

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 first class mail if:

(A) an affidavit of service evidences that the notice was sent with a return address affixed; and

(B) the letter containing the notice is not subsequently returned unopened [~~registered or certified mail with return receipt requested or by telegram with report of delivery requested~~];

(2) is addressed to the issuer at 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:

"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

1 committing an offense, and this matter may be referred for criminal
2 prosecution."

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

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

7 (1) is sent by [~~registered or certified mail with~~
8 ~~return receipt requested, by telegram with report of delivery~~
9 ~~requested, or by~~] first class mail if an affidavit of service
10 evidences that the notice [the letter] was sent by first class mail
11 [~~returned unopened with markings indicating that the address is~~
12 ~~incorrect and that there is no current forwarding order]~~;

13 (2) is addressed to the issuer at his address shown on:

14 (A) the check or order;

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

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

18 (3) contains the following statement:

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

25 SECTION 3. The change in law made by this Act applies only
26 to an offense committed on or after the effective date of this Act.
27 An offense committed before the effective date of this Act is

1 covered by the law in effect when the offense was committed, and the
2 former law is continued in effect for that purpose. For purposes of
3 this section, an offense was committed before the effective date of
4 this Act if any element of the offense was committed before that
5 date.

6 SECTION 4. This Act takes effect September 1, 2005.