

Bounced Checks

Perhaps the only thing more annoying in business than not getting paid is receiving a check that does not clear your bank account. Your business account gets charged for somebody else's negligence or fraud. This hardly seems fair. However, Michigan law does provide a way for a person to recover up to double the amount written on the check, the cost of the check not clearing your bank account, and court costs should court procedures be necessary.

So what must a veterinarian do once (s)he receives a bad check? According to MCLA 600.2952, to preserve the opportunity for double the check amount, one must write the following letter *verbatim* to the check maker:

On (date) a check drawn by you for \$_____ was returned to us dishonored for: [] not sufficient funds [] no account. If you do not pay to us, within 30 days of the time you receive this notice, the full amount of the check in cash, we have the right to bring an action against you for two (2) times the amount of the dishonored check (\$_____) or \$50.00, whichever is greater, or to make a criminal complaint against you. If you do pay to us, within 30 days of the time you receive this notice, the full amount of the check in cash, we will not take further action against you.

The areas left blank obviously must be completed by the veterinarian. It is wise to add the following language to this letter pursuant to MCLA 750.132: "Michigan law states that the failure to pay the amount of the check together with all costs and protests fees within five (5) days of receipt of this letter shall be construed as *prima facie* evidence of fraud."

MCLA 600.2952 has some further caveats that must be observed. First, this letter must be mailed by certified mail, return receipt requested, and delivery restricted to the addressee. Practically, this is a rather expensive method of sending mail. Also, in my experience, people tend to dodge certified mail because they expect it may contain a lawsuit.

Second, the double damage amount cannot exceed \$500.00. Therefore, if one receives a check for \$450, the most that one could recover under this statute is \$500.00, not \$900.00. It also means that if one receives a check for \$501.00 that does not clear, the most that could be recovered is \$501.00.

Third, assume that one does sue a person that drafts a bounced check. If at any time before trial, the maker

decides to pay *in cash* the full amount of the bounced check plus reasonable costs (not exceeding \$50), *then the check recipient cannot collect the double damages up to \$500.00* and must settle for the amount paid by the check maker.

Finally, if any criminal action is taken, then there is no possible entry of the civil judgment pursuant to this statute. In fact, if criminal prosecution against the maker succeeds after a successful lawsuit under this statute, then the civil judgment is voided! Although the amount of the check will likely be ordered to be paid as restitution as a condition of probation, such a sanction is not a guarantee of collection. In fact, if the criminal does not repay the amount of restitution and the Judge revokes the criminal's probation, the monetary amount may never be recovered. While this hardly seems fair, it only highlights the need to consult an attorney who is familiar with criminal and collection law before taking action on a bounced check.

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