

## WORTHLESS CHECKS AND HOW TO HANDLE THEM

**DEFINITION:** Section 32.41 of the Texas Penal Code states:

A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment of the check or order as well as all other checks or orders outstanding at the time of issuance.

Violation of this section is a Class C misdemeanor regardless of the amount involved.

**NOTE:** Another section of the Penal Code, section 31.06 (Presumption of theft by check) is not discussed here. Information regarding offenses under this section may be obtained from the Check Fraud Division of the District Attorney's Office, 281-316-8300 ext. 2373.

### NOTICE REQUIREMENTS

A registered or certified letter or a telegram **must be sent** to the maker of the check at his last known address, which would be either the address on the check or the address on the records of the bank or records of the person or company to whom the check was given. This notice is not required for "Account Closed" checks but requested by Judge Foster's office. This notice must advise the maker that his check has been returned, unhonored by his bank, and that he has ten days in which to make it good before further legal action will be taken.

A returned receipt must accompany the registered or certified letter, or a report made of delivery showing that the telegram was delivered. The complainant (you) must give the maker of the check **ten days from the date delivered** to make the check good. If this notice was given, it is presumed by law that it was received no later than five days after it was sent. In cases where the letter is returned unclaimed or the report of delivery shows that the telegram could not be delivered, the complainant may proceed with legal action immediately without waiting ten days.

After fulfilling the notice requirements, the payee (or a person designated by the payee) may take the check plus the signed receipt, the unopened returned letter or the report of delivery to the appropriate Justice of the Peace Court for prosecution.

### CHECKS THAT CANNOT BE PROSECUTED

The following type checks are not prosecutable under either Section 31.06 or 32.41:

- (A) most out-of-state checks (because of cost to the payee and other complications);
- (B) stop-payment checks, unless they were given for cash or other no-controversy items or the bank will confirm in writing that there were insufficient funds on deposit with the bank on the date the check was written;
- (C) checks for which the maker's checking account has been garnisheed or otherwise frozen;
- (D) checks involved with an involuntary bankruptcy.

**NOTE:** There may be exception to the garnisheed, otherwise frozen account or involuntary bankruptcy issues if the complainant can establish that the maker of the check knew of this when writing the check.

**If you have questions concerning any of the laws or procedures discussed above, you may call Constable Pam Matranga office at 281-316-8806.**

## AN OUNCE OF PREVENTION

Worthless checks losses represent a great cost to Galveston County merchants. The following guidelines may help merchants diminish losses from worthless checks:

- (A) Require a valid check, with all items of information legibly filled in, including the maker's address, the complete date, and the amount expressed in both numerals and words.
- (B) Require a driver's license. Personal acquaintance with the maker is best. A single photograph showing both the check-writer and the check is the next best. Information from the new laminated Texas Driver's License having a good color picture is mandatory. A thumb print is good. Credit cards may be reliable, but they are often stolen or forged and then used by professional hot check writers.
- (C) Require the check to be signed in your presence.
- (D) Have employees initial check when they accept them. There is almost no chance of conviction if the person who accepted the check cannot identify the maker of the check in court.
- (E) Call the bank or check other reference sources when in doubt.
- (F) Take immediate action when a check is returned by the bank.
- (G) Don't hesitate to check identification and compare photographic ID with the person.
- (H) Don't hold a check for over thirty (30) days before presenting it to the bank for payment
- (I) Be familiar with the type of checks that cannot be criminally prosecuted, and remember the only recourse is through the civil courts if these checks are returned by the bank.
- (J) Remember that criminal prosecution is not a collection process even though a merchant may frequently benefit through the process and recover some or all of the money involved.

## SAMPLE DEMAND LETTER

DATE \_\_\_\_\_

Dear (Defendant)

Demand is hereby made for full and complete restitution of your check number \_\_\_\_\_ dated \_\_\_\_\_ in the amount of \_\_\_\_\_ which has been returned by your bank.

If restitution is not received within ten (10) days, I will seek relief by filing criminal charges.

Yours Truly,

(Your Name)

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## WHERE TO FILE A COMPLAINT

After the proper notice requirements have been met, you may file charges with the Justice of the Peace in the Precinct where the check was passed. In Precinct 7, you may file charges at the Precinct 7 Courthouse.

**Honorable Mark Foster**  
**Justice of the Peace**  
**Galveston County Precinct 7**  
**4500 10<sup>th</sup> Street**  
**P.O. Box 8327**  
**Bacliff, Texas 77518**  
**281-339-4525 ext. 8803**

## PRESENTED IN THE PUBLIC INTEREST BY



**Constable Pam Matranga**  
**281-316-8806**



**The Honorable Mark Foster**  
**281-339-4525**

Courtesy Constable Ron Hickman  
Harris County Constable Pct. 5

## HOW TO HANDLE HOT CHECKS

