

Hot Check Program

The Bandera County Attorney's Office is charged with the responsibility of helping merchants recover lost funds due to bad checks. Enclosed is an information packet along with a sample letter of demand.

It is my goal to help reduce losses due to bad checks. In addition, if I or my staff can assist you, please do not hesitate to contact my office at (830) 796-4075 or fax at (830) 796-8218.

1. TEXAS LAW:

In Texas, it is unlawful to write a worthless check under *Sections 31.06 and 32.41 of the Penal Code*. These statutes deal with the direct exchange of a worthless check for goods and services and the mere introduction of a worthless check into commerce. The law allows anyone who has received a worthless check to file charges: a) with the Justice of the Peace of the Precinct where your business is located if the check is less than \$100.00, b) with the County Attorney if the check is from \$1.00 or more, but less than \$2,500.00 or, c) with the District Attorney if the check is for \$2,500.00 or more.

2. ALWAYS LOOK AT CHECKS CLOSELY:

- (1) Make sure the date is correct (I cannot accept post dated checks for prosecution).
- (2) Make sure that the written dollar amount matches the numerical dollar amount.
- (3) Look for the routing numbers on the check.
- (4) Verify with the check writer that the address and phone number printed on the check are correct.
- (5) Make sure the check writer signs the check in front of you.
- (6) MAKE SURE THE CHECK WRITER'S SIGNATURE IS LEGIBLE.
- (7) Make sure to verify the check writer's Driver's License Number and date of birth by requesting to personally look at the Driver's License.

3. BE SUSPICIOUS OF:

- (1) Low number starter checks.
- (2) Out of Town checks.
- (3) Customers who try to distract you during the transaction with excessive talking, children, etc.
- (4) Customers that do not provide a Driver's License.

4. INFORMATION TO RECORD ON THE FRONT OF THE CHECK:

REMEMBER, always record all information on the front of the check.

- (1) The eight (8) digit Texas Driver's License number of the check writer (look at the Driver's License yourself).
- (2) The name of the person accepting the check.
- (3) THE CHECK WRITER'S HOME AND WORK TELEPHONE NUMBERS.

(4) Record the physical descriptors from the license, if time permits, or at least verify that the picture on the Driver's License is the same person writing the check.

ALWAYS ASK TO SEE THE CHECK WRITER'S DRIVER'S LICENSE EVEN IF THE DRIVER'S LICENSE NUMBER IS PRINTED ON THE CHECK.

5. CHECKS THAT CANNOT BE PROSECUTED through the County Attorney's Office:

- (1) Checks that have been held for sixty (60) days or more before being presented for payment to the bank.
- (2) Checks on garnished accounts.
- (3) Checks involved with involuntary bankruptcy.
- (4) Post dated checks.
- (5) Checks for partial payments or debt.
- (6) Out of State Checks.

6. WE RECOMMEND THAT THE FOLLOWING NEVER BE ACCEPTED:

- (1) Counter checks.
- (2) Out of State checks.
- (3) Pre-signed blank checks.
- (4) Third party checks.
- (5) Post dated/hold checks.

7. PENALTIES AND PAYMENTS.

MAXIMUM Penalties for Theft by Check: Fine Amounts <u>Do Not</u> Include Restitution, Fees, or Court Costs
--

Value of Property less than \$100	Fine of \$500
Value of Property \$1 but less than \$750	Fine of \$2,000 Plus Six Months Jail Time
Value of Property \$750 but less than \$2,500	Fine of \$4,000 Plus Jail Time of One Year
Value of Property \$2,500 but less than \$30,000	Fine of \$10,000 Plus State jail time of Six Months to Two Years
Value of Property \$30,000 but less than \$150,000	Fine of \$10,000 Plus Prison time of Two to Ten Years
Value of Property \$150,000 but less than \$300,000	Fine of \$10,000 Plus Prison time of Five to Ninety Years or Life

The County Attorney often recommends fine-only, reductions to lower level offenses or even dismissal if the restitution and fees are promptly paid in full.

Restitution and fees may be paid ONLY in the form of CASH, MONEY ORDER or CASHIER'S CHECK. The County Attorney's Office DOES NOT accept checks or credit cards. If you owe money on a hot check, please call (830) 796-4075 to arrange payments. A condition for payment arrangements may be Probation.

The County Attorney attempts to contact those accused of theft by check in order to confirm the facts of the case and/or arrange a payment schedule. In many instances, the matter can be resolved and restitution made without a case being filed. If the person cannot be contacted or fails to follow an arranged payment schedule, then a warrant may be issued for their arrest.

