

BILL ANALYSIS

Senate Research Center

S.B. 548
By: Carona
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the notice of intent to prosecute the issuer of a dishonored check must be sent by registered or certified mail, with return receipt requested, or by telegram with report of delivery requested by the holder of the instrument. In recent years, the cost of certified/registered mail has increased, compounding the financial losses of businesses that have had a check returned for insufficient funds.

S.B. 548 allows the holder of a dishonored check to notify the issuer of intent to prosecute by first-class mail, with delivery evidenced by an affidavit of service. The bill also requires the issuer of a dishonored check to reimburse the holder of a dishonored check for the cost of sending notice of intent to prosecute by registered or certified mail with return receipt requested.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.06(b), Penal Code, as follows:

(b) Authorizes a notice of refusal of payment to be actual notice or notice in writing if it is sent by first class mail, evidenced by an affidavit of service, or registered or certified mail with return receipt requested if requested. Deletes existing text relating to a notice sent by telegram. Makes a nonsubstantive change.

SECTION 2. Amends Section 32.41(c), Penal Code, as follows:

(c) Makes conforming changes. Deletes existing text relating to a letter being returned unopened with an incorrect address and no current forwarding order.

SECTION 3. Amends Article 102.007, Code of Criminal Procedure, by adding Subsection (g), as follows:

(g) Provides that the issuer of a check or similar sight order that has been issued or passed under Subsection (a)(1) (relating to an issuance or passage which creates an offense) is liable for a fee in an amount equal to the costs of delivering notification by registered or certified mail with return receipt requested, in addition to the collection fee specified in Subsections (b) and (c). Requires that the fee be collected in all such cases and remitted to the holder of the check or similar sight order on receipt of proof of the actual costs expended.

SECTION 4. Amends Subchapter E, Chapter 3, Business & Commerce Code, by adding Section 3.507, as follows:

Sec. 3.507. DELIVERY NOTIFICATION FEE BY HOLDER OF CHECK OR SIMILAR SIGHT ORDER. (a) Sets forth circumstances under which a holder, or an assignee, agent, or representative thereof, seeking collection of a dishonored check or sight order is authorized to charge the drawer or endorser of the check the cost of delivery notification by registered or certified mail with return receipt requested under Section

31.06 (Presumption for Theft by Check) or 32.41 (Issuance of Bad Check), Penal Code, as applicable.

(b) Prohibits a person from charging a delivery notification fee to a drawer or indorser if the fee has been collected under Article 102.007(g), Code of Criminal Procedure. Requires the holder to immediately refund the fee previously collected from the drawer or indorser if a delivery notification fee has been collected under this section and the holder subsequently receives a fee under Article 102.007(g), Code of Criminal Procedure.

(c) Provides that this section does not affect the right or remedy to which the holder of a check or sight order may be entitled under any rule, written contract, judicial decision, or other statute, including Section 3.506 (Processing Fee by Holder of Payment Device).

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2007.