

1-1 By: Carona S.B. No. 548
1-2 (In the Senate - Filed February 8, 2007; February 26, 2007,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 15, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 15, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 548 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to notice of the presumption for theft by check.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subsection (b), Section 31.06, Penal Code, is
1-13 amended to read as follows:
1-14 (b) For purposes of Subsection (a)(2) or (f)(3), notice may
1-15 be actual notice or notice in writing that:
1-16 (1) is sent by:
1-17 (A) first class mail, evidenced by an affidavit
1-18 of service; or
1-19 (B) registered or certified mail with return
1-20 receipt requested ~~[or by telegram with report of delivery~~
1-21 ~~requested];~~
1-22 (2) is addressed to the issuer at the issuer's ~~[his]~~
1-23 address shown on:
1-24 (A) the check or order;
1-25 (B) the records of the bank or other drawee; or
1-26 (C) the records of the person to whom the check or
1-27 order has been issued or passed; and
1-28 (3) contains the following statement:
1-29 "This is a demand for payment in full for a check or order not
1-30 paid because of a lack of funds or insufficient funds. If you fail
1-31 to make payment in full within 10 days after the date of receipt of
1-32 this notice, the failure to pay creates a presumption for
1-33 committing an offense, and this matter may be referred for criminal
1-34 prosecution."
1-35 SECTION 2. Subsection (c), Section 32.41, Penal Code, is
1-36 amended to read as follows:
1-37 (c) Notice for purposes of Subsection (b)(2) may be actual
1-38 notice or notice in writing that:
1-39 (1) is sent by:
1-40 (A) [registered or certified mail with return
1-41 receipt requested, by telegram with report of delivery requested,
1-42 or by] first class mail, evidenced by an affidavit of service; or
1-43 (B) registered or certified mail with return
1-44 receipt requested [if the letter was returned unopened with
1-45 markings indicating that the address is incorrect and that there is
1-46 no current forwarding order];
1-47 (2) is addressed to the issuer at the issuer's ~~[his]~~
1-48 address shown on:
1-49 (A) the check or order;
1-50 (B) the records of the bank or other drawee; or
1-51 (C) the records of the person to whom the check or
1-52 order has been issued or passed; and
1-53 (3) contains the following statement:
1-54 "This is a demand for payment in full for a check or order not
1-55 paid because of a lack of funds or insufficient funds. If you fail
1-56 to make payment in full within 10 days after the date of receipt of
1-57 this notice, the failure to pay creates a presumption for
1-58 committing an offense, and this matter may be referred for criminal
1-59 prosecution."
1-60 SECTION 3. Article 102.007, Code of Criminal Procedure, is
1-61 amended by adding Subsection (g) to read as follows:
1-62 (g) In addition to the collection fee specified in
1-63 Subsections (b) and (c), the issuer of a check or similar sight

2-1 order that has been issued or passed as described by Subsection
2-2 (a)(1) is liable for a fee in an amount equal to the costs of
2-3 delivering notification by registered or certified mail with return
2-4 receipt requested. The fee under this subsection must be collected
2-5 in all cases described by Subsection (a)(1), and on receipt of proof
2-6 of the actual costs expended, the fee shall be remitted to the
2-7 holder of the check or similar sight order.

2-8 SECTION 4. Subchapter E, Chapter 3, Business & Commerce
2-9 Code, is amended by adding Section 3.507 to read as follows:

2-10 Sec. 3.507. DELIVERY NOTIFICATION FEE BY HOLDER OF CHECK OR
2-11 SIMILAR SIGHT ORDER. (a) On return of a check or similar sight
2-12 order to the holder following dishonor of the check or sight order
2-13 by a payor and prior to the check or sight order being referred for
2-14 prosecution, the holder, the holder's assignee, agent, or
2-15 representative, or any other person retained by the holder to seek
2-16 collection of the dishonored check or sight order may charge the
2-17 drawer or indorser of the check or sight order the cost of delivery
2-18 notification by registered or certified mail with return receipt
2-19 requested under Section 31.06 or Section 32.41, Penal Code, as
2-20 applicable.

2-21 (b) A person may not charge a delivery notification fee to a
2-22 drawer or indorser under this section if the fee has been collected
2-23 under Article 102.007(g), Code of Criminal Procedure. If a
2-24 delivery notification fee has been collected under this section and
2-25 the holder subsequently receives a fee collected under Article
2-26 102.007(g), Code of Criminal Procedure, the holder shall
2-27 immediately refund the fee previously collected from the drawer or
2-28 indorser.

2-29 (c) This section does not affect any right or remedy to
2-30 which the holder of a check or similar sight order may be entitled
2-31 under any rule, written contract, judicial decision, or other
2-32 statute, including Section 3.506.

2-33 SECTION 5. The change in law made by this Act applies only
2-34 to an offense committed on or after the effective date of this Act.
2-35 An offense committed before the effective date of this Act is
2-36 covered by the law in effect when the offense was committed, and the
2-37 former law is continued in effect for that purpose. For purposes of
2-38 this section, an offense was committed before the effective date of
2-39 this Act if any element of the offense was committed before that
2-40 date.

2-41 SECTION 6. This Act takes effect September 1, 2007.

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