

BILL ANALYSIS

Senate Research Center

S.B. 821
By: Schwertner
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This legislation is required to bring Texas law up to date regarding the electronic transfer of funds in modern business transactions. Current law addresses the issue of "hot checks," or paper transactions, but does not address insufficiently funded electronic funds transfers, or "hot drafts." Currently, district and county attorneys lack the authority to file charges against individuals or corporations that submit insufficiently funded accounts for electronic funds transfers. Bringing the code up to date will give prosecutors the authority to prosecute those who pay with hot drafts. Moreover, wholesale fuel distributors, who frequently receive payment by electronic funds transfers, would be provided a tool to spur the collection of difficult to collect accounts.

S.B. 821 amends current law relating to the prosecution of certain criminal offenses involving theft or involving fraud or other deceptive practices.

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 the heading to Section 31.06, Penal Code, to read as follows:

Sec. 31.06. PRESUMPTION FOR THEFT BY CHECK OR SIMILAR SIGHT ORDER.

SECTION 2. Amends Section 31.06(a), Penal Code, as follows:

(a) Provides that if the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, it is prima facie evidence of the issuer's intent to deprive the owner of property under Section 31.03 (Theft) including a drawee or third-party holder in due course who negotiated the check or order to avoid payment for service under Section 31.04 (Theft of Service) (except in the case of a postdated check or order) if the issuer had no account with the bank or other drawee at the time the issuer issued the check or sight order, or payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

SECTION 3. Amends the heading to Section 32.41, Penal Code, to read as follows:

Sec. 32.41. ISSUANCE OF BAD CHECK OR SIMILAR SIGHT ORDER.

SECTION 4. Amends Section 32.41(e), Penal Code, to authorize a person charged with an offense under this section to make restitution for the bad checks or sight orders.

SECTION 5. Amends Section 32.45(a)(1), Penal Code, to redefine "fiduciary."

SECTION 6. Amends Section 3.507(a), Business & Commerce Code, to authorize the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the dishonored check or sight order, as defined by Section 1.07 (Definitions), Penal Code, to charge the drawer or indorser of the check or sight order 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, on return of a check or similar sight order to the holder following dishonor of the check or sight order by the payor and prior to the check or sight order being referred for prosecution.

SECTION 7. Amends the heading to Article 102.007, Code of Criminal Procedure, to read as follows:

Art. 102.007. FEE FOR COLLECTING AND PROCESSING CHECK OR SIMILAR SIGHT ORDER.

SECTION 8. Amends Articles 102.007(a) and (e), Code of Criminal Procedure, as follows:

(a) Authorizes a county attorney, district attorney, or criminal district attorney to collect a fee if the attorney's office collects and processes a check or similar sight order, as defined in Section 1.07, Penal Code, if the check or similar sight order has been issued or passed in a manner that makes the issuance or passing an offense under certain sections of the Penal Code, or has been forged, as defined by Section 32.21 (Forgery), Penal Code.

(e) Authorizes the county attorney, district attorney, or criminal district attorney to collect the fee authorized by Section 3.506 (Processing Fee by Holder of Payment Device), Business & Commerce Code, for the benefit of the holder of a check or similar sight order or the holder's assignee, agent, representative, or any other person retained by the holder to seek collection of the check or order, in addition to the collection fee specified in Subsection (c) (relating to prohibiting the fee amount from exceeding a certain amount). Makes a nonsubstantive change.

SECTION 9. Amends Article 102.0071, Code of Criminal Procedure, as follows:

Art. 102.0071. New heading: JUSTICE COURT DISHONORED CHECK OR SIMILAR SIGHT ORDER. Authorizes the court to collect from the defendant and pay to the holder of the check or order the fee permitted by Section 3.506, Business & Commerce Code, on conviction in justice court of an offense under Section 32.41, Penal Code, or an offense under Section 31.03 or 31.04, Penal Code, in which it is shown that the defendant committed the offense by issuing or passing a check or similar sight order, as defined by Section 1.07, Penal Code, that was subsequently dishonored.

SECTION 10. Amends Sections 102.101 and 102.102, Government Code, as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: COURT OF CRIMINAL PROCEDURE. Requires a clerk of a justice court to collect a fee, not to exceed \$30, on conviction of a defendant for certain offenses involving issuing or passing a subsequently dishonored check or similar sight order (Article 102.0071 (Justice Court Dishonored Check), Code of Criminal Procedure).

Sec. 102.102. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: BUSINESS AND COMMERCE CODE. Requires the clerk of a justice court to collect from a defendant a court cost not to exceed \$30 under Section 3.506, Business & Commerce Code, on conviction of certain offenses involving issuing or passing a subsequently dishonored check or similar sight order.

SECTION 11. Amends the heading to Section 162.409, Tax Code, to read as follows:

Sec. 162.409. ISSUANCE OF BAD CHECK OR SIMILAR SIGHT ORDER TO LICENSED DISTRIBUTOR, LICENSED SUPPLIER, OR PERMISSIVE SUPPLIER.

SECTION 12. Amends Sections 162.409(a) and (d), Tax Code, as follows:

(a) Provides that a person commits an offense if the person issues or passes a check or similar sight order, as defined by Section 1.07, Penal Code, for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance, in addition to certain other circumstances.

(d) Authorizes a person who makes payment on an obligation or debt that includes a tax under this chapter (Motor Fuel Taxes) and pays with an insufficient funds check or similar sight order, as defined by Section 1.07, Penal Code, issued to a licensed distributor, licensed supplier, or permissive supplier to be held liable for a penalty equal to the total amount of tax not paid to the licensed distributor, licensed supplier, or permissive supplier.

SECTION 13. Makes application of the change in law made by this Act prospective.

SECTION 14. Effective date: September 1, 2013.