

AN ACT

relating to the prosecution of certain criminal offenses involving theft or involving fraud or other deceptive practices.

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

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

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

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

(a) 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 [~~his~~] 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 or to avoid payment for service under Section 31.04 (Theft of Service) (except in the case of a postdated check or order) if:

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

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

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

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

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

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

16 (1) made through the court; or

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

20 SECTION 5. Subdivision (1), Subsection (a), Section 32.45,
21 Penal Code, is amended to read as follows:

22 (1) "Fiduciary" includes:

23 (A) a trustee, guardian, administrator,
24 executor, conservator, and receiver;

25 (B) an attorney in fact or agent appointed under
26 a durable power of attorney as provided by Chapter XII, Texas
27 Probate Code;

1 (C) any other person acting in a fiduciary
2 capacity, but not a commercial bailee unless the commercial bailee
3 is a party in a motor fuel sales agreement with a distributor or
4 supplier, as those terms are defined by Section 162.001 [~~153.001~~],
5 Tax Code; and

6 (D) an officer, manager, employee, or agent
7 carrying on fiduciary functions on behalf of a fiduciary.

8 SECTION 6. Subsection (a), Section 3.507, Business &
9 Commerce Code, is amended to read as follows:

10 (a) On return of a check or similar sight order, as defined
11 by Section 1.07, Penal Code, to the holder following dishonor of the
12 check or sight order by a payor and prior to the check or sight order
13 being referred for prosecution, the holder, the holder's assignee,
14 agent, or representative, or any other person retained by the
15 holder to seek collection of the dishonored check or sight order may
16 charge the drawer or indorser of the check or sight order the cost
17 of delivery notification by registered or certified mail with
18 return receipt requested under Section 31.06 or Section 32.41,
19 Penal Code, as applicable.

20 SECTION 7. 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 CHECK OR
23 SIMILAR SIGHT ORDER.

24 SECTION 8. Subsections (a) and (e), Article 102.007, Code
25 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

collects and processes a check or similar sight order, as defined by Section 1.07, Penal Code, if the check or similar sight order:

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

(A) Section 31.03, Penal Code;

(B) Section 31.04, Penal Code; or

(C) Section 32.41, Penal Code; or

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

(e) In addition to the collection fee specified in Subsection (c) [~~of this article~~], the county attorney, district attorney, or criminal district attorney may collect the fee authorized by Section 3.506, Business & Commerce Code, for the benefit of the holder of a check or similar sight order or the holder's [~~its~~] assignee, agent, representative, or any other person retained by the holder to seek collection of the check or order.

SECTION 9. Article 102.0071, Code of Criminal Procedure, is amended to read as follows:

Art. 102.0071. JUSTICE COURT DISHONORED CHECK OR SIMILAR SIGHT ORDER. 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, the court may collect from the defendant and pay to the holder of the check or order the fee permitted by Section 3.506, Business & Commerce Code.

SECTION 10. Sections 102.101 and 102.102, Government Code, are amended to read as follows:

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

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

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

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

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

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

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

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

(8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized 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 check or similar sight order.

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

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

15 SECTION 12. Subsections (a) and (d), Section 162.409, Tax
16 Code, are amended to read as follows:

17 (a) A person commits an offense if:

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

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

26 (3) the payment is for an obligation or debt that
27 includes a tax under this chapter to be collected by the licensed

1 distributor, licensed supplier, or permissive supplier.

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

9 SECTION 13. 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 14. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 821 passed the Senate on April 4, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 821 passed the House on May 8, 2013, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor