

**ANGELA L. HAMMONDS, COUNTY ATTORNEY
CAMP COUNTY, TEXAS**

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March 12, 2009

Dear Camp County Local Merchant:

“It always happens to the other person” is not always true. You could be the victim of one of today’s most rampant crimes – **HOT CHECKS**. The purpose of this pamphlet is to alert you, educate you and assure you that this office will do everything possible to prosecute the hot check writer.

I hope the information you are about to read assists you. Alert and knowledgeable citizens are the first defense against all crimes – particularly hot checks.

If you have any questions, contact my office. Remember, hot checks can be controlled only with your help.

Sincerely,

Angela L. Hammonds
County Attorney, Camp County, Texas

ALH/ah

The Statutory Law in Texas

There are two laws in Texas pertaining to the issuing or passing of hot checks. They are Penal Code Section 31.06 Theft by Check and Section 3241 Issuance of a Bad Check.

Difference in Crime Committed

The offense of Theft by Check occurs when a “cash” purchase of goods or services is made using a personal check.

The check casher (usually a merchant) gives up something of value, whether it be cash, merchandise, or hotel, restaurant, or some other service, in exchange for the check which he accepts as a substitute for cash.

The transaction is a crime when the check writer has no intention of actually paying for the thing received at the time he writes the check.

When a Theft by Check charge is filed, the person who accepted the check must be able to describe the goods or services taken, itemize their values, and identify the thief.

The punishment for this crime varies in proportion to the value of the item stolen and can range from a fine of One Dollar (\$1.00) up to a maximum of Ten Thousand (\$10,000.00) Dollars and a 20 year penitentiary sentence.

There is a separate, less serious offense of Issuance of a Bad Check, which covers all instances when person writes or passes a check knowing that there is not sufficient funds in the bank account at the time to cover the check and all other checks then outstanding.

It is not necessary to prove exactly what was given (if anything) or its value, or to be able to identify the check passer in court in most cases.

Punishment is by fine of up to Five Hundred (\$500.00) Dollars.

Difference in Penalties

Theft by Check is a crime which may be punished as a Class A, B, or C misdemeanor or a second or third-degree felony, depending upon the amount involved.

The crime of Issuance of Bad Check is always a Class C misdemeanor, regardless of the amount involved.

But the filing of either charge can be equally effective in getting restitution to the merchant.

PROCEDURE WHEN TAKING A CHECK

It is vital that you stress to your employees the importance of being thorough when accepting a check. If your establishment has set a policy for all customers then no one should have any reason to feel they are being treated unfairly. It is a good idea to have a "checklist" where a cashier can see it easily. It should include at least the following:

1. **Is it dated today?**

Checks must be dated the same day they're given. Post-dated checks are not prosecutable.

2. **Is the signature legible?**

Do NOT accept checks previously signed. Have them signed in your presence and compare the driver's license or other I.D.

3. **Is the address complete?**

Require a permanent street address, not a P.O. Box number unless you know the writer.

4. **Can you confirm identity?**

Every kind of I.D. can be forged. The most reliable are the one with physical descriptions, photos, etc. If you are suspicious, ask the writer to hand you the license and while it's in your hand, ask his address and/or birth date. If it is not his license, he may be caught off guard and give the wrong information.

5. **Do written amounts and numbers correspond?**

Banks will not honor checks with discrepancies.

6. **Is the I.D. used recorded?**

Record on the check the type of I.D. and I.D. numbers as well as the clerk's initials who takes the check.

CHECKS TO AVOID: The following checks usually cannot be prosecuted as “hot” checks:

A check marked “refer to maker,” “drawn against uncollected funds” or “unable to locate account;”

A post-dated check;

A stop-payment check;

A check on an out-of-state bank;

A two-party check;

A check more than a year old;

A check for less than \$5.00;

A check for which partial payment has been received;

A check given in exchange for a returned check;

A check which does not identify who accepted it;

A check received in the mail;

A check not presented to bank within 30 days of issuance;

A check for which no 10-day notice was given;

As you can see, it is very important to get the information set out in the procedures above.

