



MERCHANT BAD CHECK
INFORMATION
PROGRAM

Midland County Constables Office Precinct 2
707 West Washington
Midland, Texas 79701

Every time a merchant accepts a check in good faith, he/she expects to realize a profit and in return extends the customer a convenience. When that check is returned for reasons of, **“INSUFFICIENT FUNDS”** or **“ACCOUNT CLOSED”**, the merchant not only suffers the loss of the expected profit, but he/she also loses the cost of the service or the item provided and then incurs an extra cost in accounting and collection fees. These costs are ultimately passed on to the consumer.

BUSINESS TIPS ON TAKING CHECKS

LOOK AT THE CHECK CLOSELY:

- 1) Make sure the date is correct.
- 2) Make sure the written dollar amount and numerical dollar amount match.
- 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 is correct.
Check the writers ID for this information and compare the photo to the individual.
- 5) Make sure the check writer signs the check in front of you.
- 6) **MAKE SURE THE CHECK WRITER’S SIGNATURE IS LEGIBLE.**
- 7) All checks should have at least one perforated edge. **ONLY** government checks are smooth on all sides.
- 8) The numbers at the bottom of the check are a dull flat black. The numbers are never glossy or reflect light.

BE SUSPICIOUS OF:

- 1) Out of town checks.
- 2) Low number starter checks. **BEWARE** of starter checks with low numbers 100-200. 90% of all hot checks are written in this series.
- 3) Nervous behavior on the part of the check writer.
- 4) Customers that try to rush the transaction or those who come in at closing time.
- 5) Purchases made without regard to color, size, style or price.
- 6) Customer who try to distract you during the transaction.
- 7) Customers who have passed more than one check, for large dollar amounts, in the same day.
- 8) Customers who have a blank check but don’t have the checkbook.
- 9) Any correction made on the front or face of the check

INFORMATION TO RECORD ON THE FRONT OF THE CHECK:

- 1) **The eight-digit (8) Texas Driver's License number of the check writer.**
- 2) **The check writers home and work phone numbers. Verify this by checking ID**
- 3) Record the physical descriptors from the license and of the individual
- 4) The name of the person accepting the check.

CHECKS THAT CANNOT BE PROSECUTED:

- 1) Checks that have been held for (30) days before being presented for payment to the bank.
- 2) Checks on garnished accounts.
- 3) Checks involved with involuntary bankruptcy.
 - NOTE: There are exceptions depending on funds availability the date the check was written, or if the maker of the check knew his/her account was frozen when the check was written.

IT IS RECOMMENDED THAT YOU NEVER ACCEPT:

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

TEXAS LAW

Texas Penal Code, 32.41 Issuance of 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 check or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for the purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a post dated check or order) if:

- (1) he had no account with the bank or other drawee at the time he issued the check or order, or
- (2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b) (2) may be actual notice or notice in writing that:

(1) Is sent by registered or certified mail with return receipt requested, by telegram with report of delivery requested, or by first class mail if the letter was returned unopened with markings indicating that the address is incorrect and that there is no current forwarding order.

(2) Is addressed to the issuer at his address shown on:

(A) the check or order;

(B) the records of the bank or drawee; or

(C) the records of the person to whom the check or order has been issued or passed; and contains 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.”

(d) If notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent.

(e) A person charged with an offense under this section may make restitution for the bad checks. Restitution shall be made through the prosecutor’s office if collection and processing were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court.

(f) Except as otherwise provided by this subsection, an offense under this section is a Class C misdemeanor. If the check or similar sight order that was issued or passed was for a child support payment the obligation for which is established under a court order, the offense is a Class B misdemeanor.

(g) An offense under this section is not a lesser-included offense of an offense under Section 31.03 (Theft) or 31.04 (Theft of Service)

The law allows anyone who has received a worthless check, regardless of the amount, to file charges with their local Justice of the Peace.

The Justice of the Peace then may issues a warrant of arrest for the offender or a summons for the offender to appear in court for the offense.

The Constable’s Department subsequently has a Criminal Warrant Division that investigates and locates the Offender and places the offender in custody if a warrant is issued.

The offender then goes before the Justice of the Peace. If the offender is convicted he is ordered to pay a fine and restitution to the business.

HOW TO FILE

There is no cost or charge to you for filing.

PRELIMINARY STEPS:

- (1) Ten (10) day notice: Send a ten (10) day notice letter to the writer of the check to the last known address, by certified mail with return receipt requested.
- (2) The ten (10) day notice **MUST** advise the maker that his/her check has been returned.
- (3) That he/she has ten (10) days to make restitution before legal action is taken.

