

By: Bonnen

H.B. No. 746

A BILL TO BE ENTITLED

AN ACT

relating to notice of the presumption for theft by check.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.06(b), Penal Code, is amended to read as follows:

(b) For purposes of Subsection (a)(2) or (f)(3), notice may be actual notice or notice in writing that:

(1) is sent by:

(A) first class mail if an affidavit of service evidences that the notice was [(1) is] sent with a return address affixed and the letter containing the notice is not subsequently returned unopened;

(B) [by] registered or certified mail with return receipt requested; or

(C) a public or private express delivery service with a signed receipt evidencing delivery or a report of delivery attempt [by telegram with report of delivery requested];

(2) is addressed to the issuer at the issuer's [his] address shown on:

(A) the check or order;

(B) the records of the bank or other drawee; or

(C) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

1                    "This is a demand for payment in full for a check  
2 or order not paid because of a lack of funds or insufficient funds.  
3 If you fail to make payment in full within 10 days after the date of  
4 receipt of this notice, the failure to pay creates a presumption for  
5 committing an offense, and this matter may be referred for criminal  
6 prosecution."

7                    SECTION 2. Section 32.41(c), Penal Code, is amended to read  
8 as follows:

9                    (c) Notice for purposes of Subsection (b)(2) may be actual  
10 notice or notice in writing that:

11                    (1) is sent by:

12                    (A) [registered or certified mail with return  
13 receipt requested, by telegram with report of delivery requested,  
14 or by] first class mail if an affidavit of service evidences that  
15 the notice [the letter] was sent with a return address affixed and  
16 the notice is not subsequently returned unopened [with markings  
17 indicating that the address is incorrect and that there is no  
18 current forwarding order];

19                    (B) registered or certified mail with return  
20 receipt requested; or

21                    (C) a public or private express delivery service  
22 with a signed receipt evidencing delivery or a report of delivery  
23 attempt;

24                    (2) is addressed to the issuer at the issuer's [~~his~~]  
25 address shown on:

26                    (A) the check or order;

27                    (B) the records of the bank or other drawee; or

1 (C) the records of the person to whom the check or  
2 order has been issued or passed; and

3 (3) contains the following statement:

4 "This is a demand for payment in full for a check  
5 or order not paid because of a lack of funds or insufficient funds.  
6 If you fail to make payment in full within 10 days after the date of  
7 receipt of this notice, the failure to pay creates a presumption for  
8 committing an offense, and this matter may be referred for criminal  
9 prosecution."

10 SECTION 3. Article 102.007, Code of Criminal Procedure, is  
11 amended by adding Subsection (g) to read as follows:

12 (g) In addition to the collection fee specified in  
13 Subsections (b) and (c) of this article, the issuer of a check or  
14 similar sight order is liable for a fee in an amount equal to the  
15 costs of delivery notification, other than notification by  
16 affidavit of service. The cost of delivery notification under this  
17 subsection may not exceed \$15. The fee under this subsection must  
18 be collected in all cases described by Subsection (a), and on  
19 receipt of proof of the actual costs expended, the fee shall be  
20 remitted to the holder of the check or similar sight order.

21 SECTION 4. The change in law made by this Act applies only  
22 to an offense committed on or after the effective date of this Act.  
23 An offense committed before the effective date of this Act is  
24 covered by the law in effect when the offense was committed, and the  
25 former law is continued in effect for that purpose. For purposes of  
26 this section, an offense was committed before the effective date of  
27 this Act if any element of the offense was committed before that

1 date.

2 SECTION 5. This Act takes effect September 1, 2005.