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## Hot Checks

A major jurisdiction of Justice Court is the criminal act of Issuance of Bad Checks (IBC). The Justice of the Peace in Texas has statutory authority to accept criminal misdemeanor complaints filed by victims of hot checks that are given in violation of Section 32.41 of the Texas Penal Code, entitled "Issuance of Bad Check. Each year, many defective checks are written, and this criminal action has a significant negative impact on the lives and businesses of our community.

### **Issuance of Bad Checks**

Issuances of Bad Check charges are class C misdemeanors and can be filed in the Justice of the Peace office. The check must be filed in the County and Precinct where it was passed.

This office accepts checks returned from the bank marked NSF or account closed. Stopped payment checks must be filed as civil suits.

Each check marked NSF must be accompanied by a returned green card or unopened letter that was mailed certified as an attempt to collect the debt before filing the check with the court.

An account-closed check can be filed without the proof of certified mail.

Each filing must be done by completing an affidavit and signing it in front of a court clerk or notary public. The original check and certified mail proof (when applicable) must be filed with the affidavit.

### **Instructions for Filing a Complaint**

1. Merchant must send a written demand for payment to the check writer by certified mail, return receipt requested. This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds.

This demand must include the following statement:

**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.**

Merchant should retain a copy of the notice and the certified mail green card when it is returned by the U.S. Postal Service. Note that when the U.S. Postal Service attempts delivery of certified mail, it is deemed as delivered for all legal purposes—in other words, attempted delivery of certified mail satisfies any notice obligations under the statute.

2. When you get the green card or the unclaimed certified mail letter back from the U.S. Postal Service, you then need to take the original of the returned check, a copy of your demand letter, and the green card (or unclaimed demand letter) to the Justice of the Peace office and tell the clerk that you want to file a criminal complaint for issuance of a bad check.
3. The JP office will have you fill out and sign an Issuance of Bad Check criminal complaint form. The person filing the criminal complaint does not have to pay any fees.
4. The JP office will prepare and mail a criminal citation to the check writer, stating that the check writer has 30 days to come to the JP office and plead “guilty,” or “not guilty,” or “nolo contendere” and that if the check writer doesn’t do one of those things by the deadline in the citation, an arrest warrant will be issued.
5. If the hot check writer shows up in court and pleads guilty or nolo contendere and produces evidence that the hot check has been paid in full, the check writer pay all court costs.
6. If the hot check writer shows up and pleads guilty or nolo contendere without proof of payment in full, the JP will impose a fine on the check writer and order him to pay the fine and court costs.
7. If the hot check writer pleads not guilty, then they will proceed to court.
8. If the hot check writer fails to show up as required in the citation, the court at the end of the designated waiting period in the citation will issue a warrant for the check writer’s arrest. The arrest warrant is promptly entered into the statewide Department of Public Safety data bank system. Then, whenever the check writer is stopped for a traffic violation, arrested for another suspected crime or tries to renew his driver’s license, the law enforcement officers will learn of the outstanding arrest warrant and can escort the check writer to jail on the spot.

## **Hot Checks Filed Against You**

You need to contact your JP office as soon as possible concerning a hot check case against you or you can contact the vendor to arrange to pay them. You will still need come to your precinct's courthouse and address your check problem today.

If you wish to plead Not Guilty, you may also request trial by Judge or Jury. That choice is yours. You will need to fill out an [affidavit of forgery](#) form if you are alleging that you did not write the check. You are not required to have an attorney in Court, but you may hire one if you wish. The District Attorney of Collin County will have an attorney present to prosecute the case against you. The Judge is prohibited, by Law, from discussing your case with you unless you have pled guilty or no contest or the District Attorney is also present.

If you choose to go to Court, you are responsible for bringing all papers, pictures, and exhibits with you to the Court hearing. You may also contact the Court for information on how to subpoena witnesses.

### [Affidavit of Forged Signature Form](#)

Once proof of restitution has been filed with the appropriate Justice of the Peace Court, you may pay the hot check fines in person at the court.