



## **INSTRUCTIONS AND INFORMATION FOR FILING FOR ISSUANCE OF A BAD CHECK**

Texas Penal Code, § 32.41. Issuance of a Bad Check. *(a) 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 in full of the check or order as well as all other checks or order outstanding at the time of issuance.*

To file a complaint of *Issuance of a Bad Check* on an individual, the issuer did not have an account with the bank or other drawee at the time he/she issued the check or order; or payment was refused by the bank or other drawee for lack of funds or the issuer failed to pay the holder in full within 10 (ten) days after receiving notice of refusal.

The check must be stamped or flagged by the bank other drawee as Insufficient Funds (NSF), no account, or account closed. **You may not file *Issuance of a Bad Check* on a check that is post dated, marked payment stopped, or funds held, but you may file a Civil Suit in Justice Court to recover damages.**

A notice required by Texas Penal Code § 32.41 (2) (c) must be sent by registered or certified mail, return receipt requested, and by first class mail. The notice must be addressed to the issuer at his/her address shown on the check or order; the records of the bank or other drawee or the records of the person to whom the check or order has been issued or passed. The notice must contain the following statement:

**"This is a demand for payment in full for a check or order not paid because of 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."**

In the Demand Letter you will also need to identify the Check, state why it was returned by the bank or other drawee, who the check or other order was written to and included any service charges or fees required. A sample letter is attached to this packet.

If the notice was given as stated in the previous paragraph, it is presumed that the notice was received no later than five days after it was sent.

The Court requests a Driver's License number or Date of Birth of the issuer to identify the person who issued the check or order. The Statutes of Limitation is two (2) years on a Class C Misdemeanor, *Issuance of a Bad Check*. The court cannot accept a filing after two (2) years from the date of the issuance of the check or order. You may file a Justice Court suit to recover damages.

You will be required to furnish the Court with the following:

1. The original check
2. The certified demand letter unopened with the unclaimed or refused or delivered green card.
3. A copy of the envelope of the first class letter sent to the issuer or the returned first class letter, unopened.
4. A copy of the Demand Letter sent to the issuer.

The Court will then prepare a Complaint and Probable Cause Affidavit for your signature. You will need to sign those documents in the presence of a notary or a person authorized by law to administer oaths (the Court Clerk). If the person being filed on pleads not guilty, you must be prepared to testify in Court.

A person may make restitution of the check, but there is no guarantee from the Court for any check recovery. Once the complaint has been filed with the Court if you collect or accept any check recovery, service charges, or certified mailing fees, you **must** notify the Court immediately with written documentation. Payment of the check recovery and/or other fees will not dismiss the criminal charges. **Once the charges are filed with the Court, it becomes a matter for the Court to process.**

The Court will contact you when and if there is any check recovery collected.

If you have any questions concerning the filing of *Issuance of a Bad Check* you may contact the Court during normal business hours.

**SAMPLE NOTICE LETTER**

Date:

Issuer's Name  
Issuer's Address  
City, State Zip Code

Re: Check Number \_\_\_\_\_, Returned for \_\_\_\_\_

Dear (Issuer):

This is a demand for payment in full for a check or order not paid because of 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.

On (date) check number \_\_\_\_\_ was written by you to the (name of person or business including the address, city, state, and zip code) in the amount of \$\_\_\_\_\_ and was returned marked (reason for return) There is a return check fee (amount) and certified mail fee of (amount) Total sum due is (amount)

Sincerely,

(Name of person signing Letter)  
(Title of person signing letter)

**THE STATE OF TEXAS**

**IN THE JUSTICE COURT**

Vs.

**PCT. \_\_\_\_\_**

**BANDERA COUNTY, TEXAS**

\_\_\_\_\_  
(Defendant)

Cause Number: \_\_\_\_\_

**AFFIDAVIT FOR PROBABLE CAUSE**

PERSONALLY APPEARED before me the undersigned authority \_\_\_\_\_,  
for \_\_\_\_\_ the affiant, who after being duly sworn, deposes and says the  
affiant has good reason to believe and does believe that one \_\_\_\_\_  
herein styled the defendant, heretofore on or about \_\_\_\_\_, in the  
County of Bandera and the State of Texas, did unlawfully and knowingly did issue or pass to  
\_\_\_\_\_ a check or order for payment of money  
being tenor the following: (as it appears on the Check)

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
(Number and Street) (City) (State) (Zip Code)

Date of Birth and/or Driver's Licenses Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Check Number: \_\_\_\_\_ Dated: \_\_\_\_\_ Payable to: \_\_\_\_\_

in the amount of \$ \_\_\_\_\_ Signed by: \_\_\_\_\_, Defendant.

Drawn on the \_\_\_\_\_ of \_\_\_\_\_.

Account Number: \_\_\_\_\_ Certified mail Number: \_\_\_\_\_ Date Mailed \_\_\_\_\_.

I, as affiant, have personal knowledge of the above facts and I have examined such check that was not honored by the bank and on its face such check, through markings placed on the check by the bank, was dishonored and returned marked \_\_\_\_\_.

Based on this information, the undersigned prays that this Honorable Court issue a finding of fact that probable cause exists to believe that a crime has been committed and that there is probable cause to believe he above named defendant has committed said crime.

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public/Court Clerk

The undersigned Judge of this Court, upon the above sworn testimony, hereby determines there is probable cause for and arrest warrant to be issued for the above defendant.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Presiding Judge