

By: Pitts

H.B. No. 3365

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the prosecution of certain criminal offenses involving
3 theft or fraud by payment device; providing penalties; imposing
4 fees.

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

6 SECTION 1. Section 31.03, Penal Code, is amended by
7 amending Subsection (e) and adding Subsection (e-1) to read as
8 follows:

9 (e) Except as provided by Subsection (f), an offense under
10 this section is:

11 (1) a Class C misdemeanor if the value of the property
12 stolen is less than:

13 (A) \$50; or

14 (B) \$20 and the defendant obtained the property
15 by issuing or passing a payment device [~~check or similar sight~~
16 ~~order~~] in a manner described by Section 31.06;

17 (2) a Class B misdemeanor if:

18 (A) the value of the property stolen is:

19 (i) \$50 or more but less than \$500; or

20 (ii) \$20 or more but less than \$500 and the
21 defendant obtained the property by issuing or passing a payment
22 device [~~check or similar sight order~~] in a manner described by
23 Section 31.06;

24 (B) the value of the property stolen is less

1 than:

2 (i) \$50 and the defendant has previously
3 been convicted of any grade of theft; or

4 (ii) \$20, the defendant has previously been
5 convicted of any grade of theft, and the defendant obtained the
6 property by issuing or passing a payment device [~~check or similar~~
7 ~~sight order~~] in a manner described by Section 31.06; or

8 (C) the property stolen is a driver's license,
9 commercial driver's license, or personal identification
10 certificate issued by this state or another state;

11 (3) a Class A misdemeanor if the value of the property
12 stolen is \$500 or more but less than \$1,500;

13 (4) a state jail felony if:

14 (A) the value of the property stolen is \$1,500 or
15 more but less than \$20,000, or the property is less than 10 head of
16 sheep, swine, or goats or any part thereof under the value of
17 \$20,000;

18 (B) regardless of value, the property is stolen
19 from the person of another or from a human corpse or grave,
20 including property that is a military grave marker;

21 (C) the property stolen is a firearm, as defined
22 by Section 46.01;

23 (D) the value of the property stolen is less than
24 \$1,500 and the defendant has been previously convicted two or more
25 times of any grade of theft;

26 (E) the property stolen is an official ballot or
27 official carrier envelope for an election; or

1 (F) the value of the property stolen is less than
2 \$20,000 and the property stolen is:

3 (i) aluminum;

4 (ii) bronze;

5 (iii) copper; or

6 (iv) brass;

7 (5) a felony of the third degree if the value of the
8 property stolen is \$20,000 or more but less than \$100,000, or the
9 property is:

10 (A) cattle, horses, or exotic livestock or exotic
11 fowl as defined by Section 142.001, Agriculture Code, stolen during
12 a single transaction and having an aggregate value of less than
13 \$100,000; or

14 (B) 10 or more head of sheep, swine, or goats
15 stolen during a single transaction and having an aggregate value of
16 less than \$100,000;

17 (6) a felony of the second degree if:

18 (A) the value of the property stolen is \$100,000
19 or more but less than \$200,000; or

20 (B) the value of the property stolen is less than
21 \$200,000 and the property stolen is an automated teller machine or
22 the contents or components of an automated teller machine; or

23 (7) a felony of the first degree if the value of the
24 property stolen is \$200,000 or more.

25 (e-1) In this section, "payment device" has the meaning
26 assigned by Section 3.506, Business & Commerce Code.

27 SECTION 2. Section 31.04(g), Penal Code, is amended to read

1 as follows:

2 (g) It is a defense to prosecution under this section that:

3 (1) the defendant secured the performance of the
4 service by giving a postdated payment device, as defined by Section
5 3.506, Business & Commerce Code, [~~post-dated check or similar sight~~
6 ~~order]~~ to the person performing the service; and

7 (2) the person performing the service or any other
8 person presented the payment device [~~check or sight order]~~ for
9 payment before the date on the payment device [~~check or sight~~
10 ~~order]~~.

