

By: Carona

S.B. No. 548

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. Subsection (b), Section 31.06, 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, evidenced by an affidavit of service; or

(B) registered or certified mail with return receipt requested [~~or 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:

"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. Subsection (c), Section 32.41, Penal Code, is  
4 amended to read 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:

8 (A) ~~[registered or certified mail with return~~  
9 ~~receipt requested, by telegram with report of delivery requested,~~  
10 ~~or by]~~ first class mail, evidenced by an affidavit of service; or

11 (B) registered or certified mail with return  
12 receipt requested ~~[if the letter was returned unopened with~~  
13 ~~markings indicating that the address is incorrect and that there is~~  
14 ~~no current forwarding order];~~

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

17 (A) the check or order;

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

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

21 (3) contains the following statement:

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

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

3 (g) In addition to the collection fee specified in  
4 Subsections (b) and (c), the issuer of a check or similar sight  
5 order that has been issued or passed as described by Subsection  
6 (a)(1) is liable for a fee in an amount equal to the costs of  
7 delivering notification by registered or certified mail with return  
8 receipt requested. The fee under this subsection must be collected  
9 in all cases described by Subsection (a)(1), and on receipt of proof  
10 of the actual costs expended, the fee shall be remitted to the  
11 holder of the check or similar sight order.

12 SECTION 4. Subchapter E, Chapter 3, Business & Commerce  
13 Code, is amended by adding Section 3.507 to read as follows:

14 Sec. 3.507. DELIVERY NOTIFICATION FEE BY HOLDER OF CHECK OR  
15 SIMILAR SIGHT ORDER. (a) On return of a check or similar sight  
16 order to the holder following dishonor of the check or sight order  
17 by a payor and prior to the check or sight order being referred for  
18 prosecution, the holder, the holder's assignee, agent, or  
19 representative, or any other person retained by the holder to seek  
20 collection of the dishonored check or sight order may charge the  
21 drawer or indorser of the check or sight order the cost of delivery  
22 notification by registered or certified mail with return receipt  
23 requested under Section 31.06 or Section 32.41, Penal Code, as  
24 applicable.

25 (b) A person may not charge a delivery notification fee to a  
26 drawer or indorser under this section if the fee has been collected  
27 under Article 102.007(g), Code of Criminal Procedure. If a

1 delivery notification fee has been collected under this section and  
2 the holder subsequently receives a fee collected under Article  
3 102.007(g), Code of Criminal Procedure, the holder shall  
4 immediately refund the fee previously collected from the drawer or  
5 indorser.

6 (c) This section does not affect any right or remedy to  
7 which the holder of a check or similar sight order may be entitled  
8 under any rule, written contract, judicial decision, or other  
9 statute, including Section 3.506.

10 SECTION 5. The change in law made by this Act applies only  
11 to an offense committed on or after the effective date of this Act.  
12 An offense committed before the effective date of this Act is  
13 covered by the law in effect when the offense was committed, and the  
14 former law is continued in effect for that purpose. For purposes of  
15 this section, an offense was committed before the effective date of  
16 this Act if any element of the offense was committed before that  
17 date.

18 SECTION 6. This Act takes effect September 1, 2007.