

Edmund J. Zielinski
County Attorney

ed.zielinski@co.cooke.tx.us



Michael Krebs
Investigator

michael.krebs@co.cooke.tx.us

Cooke County Attorney's Office

101 S. Dixon St.
Gainesville, Texas 76240
Phone (940) 668-5459 Fax (940) 668-5444

PROCESS OF FILING A CHECK:

I. **"NSF" or "STOP PAYMENT"** -If a check is returned to you marked NSF (non-sufficient funds or stop payment):

1. You must send a certified letter, return receipt requested to the maker, demanding payment.
2. This letter **MUST** contain the language of the Texas Penal Code§ 31.06 (b)(3) (If you don't have a copy, please contact our office.)
3. Either a signed green card, or the unopened envelope (please **DO NOT** open it) will be returned to you.
4. 15 days after the date you sent the letter, bring or mail to this office:
 - a. The check.
 - b. A completed intake sheet (affidavit)-THE "FACTS ABOUT THE CHECK" BOX MUST BE COMPLETED.
 - c. A copy of the letter sent.
 - d. The unopened envelope or the signed green card.

II. **ACCOUNT CLOSED** - If the check is returned to you marked account closed:

- a. Mail or bring to our office the check and the completed affidavit, **ONLY**.

We will send a postcard to the check writer to the address on the check and give them 10 days to pick the check up from our office. If we have a valid driver's license, we will at that time issue a warrant for their arrest.

Once you turn a check into this office, **DO NOT ACCEPT ANY PAYMENT** on the check, but direct the person attempting to make payment to our office. If you accept the money owed to you, you are responsible for paying the County Attorney's processing fee that is usually collected from the defendant. Thank you!

Edmund J. Zielinski
Cooke County Attorney

**OFFICE OF
COOKE COUNTY ATTORNEY**

HOT CHECK INFORMATION AND AFFIDAVIT

The undersigned affiant, who after being duly sworn by me, makes the following statements under oath: I have good reason to believe and do believe that _____, herein after called The accused, did commit the offense of
(Name of person who signed check)

Theft By Check. My belief is based on the following facts, as shown by the appropriately completed information as set out below, to-wit:

FACTS ABOUT THE ACCUSED

DL# _____, State _____, DOB: _____

SEX _____ RACE _____ HEIGHT _____ WEIGHT _____ HAIR _____ EYES _____

ADDRESS: _____ CITY _____ ST _____ ZIP _____

PHONE: (_____) _____ BUSINESS OR EMPLOYER: _____

CITY: _____ ST _____ ZIP _____ PHONE: (_____) _____

FACTS ABOUT THE CHECK

CHECK #	DATE CHECK WRITTEN	AMOUNT OF CHECK	PERSON WHO TOOK CHECK (PLEASE PRINT FULL NAME)	DL & DOB OBTAINED FROM MAKER? (YES OR NO)	CHECK GIVEN FOR: PLEASE BE SPECIFIC	HOW CHECK DISHONORED (account closed or insufficient funds)

Have you collected partial restitution on any of the above referred check(s)? YES / NO. If so, how much \$ _____.
NOTE! IF YOU MAKE A CLAIM FOR MORE THAN YOU ARE OWED, YOU SUBJECT YOURSELF TO CRIMINAL PROSECUTION UNDER EITHER 32.32 OR 37.08 OF THE PENAL CODE.
Total amount of checks with \$10.00 per check merchant fee \$ _____.

OTHER PERTINENT FACTS

RESTITUTION COLLECTED SHOULD BE SENT TO: _____

ADDRESS: _____ CITY, STATE, ZIP: _____

PHONE: _____ CONTACT PERSON AT STORE: _____

I hereby swear or affirm that the above information is true and correct to the best of my knowledge; that the above check(s) was given in COOKE COUNTY, TEXAS; that said check(s) was not a post dated or hold check(s); that check(s) was believed to have been good when it was accepted; that no partial payment has been made on said check(s); that said check(s) were personally taken by the person listed who verified that the identifying information taken pertained to the person that passed the check; that I am the holder or by virtue of my employment I have the authority to make this affidavit on behalf of the holder; that I understand if charges are filed a warrant will be issued for the accused who may be placed in jail.

AFFIANT (COMPLAINANT)

SUBSCRIBED AND SWORN to before me on this _____ day of _____.

NOTARY PUBLIC

EXAMPLE OF A CERTIFIED FORM LETTER FOR RETURNED CHECKS

Date

Name

Street or Box#

City, St, Zip

CERTIFIED MAIL NUMBER: _____

RE: Returned Checks

Dear Mr. or Mrs./Ms.: _____

"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."