11 SECTION 3. The heading to Section 31.06, Penal Code, is
12 amended to read as follows:

13 Sec. 31.06. PRESUMPTION FOR THEFT BY PAYMENT DEVICE
14 [~~CHECK~~].

15 SECTION 4. Sections 31.06(a), (b), and (f), Penal Code, are
16 amended to read as follows:

17 (a) If the actor obtained property or secured performance of
18 service by issuing or passing a payment device, as defined by
19 Section 3.506, Business & Commerce Code, [~~check or similar sight~~
20 ~~order]~~ for the payment of money, when the issuer did not have
21 sufficient funds in or on deposit with the bank or other drawee for
22 the payment in full of the payment device [~~check or order]~~ as well
23 as all other payment devices [~~checks or orders]~~ then outstanding,
24 it is prima facie evidence of the issuer's [~~his~~] intent to deprive
25 the owner of property under Section 31.03 (Theft) including a
26 drawee or third-party holder in due course who negotiated the
27 payment device [~~check~~] or to avoid payment for service under

1 Section 31.04 (Theft of Service) (except in the case of a postdated
2 payment device [~~check or order~~]) if:

3 (1) the issuer [~~he~~] had no account with the bank or
4 other drawee at the time the issuer [~~he~~] issued the payment device
5 [~~check or order~~]; or

6 (2) payment was refused by the bank or other drawee for
7 lack of funds or insufficient funds, on presentation within 30 days
8 after issue, and the issuer failed to pay the holder in full within
9 10 days after receiving notice of that refusal.

10 (b) For purposes of Subsection (a)(2) or (f)(3), notice may
11 be actual notice or notice in writing that:

12 (1) is sent by:

13 (A) first class mail, evidenced by an affidavit
14 of service; or

15 (B) registered or certified mail with return
16 receipt requested;

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

19 (A) the payment device [~~check or order~~];

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

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

23 (3) contains the following statement:

24 "This is a demand for payment in full for a payment device
25 [~~check or order~~] not paid because of a lack of funds or insufficient
26 funds. If you fail to make payment in full within 10 days after the
27 date of receipt of this notice, the failure to pay creates a

1 presumption for committing an offense, and this matter may be
2 referred for criminal prosecution."

3 (f) If the actor obtained property by issuing or passing a
4 payment device [~~check or similar sight order~~] for the payment of
5 money, the actor's intent to deprive the owner of the property under
6 Section 31.03 (Theft) is presumed, except in the case of a postdated
7 payment device [~~check or order~~], if:

8 (1) the actor ordered the bank or other drawee to stop
9 payment on the payment device [~~check or order~~];

10 (2) the bank or drawee refused payment to the holder on
11 presentation of the payment device [~~check or order~~] within 30 days
12 after issue;

13 (3) the owner gave the actor notice of the refusal of
14 payment and made a demand to the actor for payment or return of the
15 property; and

16 (4) the actor failed to:

17 (A) pay the holder within 10 days after receiving
18 the demand for payment; or

19 (B) return the property to the owner within 10
20 days after receiving the demand for return of the property.

21 SECTION 5. The heading to Section 32.41, Penal Code, is
22 amended to read as follows:

23 Sec. 32.41. ISSUANCE OF BAD PAYMENT DEVICE [~~CHECK~~].

24 SECTION 6. Sections 32.41(a), (b), (c), (e), and (f), Penal
25 Code, are amended to read as follows:

26 (a) A person commits an offense if the person [~~he~~] issues or
27 passes a payment device, as defined by Section 3.506, Business &

1 Commerce Code, [~~check or similar sight order~~] for the payment of
2 money knowing that the issuer does not have sufficient funds in or
3 on deposit with the bank or other drawee for the payment in full of
4 the payment device [~~check or order~~] as well as all other payment
5 devices [~~checks or orders~~] outstanding at the time of issuance.

6 (b) This section does not prevent the prosecution from
7 establishing the required knowledge by direct evidence; however,
8 for purposes of this section, the issuer's knowledge of
9 insufficient funds is presumed (except in the case of a postdated
10 payment device [~~check or order~~]) if:

11 (1) the issuer [~~he~~] had no account with the bank or
12 other drawee at the time the issuer [~~he~~] issued the payment device
13 [~~check or order~~]; or

14 (2) payment was refused by the bank or other drawee for
15 lack of funds or insufficient funds on presentation within 30 days
16 after issue and the issuer failed to pay the holder in full within
17 10 days after receiving notice of that refusal.