8. FILING HOT CHECKS WITH THE COUNTY ATTORNEY.

Below are the steps you must accomplish before you may file. A copy of the required COMPLAINT AND AFFIDAVIT form and an example Demand Letter are included for you to print on your printer. Complete the form with information from the check and other sources.

Once you have filed the check with the County Attorney's Office, **DO NOT ACCEPT PAYMENT** on the check. If you receive a money order or payment through the mail, please return it to the check writer with a note explaining that the check has been turned in to the County Attorney for Prosecution and the check writer must contact the County Attorney's Office. If there is a change of address for the check writer, **NOTIFY MY OFFICE** of the change.

If you have any questions or suggestions, please call or email Ellen Cummings, the Hot Checks Coordinator, (830) 796-4075 or ecummings@banderacounty.org.

HOW TO FILE CHARGES ON A WORTHLESS CHECK

PRELIMINARY STEPS YOU MUST TAKE:

- (1) **TEN (10) DAY NOTICE:** Send a ten-day notice letter (Demand Letter) to the writer of the check to the last known address by **CERTIFIED MAIL** with return receipt requested and a copy of the same letter sent by **REGULAR MAIL**. Also, keep a copy of the letter for your records.
- (2) On the envelope under your return address add "*Return Service Requested*".
- (3) The ten-day notice **MUST** advise the maker that his/her check has been returned (see the Example Demand Letter, below).
- (4) The ten-day notice also **MUST** advise the maker that he/she has ten (10) days to make restitution before legal action is taken.

WHAT TO TAKE TO THE COUNTY ATTORNEY FOR PROSECUTION:

- (1) The signed receipt or the **UNOPENED** returned letter whichever has been returned by the Post Office.
- (2) **THE ORIGINAL CHECK.**
- (3) All pertinent information that you have accumulated on the maker of the check.
- (4) The completed **COMPLAINT AND AFFIDAVIT.**
- (5) A copy of the Demand Letter sent to the check writer.

AFFIDAVIT

THE STATE OF TEXAS }
 }
COUNTY OF BANDERA }
 }

THE UNDERSIGNED AFFIANT, after being duly sworn by me, makes the following statements under oath: I have good reason to believe and do so believe that

(Name of the person who signed the check(s))

Herein after called the accused, did commit the offense of theft by passing a worthless check. My belief is based on the following facts:

FACTS ABOUT THE ACCUSED

DL# _____, State _____, DOB: _____, SSN: _____
Home Address: _____ City _____ State _____ Zip _____
Place of Employment: _____ Address: _____
City, State & Zip _____ Phone # _____

FACTS ABOUT THE CHECK

This check was accepted for? Merchandise _____ Cash _____ Service _____
Explanation _____

CHECK#	DATE WRITTEN	AMT. OF CHECK	PERSON WHO TOOK CHECK	HOW CHECK DISHONORED
_____	_____	_____	_____	_____

OTHER PERTINENT FACTS

Restitution collected should be sent to: _____
Address: _____ City _____ State _____ Zip _____
Phone # _____
Additional helpful information about case: _____

I HEREBY SWEAR OR AFFIRM that the above information is true and correct to the best of my knowledge; that the above check(s) was given in Bandera County, Texas; that said check(s) was not postdated or hold check(s); that said check(s) was believed to have been good when it was accepted; that no partial payment has been made on said check(s); that I personally received said check(s) or that virtue of my employment I have the Authority to make this affidavit on behalf of the holder. **I will not accept any payment for this check after being filed for prosecution.**

AFFIANT (Complainant)

PRINTED NAME OF COMPLAINANT

SUBSCRIBED AND SWORN TO before me on this _____ day of _____ .

Notary Public in and for the State of Texas

NOTE: To fully comply with the law, the second paragraph (shown in bold type) must appear, word for word, in your Demand Letter. Also, it is a good idea to include the Certified Mail Number below the signature block for future reference.

EXAMPLE DEMAND LETTER

I.B.Stiffed
Stiffed Company
1234 Any Street
My Town, State Zip

July 5, 1776

U.Ome Bigtime
5678 Dirt Road
His Town, State Zip

Dear Mr. Bigtime:

Your check of July 1, 1776 for \$27.94 for payment of a small cask of black powder and 20 lbs of round musket shot was returned to me today, July 5, 1776, by your bank for insufficient funds.

This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within ten (10) days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution.

I await your prompt resolution of this matter.

Sincerely,

I.B. Stiffed

Certified Mail No.
and Regular Mail

cc: Bandera County Attorney