

Issuance of Bad Check

The Offenses of Issuance of Bad Check and Theft by Check

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."

Theft by Check, [Section 31.03](#) and [Section 31.06](#) of the Texas Penal Code

In general, it is a theft for a person to take property from its owner by issuing or passing a check when that person knew or should have known that there were not sufficient funds on deposit with the bank for the payment in full of the check as well as all of the other checks that the person had outstanding at the time. The law presumes that the check writer intended to steal the property, if (i) the check writer had no account with the bank at the time of issuing the check, or (ii) the check writer failed to pay the check within ten (10) days after receiving notice that the check was returned by the bank for "insufficient funds."

Notice to the check writer 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."

"Theft by Check" is a Class C misdemeanor if the property stolen is valued at less than \$20.00 and the person obtained the property by issuing or passing a check.

Punishment

A Class C misdemeanor is punishable by a fine not to exceed \$500.00.

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.

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.

Complaint Forms / Fort Bend County

- [Affidavit for Probable Cause by Merchant or Manager \[PDF\]](#)
- [Affidavit for Probable Cause by Individual \[PDF\]](#)

Issuance of Arrest Warrant or Other Notice

When a sufficient complaint has been filed, the court will notify the check writer of the filing of the charge either by issuing a summons or an arrest warrant. In some instances, the court may issue a notice of the filing of the charge and providing an opportunity to appear and answer.

If a warrant is issued, you may avoid arrest by posting bail.

Posting Bail

You may post bail at the Justice Court in which your case is filed. Bail may be in the form of a Surety Bond or a Cash Bond. When posting a cash bond, you must tender cash in the form of a cashier's check or money order, payable to the Justice Court, in the amount of bail.

A magistrate must consider allowing you a personal bond. After posting bail, you will be notified of the date and time you are to appear in court.

Paying the Fine at the Court

You may pay the acceptable fine either **(i)** in person at the Justice Court in which your case is filed or **(ii)** by mailing the fine to the Justice Court. Fines may be paid by cashier's check or money order payable to the Justice of the Peace. Fines may also be paid in cash or by credit card at the office of the Justice of the Peace. If you pay the fine, no further court appearance is necessary.

You will remain subject to arrest until you post bail or otherwise dispose of your case. If you are arrested, you will be required to give bail to secure your release from custody and appear in court at a later time to answer for this charge.

Rights of Defendants

If you are accused of the offenses of "issuance of bad check" or "theft by check," you have certain rights.

You have the right to see the complaint or citation that has been filed with the court.

You have the right to a trial by jury, but you may waive the right to a trial by jury and be tried by the Judge.

You have the right to be represented by an attorney of your choice. You are not required to be represented by an attorney. An attorney may make an appearance on your behalf.

You have the right to remain silent and not to give evidence against yourself. You may waive this right and discuss your case with a prosecutor in an effort to dispose of your case without trial.

Restitution

In assessing a fine, the court may consider mitigating circumstances, for example, that restitution was made to the holder of the check. Check writers are encouraged to furnish original receipts for restitution that has been made.

Upon request, the court may reschedule your case to allow you an opportunity to make restitution prior to sentencing.

First Appearance in Court

At the time of your first appearance, you will be identified as the defendant, and you will be asked how you plead to the offense with which you are charged.

Pleas are "not guilty," "guilty," or "no contest."

If you plead not guilty, your case will be set for trial. You may waive your right to a trial by jury and have the case heard by the court. At your request, the court will subpoena a witness on your behalf, but you must furnish the court with the name, address, and telephone number of each witness prior to trial. You may be required to attend a pre-trial conference.

If you refuse to enter a plea, the court will enter a plea of not guilty for you, and your case will be set for a jury trial unless you waive that right.

If you plead guilty or no contest, the court will find you guilty and assess a fine as punishment. A plea of no contest has the same result as a plea of guilty, but it may not be used against you in any civil proceeding that might arise from the incident leading to your arrest.

If you are pleading guilty or no contest, you may present any evidence or documents to the court in connection with the offense and you may explain any mitigating circumstances that may affect punishment.

If you are unsure about how to plead, do not hesitate to enter a plea of not guilty.

The court may be required to provide you certain notices, and it is your responsibility to notify the court of any change of address.