WHAT TO TAKE TO THE JUSTICE COURT OFFICE:

- 1) The signed receipt or the unopened returned letter, whichever has been returned to you by the post office.
- 2) The original check.
- 3) All pertinent information you have accumulated on the maker of the check.
- 4) **NOTE:** The name and location of the person who took the check.
- 5) **NOTE:** What was purchased with the check?
- 6) **NOTE:** any pertinent information you may have on the writer of the check such as:
EMPLOYMENT, PHYSICAL DESCRIPTION, DRIVERS LICENSE NUMBER, etc.
- 7) Complete Affidavit of Probable Cause with all pertinent information
(Example attachment B)
- 8) Complete Criminal Complaint with all pertinent information.
(Example attachment C)

**Demand Letter
(Attachment A)**

Date: _____

Certified Mail #: _____

From: Customer/Business Name _____

Customer/Business Address _____

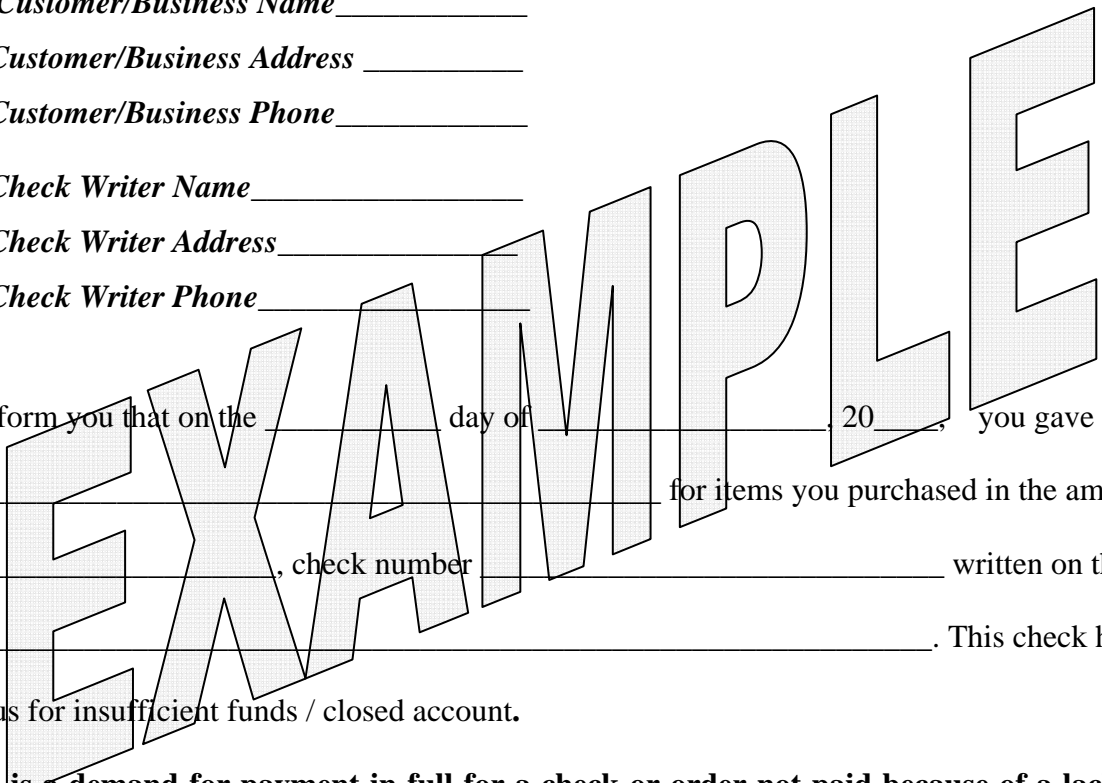
Customer/Business Phone _____

To: Check Writer Name _____

Check Writer Address _____

Check Writer Phone _____

This is to inform you that on the _____ day of _____, 20____, you gave a check to _____ for items you purchased in the amount of \$_____, check number _____ written on the bank _____ . This check has been returned to us for insufficient funds / closed account.



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 (ten) days 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.

Check Amount: _____

Service charge: _____

Mail Charges: _____

TOTAL DUE: _____

Sincerely,

**Demand Letter
(Attachment A)**

Date: _____

Certified Mail #: _____

From: _____

To: _____

This is to inform you that on the _____ day of _____, 20____, you gave a check to _____ for items you purchased in the amount of \$ _____, check number _____ written on the bank _____ . This check has been returned to us for insufficient funds / closed account.

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 (ten) days 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.

