

CHECKLIST

(PLEASE ASSURE YOU HAVE ALL DOCUMENTS ENCLOSED PRIOR TO SUBMITTING TO THE COURT)

AFFIDAVIT STATING PROBABLE CAUSE

RETURNED CHECK

CERTIFIED MAIL RECEIPT SHOWING NOTICE WAS GIVEN TO THE CHECK WRITER OF THE BANKS REFUSAL TO PAY

Issuance of Bad Check, Section 32.41 of the Texas Penal Code

The offense of "issuance of bad check" is a Class C misdemeanor.

It is a crime for a person to issue or pass a check knowing that the person did not have sufficient funds on deposit with the bank to cover the check and any other check that was outstanding at the time the check was issued. The law presumes that the person knew that the check was bad if (i) the person had no account with the bank at the time of issuing the check, or (ii) the person failed to pay the check within ten (10) days after receiving notice that the check was returned for "insufficient funds."

Notice that payment was refused by the bank for insufficient funds may be actual notice, or notice in writing, sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the person who issued the check at (a) the address shown on the check, (b) the address shown on the records of the bank, or (c) the address shown on the records of the person to whom the check was given. The notice must contain the following statement:

"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 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."

Filing the Complaint

The law allows the check writer's knowledge of insufficient funds to be presumed if:

- (i) the check writer had no account with the bank at the time the check was issued; or
- (ii) payment was refused by the bank for insufficient funds on the holder's presentation of the check to the bank within thirty (30) days after issue; and
- (iii) the check writer failed to pay the holder in full within ten (10) days after receipt of notice of the bank's refusal to pay the check.

In order to take advantage of the presumption, the holder of the check must

- (i) deposit or present the check for payment within thirty (30) days after it was issued; and
- (ii) give the check writer notice of the bank's refusal of payment,

To prosecute the bad check writer, a Complaint may be made, if appropriate, in the Justice Court in the Justice of the Peace precinct where the check was issued, or in which the check writer resides. The complaint must be accompanied by an Affidavit Stating Probable Cause. The affidavit is a written statement containing enough facts about the transaction to cause the magistrate to believe that the check writer has indeed issued a bad check, and is necessary to allow the magistrate to issue a warrant ordering the arrest of the check writer.

A special Affidavit of Probable Cause is required for Merchant Owners/Managers, for Merchants with a Merchant Identification Card, and for Courtesy Booth Operators.

The original check, the notice to the check writer of the bank's refusal to pay, and the registered or certified mail receipt showing notice given, should be provided at the time of filing the complaint. A witness who is able to identify the check writer must be available for trial.