Bruce L. James

McCulloch County Attorney

199 Courthouse Sq. Rm 102
Brady, Texas 76825

Office 325-597-0733
Fax

Dear Merchant:

Good News! The State Legislator passed SB 548 and it went into effect September, 1, 2007. This bill allows the merchant to send a first-class letter rather than a certified letter to the check writer. In order to have the evidence available in the court I have prepared new Complaint of Worthless Check forms to be used. You will affirm that a first-class letter was sent to the check writer. Please destroy any old forms and begin using this form immediately.

This packet will explain the policies and procedures when turning a check or checks over to the County Attorney's Office for collection. Also included are documents you will need when doing so. The following is a brief overview of the steps you must take before bringing the check or checks to our office with more detailed explanations and instructions following:

MERCHANT LETTER TO CHECK WRITER:

This letter should include the following information:

Check #
Date Written
Amount of Check
Bank which returned check\
Reason for return (NSF, Account Closed, stop payment, refer to maker)

COMPLAINT OF WORTHLESS CHECK:

1. This document must be completed and the affiant's signature notarized. If you need to use one of our notaries the form must be signed in the presence of the notary. Include as much information as you have on the writer, this will make it easier for an officer to locate this individual should it go to warrant status. Although helpful, you are not required to get a physical description, i.e., race height, etc., however you must get a driver's license number and or date of birth or a criminal case cannot and will not be filed.

   Should you fail to get the driver's license number and or date of birth, or if the information is incorrect, and the accused does not contact our office, we will hold these cases in a pending file for up to two years before we return them to you. Two years is the statute of limitations for filing a theft by check case. Should you receive a driver's license number or date of birth on the accused within that time period, please calls our office with the information and we will issue a warrant at that time.

2. Please read the last paragraph of the document carefully. You are swearing to those facts.

OTHER INFORMATION:

1. Once you have turned a check over to our office, do not accept payment from the accused. The writer must deal with our office at that point.
2. We collect a $30.00 merchant fee for you in addition to the check amount if you have posted by your register that you will charge a merchant fee.
3. Should we refuse to accept a check for prosecution for whatever reason, the check will be sent back to you with a letter stating the reason it was refused. Please feel free to call our office should you disagree or should you have any questions.

WHAT WE MUST HAVE TO FILE A CRIMINAL THEFT BY CHECK CASE:

1. Original Check or Photo Copy from the Bank.
2. *Complaint of Worthless Check.*
3. *Copy of the letter sent to the check writer.*

CHECKS WHICH ARE DIFFICULT TO PROSECUTE:

1. Checks which are held by the merchant more than six months from the date of issuance before referral to the County Attorney's Office
2. Checks received in the mail or left in a receptacle.
3. Stop payment checks
4. Checks which do not identify the maker, I.e., "temporary checks"
5. Checks signed by someone other than the names of the account holder printed on the check

CHECKS THAT CANNOT BE PROSECUTED: (Ordinarily, these checks will not be accepted by the County Attorney's Office)

1. Post dated or "hold" checks
2. 3rd party checks
3. Checks that are two or more years old
4. Checks which do not identify who accepted it
5. Checks not passed in McCulloch County
6. Checks not presented to the bank within 30 days of issuance

The Hot Check Coordinator in my office is Kellie D. Jonas. You will also find enclosed a packet Kellie put together to assist the merchants in training their employees who accept checks. If you have any questions or need assistance in completing the Complaint, please feel free to call her at 325-597-0733 x7.

Thank you for the opportunity to serve and we look forward to working with you.

Sincerely,
Bruce L. James
McCulloch County Attorney

Enclosure

ACCEPTING A CHECK

__√___ **Make sure the signature is the same as the printed name**

__◊___ **Make sure the number amount matches written amount**

Johnny Check √ ####
Address
City, State Zip **Date** _____

Pay to the Order of _____ **$__◊_____**

_____◊_____DOLLARS
BANK INFO

FOR_____ **√_____Johnny Check_____**

RECORDING INFORMATION

Johnny Check **Driver License #/Date of Birth** ####
Address **Expiration Date/ Clerk's Initials**
City, State Zip **Date** _____

Pay to the Order of _____ **$**_____

_____**DOLLARS**
BANK INFO

FOR_____ **_____Johnny Check _____**

CORPORATE & DBA CHECKS
Require Special Attention When Accepting the Check

Check-Up, Inc. **Driver License #/Date of Birth** ####
Address **Expiration Date/ Clerk's Initials**
City, State Zip **Date** _____

Pay to the Order of _____ **$**_____

_____**DOLLARS**
BANK INFO

FOR_____ **_____Johnny Check _____**

Make sure the signature is legible or print the person's name above or below the signature. You must have the name of the person who issued the check to file the check with our office. You cannot allege the name of the company.

FILING A CHECK

I. NSF CHECK
   A. Send a Letter demanding full payment within 10 days
      (Our office will furnish you the proper, fill in the blank, form)
   B. Wait 10 days to file your check
   C. Complete Complaint of Worthless Check Affidavit and bring to County Attorney Office with returned check.