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

20 (1) is sent by:

21 (A) first class mail, evidenced by an affidavit
22 of service; or

23 (B) registered or certified mail with return
24 receipt requested;

25 (2) is addressed to the issuer at the issuer's address
26 shown on:

27 (A) the payment device [~~check or order~~];

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

2 (C) the records of the person to whom the payment
3 device [~~check or order~~] has been issued or passed; and

4 (3) contains the following statement:

5 "This is a demand for payment in full for a payment device
6 [~~check or order~~] not paid because of a lack of funds or insufficient
7 funds. If you fail to make payment in full within 10 days after the
8 date of receipt of this notice, the failure to pay creates a
9 presumption for committing an offense, and this matter may be
10 referred for criminal prosecution."

11 (e) A person charged with an offense under this section may
12 make restitution for the bad payment devices
13 [~~checks~~]. Restitution shall be made through the prosecutor's
14 office if collection and processing were initiated through that
15 office. In other cases restitution may be, with the approval of
16 the court in which the 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 (f) Except as otherwise provided by this subsection, an
22 offense under this section is a Class C misdemeanor. If the payment
23 device [~~check or similar sight order~~] that was issued or passed was
24 for a child support payment the obligation for which is established
25 under a court order, the offense is a Class B misdemeanor.

26 SECTION 7. The heading to Section 3.507, Business &
27 Commerce Code, is amended to read as follows:

1 Sec. 3.507. DELIVERY NOTIFICATION FEE BY HOLDER OF PAYMENT
2 DEVICE [~~CHECK OR SIMILAR SIGHT ORDER~~].

3 SECTION 8. Sections 3.507(a) and (c), Business & Commerce
4 Code, are amended to read as follows:

5 (a) On return of a payment device, as defined by Section
6 3.506, [~~check or similar sight order~~] to the holder following
7 dishonor of the payment device [~~check or sight order~~] by a payor and
8 prior to the payment device [~~check or sight order~~] being referred
9 for prosecution, the holder, the holder's assignee, agent, or
10 representative, or any other person retained by the holder to seek
11 collection of the dishonored payment device [~~check or sight order~~]
12 may charge the drawer or indorser of the payment device [~~check or~~
13 ~~sight order~~] the cost of delivery notification by registered or
14 certified mail with return receipt requested under Section 31.06 or
15 Section 32.41, Penal Code, as applicable.

16 (c) This section does not affect any right or remedy to
17 which the holder of a payment device [~~check or similar sight order~~]
18 may be entitled under any rule, written contract, judicial
19 decision, or other statute, including Section 3.506.

20 SECTION 9. The heading to Article 102.007, Code of Criminal
21 Procedure, is amended to read as follows:

22 Art. 102.007. FEE FOR COLLECTING AND PROCESSING PAYMENT
23 DEVICE [~~SIGHT ORDER~~].

24 SECTION 10. Articles 102.007(a), (c), (d), (e), and (g),
25 Code of Criminal Procedure, are amended to read as follows:

26 (a) A county attorney, district attorney, or criminal
27 district attorney may collect a fee if the attorney's [~~his~~] office

1 collects and processes a payment device, as defined by Section
2 3.506, Business & Commerce Code, [~~check or similar sight order~~] if
3 the payment device [~~check or similar sight order~~]:

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

6 (A) Section 31.03, Penal Code;

7 (B) Section 31.04, Penal Code; or

8 (C) Section 32.41, Penal Code; or

9 (2) is a check or similar sight order that has been
10 forged, as defined by Section 32.21, Penal Code.

11 (c) The amount of the fee may not exceed:

12 (1) \$10 if the face amount of the payment device [~~check~~
13 ~~or sight order~~] does not exceed \$10;

14 (2) \$15 if the face amount of the payment device [~~check~~
15 ~~or sight order~~] is greater than \$10 but does not exceed \$100;

16 (3) \$30 if the face amount of the payment device [~~check~~
17 ~~or sight order~~] is greater than \$100 but does not exceed \$300;

18 (4) \$50 if the face amount of the payment device [~~check~~
19 ~~or sight order~~] is greater than \$300 but does not exceed \$500; and

20 (5) \$75 if the face amount of the payment device [~~check~~
21 ~~or sight order~~] is greater than \$500.

