

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. 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, evidenced by an affidavit of service; or

(B) if requested by and paid for or agreed to be paid for by the issuer, 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

1 this notice, the failure to pay creates a presumption for
2 committing an offense, and this matter may be referred for criminal
3 prosecution."

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

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

8 (1) is sent by:

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

12 (B) if requested by and paid for or agreed to be
13 paid for by the issuer, registered or certified mail with return
14 receipt requested [if the letter was returned unopened with
15 markings indicating that the address is incorrect and that there is
16 no current forwarding order];

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

19 (A) the check or order;

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

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

23 (3) contains the following statement:

24 "This is a demand for payment in full for a check or order not
25 paid because of a lack of funds or insufficient funds. If you fail
26 to make payment in full within 10 days after the date of receipt of
27 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 3. Article 102.007, Code of Criminal Procedure, is
4 amended by adding Subsection (g) to read as follows:

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

14 SECTION 4. The change in law made by this Act applies only
15 to an offense committed on or after the effective date of this Act.
16 An offense committed before the effective date of this Act is
17 covered by the law in effect when the offense was committed, and the
18 former law is continued in effect for that purpose. For purposes of
19 this section, an offense was committed before the effective date of
20 this Act if any element of the offense was committed before that
21 date.

22 SECTION 5. This Act takes effect September 1, 2007.