Sincerely,

*The paragraph listed above **MUST** accompany any additional information sent to the check writer in the certified letter.*

Edmund J. Zielinski
County Attorney

ed.zielinski@co.cooke.tx.us



Michael Krebs
Investigator

michael.krebs@co.cooke.tx.us

Cooke County Attorney's Office

101 S. Dixon St.
Gainesville, Texas 76240
Phone (940) 668-5459 Fax (940) 668-5444

Re: New Procedure for Checks

Dear Business Owner,

In a previous session of the Legislature the Theft by Check presumption law was amended in a way that could greatly affect your business. Previously for the theft presumption to apply a merchant had to send a certified notice to the check writer advising him or her that the check had been returned and demand payment. The notice and demand law remains the same, as does the statutory language that must be included.

However, what has changed is that there is now an alternative method of notifying the check writer. You may continue to send the notices certified mail, or you may now send them regular mail, as long as there is executed an Affidavit of Service by Mail by the person actually sending the notice. (See enclosed). **This affidavit will have to be signed in front of Notary Public and will need to be presented to this office with the check and a copy of the demand letter.** If you wish to use the Affidavit of Service by Mail, please feel free to copy the enclosed form and use the copies in the future. I have also included a copy of the affidavit with explanations of what should be included in each blank as a guide in completing the affidavit.

If you have any questions, please do not hesitate to contact this office.

Thank You,

Edmund J. Zielinski
Cooke County Attorney

Affidavit of Service by Mail

(Sample)

State of Texas

County of Cooke

On this date appeared (name of the person that actually mailed the notice and is signing the affidavit), being first duly sworn on oath, and stated that he/she is at least eighteen (18) years of age and that on the (day of the month the notice was mailed) of (month the notice was mailed), (year the notice was mailed) he/she served the attached *Notice of Demand* by placing a true and correct copy thereof securely enclosed in an envelope addresses as follows:

(Name of check writer) _____

(Street address of check writer) _____

(City, State and Zip of check writer) _____

And deposited the same, postage prepaid, first class mail in the United States mail at:

(Address where notice was placed in the mail) _____

(Signature of person named in first paragraph) _____

AFFIANT

Subscribed and sworn before me this (Day signed) day of (Month signed), (Year signed).

(Signature of Notary Public) _____

NOTARY PUBLIC

My Commission Expires: (Date Notary's commission Expires)

Affidavit of Service by Mail

State of Texas

County of Cooke

On this date appeared _____, being first duly sworn on oath, and stated that he/she is at least eighteen (18) years of age and that on the ____ of _____, _____ he/she served the attached *Notice of Demand* by placing a true and correct copy thereof securely enclosed in an envelope addresses as follows:

And deposited the same, postage prepaid, first class mail in the United States mail at:

AFFIANT

Subscribed and sworn before me this ____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____

COOKE COUNTY ATTORNEY'S OFFICE
101 S. DIXON ROOM 029
GAINESVILLE, TX 76240

PROCEDURE WHEN TAKING A CHECK

STRESS TO YOUR EMPLOYEES THE IMPORTANCE OF BEING ALERT WHEN ACCEPTING A CHECK!

IS THE CHECK PROPERLY DATED?

Checks must be dated the same day as given.
Post dated checks can not be prosecuted.

IS THE SIGNATURE LEGIBLE?

Checks must be signed in your presence and should be checked with driver's license, date of birth, sex, race, weight, eyes and hair.
Do not accept checks previously signed.

IS THE ADDRESS COMPLETE?

Require street address, not a post office box.
Place of employment
Both home and business telephone number.

DO WRITTEN AMOUNTS AND NUMBERS CORRESPOND?

Banks will not honor check(s) with discrepancies.

IS THE I.D. OF WRITER USED RECORDED?

The merchant must be able to identify the writer of the check.
Always require identification from the writer.
The most reliable identification is a driver's license or I.D. card with a physical description and/or photo
Record the driver's license number and date of birth on check
Record other types of I.D. and I.D. number

HAS THE CLERK WHO RECEIVED THE CHECK INITIALED THE CHECK?

THESE ARE CHECKS TO AVOID

CHECKS WHICH ARE DIFFICULT TO PROSECUTE OR WHICH CANNOT BE PROSECUTED UNDER TEXAS "HOT CHECK" LAW:

- (1) Post dated checks
- (2) Checks that are more than two years old (generally if check is over one year old, prosecution is extremely difficult).
- (3) Checks which are received in the mail or left in receptacle.
- (4) Checks which do not identify who accepted it.
- (5) Checks which do not thoroughly identify the maker
 - a) Verify pre-printed Driver's License number
 - b) If none pre-printed, compare Driver's License and place I.D. facts on check in writing (make sure to include at least date of birth and driver's license number)
 - c) Make a mark to indicate Driver's License photo comparison
- (6) Checks not passed in this county
- (7) Checks not presented to bank within 30 days of issuance
- (8) Checks for which no 10 day notice was given by registered or certified mail.
- (9) Checks which are kept by the merchant more than six months from the date of issuance before being referred to the County Attorney's office.
- (10) Checks where ID does not match name of account holder printed on check
- (11) Stop-payment checks
- (12) Check on out of state bank (difficult to prosecute)
- (13) Two party checks
- (14) Person who took check cannot identify maker