CLUES FOR DETECTING BAD CHECKS

Be careful of low series numbers on personal checks. About 85% of all uncollected “hot checks” are new account numbers between 101 and 150.

Check the finish on the black magnetic computer numbers on the bottom. Magnetic ink is very dull – never shiny.

Check the first four magnetic numbers to the left of the account number. Each area of the state has its own bank routing number – learn yours.

Look for at least one perforated edge. All checks except government or computer-produced will be perforated.

Look for multi-colored checks from large corporations but beware of Xerox “color.” Watch for shiny, tacky, raised letters. This should never be and is the best sign of a Xeroxed check.

PROCEDURE WHEN A CHECK IS RETURNED

There are certain procedures you must follow before this office will accept a returned check for prosecution:

1. The check must be presented to the bank for payment, even if you know it will not be honored and stamped by the bank as to the reason of dishonorment.
2. You must send written notification to the check writer informing him or her of the reason the check was not honored. The written notice must be sent CERTIFIED, RETURN RECEIPT REQUESTED. The following sample letter sets out the information which must be included:

Date

To:

Mr. / Ms. (Bad check writer)

Address on check or

Better address if known

Dear (Bad Check Writer):

Please be advised that your check number _____ dated _____ for \$ _____ has been returned to our business by your bank marked “_____”. You may accept this letter as notice required by the Texas Penal Code that if payment of the above check and our returned check fee totaling \$ _____ is not received by us within ten (10) days from the date of this letter, this matter will be turned over to the County Attorney of Camp County, Texas, for further action.

Very truly yours,
(Recipient of Check)

Effective September 1, 2003, Merchants are now allowed to collect a processing fee of \$30.00 for all checks written on or after this date. Please post in business and/or update signs you already have posted.

Be sure to keep a copy of this letter. If, after 10 days the check hasn't been paid, you must personally bring it to this office and furnish the following:

- 1. The original check with the bank flag or notation with the reason it was not honored;**
- 2. The signed receipt from the certified letter or the correspondence (unopened) marked refused or unclaimed;**
- 3. A copy of your letter;**
- 4. The name, address and phone number of the person who accepted the check and who can identify the maker;**
- 5. Specific identification of maker such as driver's license number, date of birth, and physical description. (It will be necessary for you to supply this information on a form when you come into the office.)**

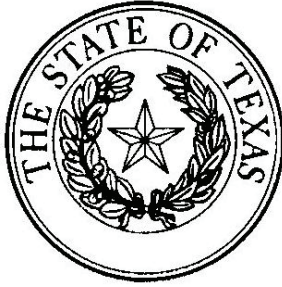
Date _____

To:
Mr. / Ms. _____

Dear _____ :

Please be advised that your check number _____ dated
_____ for \$ _____ has been returned to our
business by your bank marked “ _____ ”. You may accept this
letter as notice required by the Texas Penal Code that if payment of the above
check and our returned check fee totaling \$ _____ is not received by us
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Mr.
Maker of Check: Mrs.
Miss

Home Address Street City Zip Phone

Business Address Street City Zip Phone

DL# DOB: SEX RACE

HEIGHT: HAIR EYES

Did you contact Bank? Yes / No Remarks:

Have you contacted signer? Yes / No How?

MONEY COLLECTED SHOULD BE SENT TO:

Street City Zip Phone

Check given for: Cash, Merchandise, Loan, Past Rent, Future Rent, Services, or

Person who took check from maker:

CIRCLE ONE
Can he/she identify maker in court? Yes No
Was check passed in Camp County? Yes No
Was this a Stop Payment Check? Yes No
CHECK AMT.
Date of check \$
Date of check \$
Date of check \$
Date of check \$
Date of check \$
Date of check \$
Merchant Fee \$
Subtotal \$
Hot Ck SPF \$
TOTAL \$

Your Name:

Remarks:

The County Attorney's office cannot legally prosecute checks taken outside of Camp County, checks taken as payment for debt, or post-dated checks.

Date received in C.A.'s office