Check Amount: _____

Service charge: _____

Mail Charges: _____

TOTAL DUE: _____

Sincerely,

AFFIDAVIT OF PROBABLE CAUSE

THE STATE OF TEXAS § CAUSE NO. _____

COUNTY OF MIDLAND §

THE UNDERSIGNED AFFIANT, BEING A CREDIBLE PERSON UNDER THE LAWS OF TEXAS AND BEING DULY SWORN, ON OATH MAKES THE FOLLOWING STATEMENT AND ACCUSATION:

1. SUSPECTED PARTY: Names, Address, Phone, DOB, Texas DL, SSN, Etc.

2. IT IS THE BELIEF OF AFFIANT, AND HE HEREBY CHARGES AND ACCUSES, THAT SAID SUSPECTED PARTY HAS COMMITTED THE FOLLOWING OFFENSE:

ISSUANCE OF BAD CHECK (Texas Penal Code 32.41) On the _____ day of _____ 20____ at
Business Name and Address in Midland County.

3. AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO WIT:

On (DATE CHECK WRITTEN) (CHECK WRITER) gave us check number _____ for the amount of (CHECK AMOUNT), written on the (NAME OF BANK) and the check was returned unpaid due to insufficient funds/account closed. (CHECK WRITER) has failed to respond to the demand letter mailed to him.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED AUTHORITY, BY SAID AFFIANT OF THIS THE _____ DAY OF _____, 20_____.

NOTARY PUBLIC
MIDLAND COUNTY, TEXAS

JUSTICE OF THE PEACE
PRECINCT NO. 2
MIDLAND COUNTY, TEXAS

AFFIDAVIT OF PROBABLE CAUSE

THE STATE OF TEXAS § CAUSE NO. _____

COUNTY OF MIDLAND §

THE UNDERSIGNED AFFIANT, BEING A CREDIBLE PERSON UNDER THE LAWS OF TEXAS AND BEING DULY SWORN, ON OATH MAKES THE FOLLOWING STATEMENT AND ACCUSATION:

1. SUSPECTED PARTY: Name, Address, Phone, DOB, Texas DL, SSN, ETC

2. IT IS THE BELIEF OF AFFIANT, AND HE HEREBY CHARGES AND ACCUSES, THAT SAID SUSPECTED PARTY HAS COMMITTED THE FOLLOWING OFFENSE:

ISSUANCE OF BAD CHECK (Texas Penal Code 32.41) On the _____ day of _____ 20____ at _____ in Midland County

3. AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO WIT:

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED AUTHORITY, BY SAID AFFIANT OF THIS THE _____ DAY OF _____, 20_____.

**NOTARY PUBLIC
MIDLAND COUNTY, TEXAS**

**JUSTICE OF THE PEACE
PRECINCT NO. 2
MIDLAND COUNTY, TEXAS**

**Criminal Complaint
(Attachment C)**

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned authority, on this day personally appeared this Affiant, who after being by me duly sworn, says upon his oath that he has good reason to believe and does believe that on or about the _____ day of _____, 20____ and before the making and filing of this complaint, in the County of Midland, State of Texas, _____(name of check writer)_____, hereinafter styled the Defendant, did then and there unlawfully issue and pass to _____(merchant)_____, a check to wit: Check No. _____, drawn on _____(name of bank)_____, on the account of _____(name of defendant)_____, account no. _____, in the amount of \$_____, knowing at the time that the said Defendant did not have sufficient funds on deposit with said bank on which said check was drawn for the payment in full of said check, as well as all other checks and orders then outstanding, against the peace and dignity of the State.

AFFIANT

Sworn to and subscribed before me by Affiant, a credible person, on this the _____ day of _____, 20____.

Notary Public in and for the State of Texas

**Criminal Complaint
(Attachment C)**

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned authority, on this day personally appeared this Affiant, who after being by me duly sworn, says upon his oath that he has good reason to believe and does believe that on or about the _____ day of _____, 20____ and before the making and filing of this complaint, in the County of Midland, State of Texas, _____, hereinafter styled as the Defendant, did then and there unlawfully issue and pass to _____, a check to wit: Check No. _____, drawn on _____, on the account of _____, account number. _____, in the amount of \$ _____, knowing at the time that the said Defendant did not have sufficient funds on deposit with said bank on which said check was drawn for the payment in full of said check, as well as all other checks and orders then outstanding, against the peace and dignity of the State.

AFFIANT

Sworn to and subscribed before me by Affiant, _____ a credible person, on this the _____ day of _____, 20____.

Notary Public in and for the State of Texas.