepted partial pay-  
3 ment for such debt;

4           “(5) a check issued by a person who was not  
5 competent, or was not of legal age, to enter into a  
6 legal contractual obligation at the time the check  
7 was made, drawn, or delivered; or

8           “(6) a check issued to pay an obligation arising  
9 from a transaction that was illegal in the jurisdiction  
10 of the State or district attorney at the time the  
11 check was made, drawn, or delivered.

12           “(c) DEFINITIONS.—For purposes of this section, the  
13 following definitions shall apply:

14           “(1) STATE OR DISTRICT ATTORNEY.—The  
15 term ‘State or district attorney’ means the chief  
16 elected or appointed prosecuting attorney in a dis-  
17 trict, county (as defined in section 2 of title 1,  
18 United States Code), municipality, or comparable ju-  
19 risdiction, including State attorneys general who act  
20 as chief elected or appointed prosecuting attorneys  
21 in a district, county (as so defined), municipality or  
22 comparable jurisdiction, who may be referred to by  
23 a variety of titles such as district attorneys, pros-  
24 ecuting attorneys, commonwealth’s attorneys, solici-  
25 tors, county attorneys, and state’s attorneys, and



1 who are responsible for the prosecution of State  
2 crimes and violations of jurisdiction-specific local or-  
3 dinances.

4 “(2) CHECK.—The term ‘check’ has the same  
5 meaning as in section 3(6) of the Check Clearing for  
6 the 21st Century Act.

7 “(3) BAD CHECK VIOLATION.—The term ‘bad  
8 check violation’ means a violation of the applicable  
9 State criminal law relating to the writing of dishon-  
10 ored checks.”.

11 (b) CLERICAL AMENDMENT.—The table of sections  
12 for the Fair Debt Collection Practices Act (15 U.S.C.  
13 1692 et seq.) is amended—

14 (1) by redesignating the item relating to section  
15 818 as section 819; and

16 (2) by inserting after the item relating to sec-  
17 tion 817 the following new item:

“818. Exception for certain bad check enforcement programs operated by pri-  
vate entities.”.

18 **SEC. 802. OTHER AMENDMENTS.**

19 (a) *LEGAL PLEADINGS.—Section 809 of the Fair Debt*  
20 *Collection Practices Act (15 U.S.C. 1692g) is amended by*  
21 *adding at the end the following new subsection:*

22 “(d) *LEGAL PLEADINGS.—A communication in the*  
23 *form of a formal pleading in a civil action shall not be*

