

By: Pitts

H.B. No. 3365

Substitute the following for H.B. No. 3365:

By: Herrero

C.S.H.B. No. 3365

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution of certain criminal offenses involving  
3 theft or fraud by check or similar sight order; providing  
4 penalties; imposing fees.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Section 31.06, Penal Code, is  
7 amended to read as follows:

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

10 SECTION 2. Section 31.06(a), Penal Code, is amended to read  
11 as follows:

12 (a) If the actor obtained property or secured performance of  
13 service by issuing or passing a check or similar sight order for the  
14 payment of money, when the issuer did not have sufficient funds in  
15 or on deposit with the bank or other drawee for the payment in full  
16 of the check or order as well as all other checks or orders then  
17 outstanding, it is prima facie evidence of the issuer's [~~his~~]  
18 intent to deprive the owner of property under Section 31.03 (Theft)  
19 including a drawee or third-party holder in due course who  
20 negotiated the check or order or to avoid payment for service under  
21 Section 31.04 (Theft of Service) (except in the case of a postdated  
22 check or order) if:

23 (1) the issuer [~~he~~] had no account with the bank or  
24 other drawee at the time the issuer [~~he~~] issued the check or sight

1 order; or

2 (2) payment was refused by the bank or other drawee for  
3 lack of funds or insufficient funds, on presentation within 30 days  
4 after issue, and the issuer failed to pay the holder in full within  
5 10 days after receiving notice of that refusal.

6 SECTION 3. The heading to Section 32.41, Penal Code, is  
7 amended to read as follows:

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

9 SECTION 4. Section 32.41(e), Penal Code, is amended to read  
10 as follows:

11 (e) A person charged with an offense under this section may  
12 make restitution for the bad checks or sight orders. Restitution  
13 shall be made through the prosecutor's office if collection and  
14 processing were initiated through that office. In other cases  
15 restitution may be, with the approval of the court in which the  
16 offense is filed:

17 (1) made through the court; or

18 (2) collected by a law enforcement agency if a peace  
19 officer of that agency executes a warrant against the person  
20 charged with the offense.

21 SECTION 5. Section 3.507(a), Business & Commerce Code, is  
22 amended to read as follows:

23 (a) On return of a check or similar sight order, as defined  
24 by Section 1.07, Penal Code, to the holder following dishonor of the  
25 check or sight order by a payor and prior to the check or sight order  
26 being referred for prosecution, the holder, the holder's assignee,  
27 agent, or representative, or any other person retained by the

1 holder to seek collection of the dishonored check or sight order may  
2 charge the drawer or indorser of the check or sight order the cost  
3 of delivery notification by registered or certified mail with  
4 return receipt requested under Section 31.06 or Section 32.41,  
5 Penal Code, as applicable.

6 SECTION 6. The heading to Article 102.007, Code of Criminal  
7 Procedure, is amended to read as follows:

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

10 SECTION 7. Articles 102.007(a) and (e), Code of Criminal  
11 Procedure, are amended to read as follows:

12 (a) A county attorney, district attorney, or criminal  
13 district attorney may collect a fee if the attorney's [his] office  
14 collects and processes a check or similar sight order, as defined by  
15 Section 1.07, Penal Code, if the check or similar sight order:

16 (1) has been issued or passed in a manner that makes  
17 the issuance or passing an offense under:

- 18 (A) Section 31.03, Penal Code;
- 19 (B) Section 31.04, Penal Code; or
- 20 (C) Section 32.41, Penal Code; or

21 (2) has been forged, as defined by Section 32.21,  
22 Penal Code.

23 (e) In addition to the collection fee specified in  
24 Subsection (c) [~~of this article~~], the county attorney, district  
25 attorney, or criminal district attorney may collect the fee  
26 authorized by Section 3.506, Business & Commerce Code, for the  
27 benefit of the holder of a check or similar sight order or the

1 holder's [~~its~~] assignee, agent, representative, or any other person  
2 retained by the holder to seek collection of the check or order.

3 SECTION 8. Article 102.0071, Code of Criminal Procedure, is  
4 amended to read as follows:

5 Art. 102.0071. JUSTICE COURT DISHONORED CHECK OR SIMILAR  
6 SIGHT ORDER. On conviction in justice court of an offense under  
7 Section 32.41, Penal Code, or an offense under Section 31.03 or  
8 31.04, Penal Code, in which it is shown that the defendant committed  
9 the offense by issuing or passing a check or similar sight order, as  
10 defined by Section 1.07, Penal Code, that was subsequently  
11 dishonored, the court may collect from the defendant and pay to the  
12 holder of the check or order the fee permitted by Section 3.506,  
13 Business & Commerce Code.

14 SECTION 9. Sections 102.101 and 102.102, Government Code,  
15 are amended to read as follows:

16 Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN  
17 JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice  
18 court shall collect fees and costs under the Code of Criminal  
19 Procedure on conviction of a defendant as follows:

20 (1) a jury fee (Art. 102.004, Code of Criminal  
21 Procedure) . . . \$3;

22 (2) a fee for withdrawing request for jury less than 24  
23 hours before time of trial (Art. 102.004, Code of Criminal  
24 Procedure) . . . \$3;

25 (3) a jury fee for two or more defendants tried jointly  
26 (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

27 (4) a security fee on a misdemeanor offense (Art.

1 102.017, Code of Criminal Procedure) . . . \$4;

2 (5) a fee for technology fund on a misdemeanor offense  
3 (Art. 102.0173, Code of Criminal Procedure) . . . \$4;

4 (6) a juvenile case manager fee (Art. 102.0174, Code  
5 of Criminal Procedure) . . . not to exceed \$5 if the court employs a  
6 juvenile case manager;

7 (7) a fee on conviction of certain offenses involving  
8 issuing or passing a subsequently dishonored check or similar sight  
9 order (Art. 102.0071, Code of Criminal Procedure) . . . not to  
10 exceed \$30;

11 (8) a court cost on conviction of a Class C misdemeanor  
12 in a county with a population of 3.3 million or more, if authorized  
13 by the county commissioners court (Art. 102.009, Code of Criminal  
14 Procedure) . . . not to exceed \$7; and

15 (9) a civil justice fee (Art. 102.022, Code of  
16 Criminal Procedure) . . . \$0.10.

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

23 SECTION 10. The heading to Section 162.409, Tax Code, is  
24 amended to read as follows:

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

1 SECTION 11. Sections 162.409(a) and (d), Tax Code, are  
2 amended to read as follows:

3 (a) A person commits an offense if:

4 (1) the person issues or passes a check or similar  
5 sight order, as defined by Section 1.07, Penal Code, for the payment  
6 of money knowing that the issuer does not have sufficient funds in  
7 or on deposit with the bank or other drawee for the payment in full  
8 of the check or order as well as all other checks or orders  
9 outstanding at the time of issuance;

10 (2) the payee on the check or order is a licensed  
11 distributor, licensed supplier, or permissive supplier; and

12 (3) the payment is for an obligation or debt that  
13 includes a tax under this chapter to be collected by the licensed  
14 distributor, licensed supplier, or permissive supplier.

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

22 SECTION 12. The change in law made by this Act applies only  
23 to an offense committed on or after the effective date of this Act.  
24 An offense committed before the effective date of this Act is  
25 governed by the law in effect on the date the offense was committed,  
26 and the former law is continued in effect for that purpose. For  
27 purposes of this section, an offense was committed before the

1 effective date of this Act if any element of the offense occurred  
2 before that date.

3 SECTION 13. This Act takes effect September 1, 2013.