22 (d) If the person from whom the fee is collected was a party
23 to the offense of forgery, as defined by Section 32.21, Penal Code,
24 committed by altering the face amount of the payment device [~~check~~
25 ~~or sight order~~], the face amount as altered governs for the purposes
26 of determining the amount of the fee.

27 (e) In addition to the collection fee specified in

1 Subsection (c) of this article, the county attorney, district
2 attorney, or criminal district attorney may collect the fee
3 authorized by Section 3.506, Business & Commerce Code, for the
4 benefit of the holder of a payment device [~~check~~] or the holder's
5 [~~its~~] assignee, agent, representative, or any other person retained
6 by the holder to seek collection of the payment device [~~check~~].

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

17 SECTION 11. Article 102.0071, Code of Criminal Procedure,
18 is amended to read as follows:

19 Art. 102.0071. JUSTICE COURT DISHONORED PAYMENT DEVICE
20 [~~CHECK~~]. On conviction in justice court of an offense under Section
21 32.41, Penal Code, or an offense under Section 31.03 or 31.04, Penal
22 Code, in which it is shown that the defendant committed the offense
23 by issuing or passing a payment device, as defined by Section 3.506,
24 Business & Commerce Code, [~~check~~] that was subsequently dishonored,
25 the court may collect from the defendant and pay to the holder of
26 the payment device [~~check~~] the fee permitted by Section 3.506,
27 Business & Commerce Code.

1 SECTION 12. Sections 102.101 and 102.102, Government Code,
2 are amended to read as follows:

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

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

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

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

14 (4) a security fee on a misdemeanor offense (Art.
15 102.017, Code of Criminal Procedure) . . . \$4;

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

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

21 (7) a fee on conviction of certain offenses involving
22 issuing or passing a subsequently dishonored payment device [~~check~~]
23 (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed
24 \$30;

25 (8) a court cost on conviction of a Class C misdemeanor
26 in a county with a population of 3.3 million or more, if authorized
27 by the county commissioners court (Art. 102.009, Code of Criminal

1 Procedure) . . . not to exceed \$7; and

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

4 Sec. 102.102. ADDITIONAL COURT COSTS ON CONVICTION IN
5 JUSTICE COURT: BUSINESS & COMMERCE CODE. The clerk of a justice
6 court shall collect from a defendant a court cost not to exceed \$30
7 under Section 3.506, Business & Commerce Code, on conviction of
8 certain offenses involving issuing or passing a subsequently
9 dishonored payment device [~~check~~].

10 SECTION 13. The heading to Section 162.409, Tax Code, is
11 amended to read as follows:

12 Sec. 162.409. ISSUANCE OF BAD PAYMENT DEVICE [~~CHECK~~] TO
13 LICENSED DISTRIBUTOR, LICENSED SUPPLIER, OR PERMISSIVE SUPPLIER.

14 SECTION 14. Sections 162.409(a) and (d), Tax Code, are
15 amended to read as follows:

16 (a) A person commits an offense if:

17 (1) the person issues or passes a payment device, as
18 that term is defined by Section 3.506, Business & Commerce Code,
19 [~~check or similar sight order~~] for the payment of money knowing that
20 the issuer does not have sufficient funds in or on deposit with the
21 bank or other drawee for the payment in full of the payment device
22 [~~check or order~~] as well as all other payment devices [~~checks or~~
23 ~~orders~~] outstanding at the time of issuance;

24 (2) the payee on the payment device [~~check or order~~] is
25 a licensed distributor, licensed supplier, or permissive supplier;
26 and

27 (3) the payment is for an obligation or debt that

1 includes a tax under this chapter to be collected by the licensed
2 distributor, licensed supplier, or permissive supplier.

3 (d) A person who makes payment on an obligation or debt that
4 includes a tax under this chapter and pays with an insufficient
5 funds payment device [~~check~~] issued to a licensed distributor,
6 licensed supplier, or permissive supplier may be held liable for a
7 penalty equal to the total amount of tax not paid to the licensed
8 distributor, licensed supplier, or permissive supplier.

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

17 SECTION 16. This Act takes effect September 1, 2013.