II. ACCOUNT CLOSED
   No Notice is required

III. OBTAIN A FILING FORM FROM THE COUNTY ATTORNEY
   A. Fill the form out completely and accurately
   B. The information must be LEGIBLE
   C. The form must be notarized and can be mailed

IV. THE ORIGINAL CHECK MUST ACCOMPANY THE AFFIDAVIT
   A. Make a copy of the check for your record

RED FLAGS

1. Starter check or low number check
2. Temporary Driver's License
3. Department of Public Safety I.D. Card (Intended for Senior Citizens and Handicapped)
4. Expired Driver's License
5. Cannot produce Driver License
6. Any non-matching information between the check, identification and/or check writer

DID YOU KNOW?

* Filing a check with the County Attorney Hot Check Department is FREE
* Our office will file Class C Misdemeanors with the Justice of the Peace on your behalf
* We will collect the $30.00 merchant fee on all checks
(YOU MUST HAVE A SIGN POSTED THAT IS VISIBLE TO THE CHECK WRITER)

DON'T GET BURNED

I. PROCEDURE

A. Is the check dated today?

(Postdated & replacement checks should not be accepted)

II. IS THE SIGNATURE LEGIBLE?

A. The checks should be signed in your presence

B. Print the name on business account if you cannot read signature

III. IS THE ADDRESS COMPLETE

A. Permanent street address, home and work phone

IV. CAN YOU CONFIRM IDENTITY?

A. An ID can be forged (if suspicious of photo identification, examine carefully)

V. DO WRITTEN AMOUNT AND NUMBERS CORRESPOND?

VI. RECORD THE FOLLOWING INFORMATION

A. Driver's License (even if pre-printed)

B. Date of Birth

C. Expiration date of license

D. Initials of clerk accepting check

VII. WHY IS THE INFORMATION NEEDED?

A. Recording the information convinces the jury that the check writer actually wrote the check

B. This information enables the County Attorney to issue a warrant

CHECKS WE DON'T ACCEPT

THE COUNTY ATTORNEY HOT CHECK DIVISION USUALLY WILL NOT ACCEPT THE FOLLOWING CHECKS FOR PROSECUTION:

1. Post-dated check
2. Stop-payment check for service only
3. Check given in return for check
4. Check where you cannot prove the name of the clerk accepting the check
5. Check not presented to bank within 30 days
6. Check returned NSF where no certified notice has been sent
7. Check given for payment on an account

Your Place of Business here
Brady, Texas 76825

Date of Letter

Check Writer
Address
City, State, Zip

Dear Mr. Check writer:

Your check # _____ dated _____ and in the amount of $_____ has been returned by your bank, __name of bank___, marked __NSF or Account Closed__ has been returned by your bank.

You have ten (10) days from receipt of this letter to bring payment in cash, casher's check or money order for the amount of the check plus $30.00 charge for handling or this matter will be turned over to the prosecutor's office. The total amount due is $_____.

Sincerely,

Your Name and Place of Business here

Sample letter

Merchant

Address
Brady, Texas 76825
Telephone #

Date 2021

Check Casher Name
Address
City, State, Zip

Dear _____:

The check you presented to our company on ____ (*date*)_____ signed by ____(*check writer name*)_____ and drawn on the _____ bank in the amount of $_____ has been returned marked ___(Insufficient funds, account closed, return to maker).

You have 10 days from the date of the receipt of this letter to present payment of $_____in the form of cash, cashier's check or money order (amount of check plus $30.00 Merchant fee).

If I have not received this payment by that date this check will be referred to the County Attorney for purpose of prosecution.

Sincerely,

Merchant

2 PARTY S A M P L E
LETTER

COMPLAINT OF WORTHLESS CHECK

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:

_____
(Name of person who signed the check)

Hereinafter called the accused, did commit the offense of Theft by passing a worthless check. My belief is based on the following facts, as shown by appropriately completed information as set out below, to wit:

FACTS ABOUT THE ACCUSED

DL# _____ State_____ DOB_____ Sex_____ Race_____ Ht _____

Address_____City_____State__**TX**__Zip_____

Phone_____Employer _____Address _____

Employer Phone _____Other Info_____

FACTS ABOUT THE CHECK

Check #	Check Date	Amount	How Dishonored	Person Who Took Check

FACTS ABOUT HOLDER

Restitution collected should be sent to: _____

Address: _____ City: _____ State: **TX Zip**: _____

Phone: _____ Person to Contact: _____

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 McCulloch County, Texas, that said check(s) was not postdated or a hold check(s); and that said check(s) was believed to have been good when it was accepted; that I personally received said check(s) or that by virtue of my employment I have the authority to make this affidavit on behalf of the holder, that I understand that if charges are filed a warrant will be issued for the accused who may be placed in jail. I swear that the check(s) was presented to the bank within 30 days after receipt of said check and that a first-class letter was mailed to the accused and allowed the accused to make payment in full within the 10 days required by law.

_____
Affiant

SUBSCRIBED AND SWORN to before me on the _____ day of _____, 2022.

_____
Notary Public, State of Texas