

BILL ANALYSIS

C.S.H.B. 746
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 74th Legislature enacted legislation to provide that notice, by registered or certified mail with return receipt request or by telegram with report of delivery requested, is acceptable as a form of notice to a person who has committed theft by check.

The passage of C.S.H.B. 746 will expand the mail notification procedures to individuals who have committed theft by check and will allow for the recovery of the check collectors fees. C.S.H.B. 746 amends current law to recognize actual notice if sent by regular mail evidenced by an affidavit of service, certified or registered mail or by an express delivery service.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 746 amends Section 31.06 of the Penal Code to include new methods of notice to a person who has committed theft by check. This notice may be sent by first class mail evidenced with an affidavit of service with a return address affixed and the letter containing the notice is not to be returned unopened or an express delivery service. This legislation reinstates the use of registered or certified mail as a method of notification that is in current law. Additionally, C.S.H.B. 746 omits the use of the telegram as a method of notice because it is an outdated source of notification.

C.S.H.B. 746 amends Section 32.41 of the Penal Code, Subsection (c) to include new methods of notice to a person who has committed theft by check. This notice may be sent by first class mail evidenced with an affidavit of service with a return address affixed and the letter containing the notice is not to be returned unopened or express delivery service. This legislation reinstates the use of registered or certified mail as a method of notification that is in current law. Additionally, C.S.H.B. 746 omits the use of the telegram as a method of notice because it is an outdated source of notification.

C.S.H.B. 746 amends Section 102.007 of the Code of Criminal Procedure by adding Subsection (g) to allow for the recovery of costs for delivery notification other than affidavit of service be passed onto the issuer of the bad check. The cost of the delivery notification is not to exceed \$15 dollars and shall collected by the prosecutor and remitted to the holder of the check.

This change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 746 79(R)

SECTION 31.06 (b), PENAL CODE

C.S.H.B. 746 Amends Section 31.06 (b), Subsection (1), (2), (3) of the Texas Penal Code by restoring registered or certified mail and adding express delivery service as additional methods of delivery notification to individuals who have committed theft by check.

SECTION 32.41 (c), PENAL CODE

C.S.H.B. 746 amends Section 32.41 (c), Subsection (1) (A), (B), (C) of the Texas Penal Code by restoring registered or certified mail and express delivery service as additional methods of delivery notification to individuals who have committed theft by check.

ARTICLE 102.007, CODE OF CRIMINAL PROCEDURE

CSHB 746 amends Article 102.007 of the Code of Criminal Procedure by adding a new subsection (g) to the bill that allows the cost of delivery notification other than affidavit of service onto to the issuer of the bad check. It establishes that cost for delivery notification is not to exceed \$15. This substitute requires the prosecutor to collect the fee and remit to the holder of the check.