

By: Schwertner

S.B. No. 821

A BILL TO BE ENTITLED

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

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

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

(A) \$50; or

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

(2) a Class B misdemeanor if:

(A) the value of the property stolen is:

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

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

(B) the value of the property stolen is less than:

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

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

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

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

12 (4) a state jail felony if:

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

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

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

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

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

27 (F) the value of the property stolen is less than

1 \$20,000 and the property stolen is:

2 (i) aluminum;

3 (ii) bronze;

4 (iii) copper; or

5 (iv) brass;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (a) If the actor obtained property or secured performance of  
17 service by issuing or passing a payment device, as defined by  
18 Section 3.506, Business & Commerce Code, [~~check or similar sight~~  
19 ~~order]~~ for the payment of money, when the issuer did not have  
20 sufficient funds in or on deposit with the bank or other drawee for  
21 the payment in full of the payment device [~~check or order]~~ as well  
22 as all other payment devices [~~checks or orders]~~ then outstanding,  
23 it is prima facie evidence of the issuer's [~~his~~] intent to deprive  
24 the owner of property under Section 31.03 (Theft) including a  
25 drawee or third-party holder in due course who negotiated the  
26 payment device [~~check~~] or to avoid payment for service under  
27 Section 31.04 (Theft of Service) (except in the case of a postdated

1 payment device [~~check or order~~]) if:

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

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

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

11 (1) is sent by:

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

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

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

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

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

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

22 (3) contains the following statement:

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

1 referred for criminal prosecution."

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

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

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

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

15 (4) the actor failed to:

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

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

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

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

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

25 (a) A person commits an offense if the person [~~he~~] issues or  
26 passes a payment device, as defined by Section 3.506, Business &  
27 Commerce Code, [~~check or similar sight order~~] for the payment of

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

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

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

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

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

19 (1) is sent by:

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

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

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

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

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

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

3 (3) contains the following statement:

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

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

25 SECTION 7. Section 32.45(a)(1), Penal Code, is amended to  
26 read as follows:

27 (1) "Fiduciary" includes:



1 (A) a trustee, guardian, administrator,  
2 executor, conservator, and receiver;

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

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

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

13 SECTION 8. The heading to Section 3.507, Business &  
14 Commerce Code, is amended to read as follows:

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

17 SECTION 9. Sections 3.507(a) and (c), Business & Commerce  
18 Code, are amended to read as follows:

19 (a) On return of a payment device, as defined by Section  
20 3.506, [~~check or similar sight order~~] to the holder following  
21 dishonor of the payment device [~~check or sight order~~] by a payor and  
22 prior to the payment device [~~check or sight order~~] being referred  
23 for prosecution, the holder, the holder's assignee, agent, or  
24 representative, or any other person retained by the holder to seek  
25 collection of the dishonored payment device [~~check or sight order~~]  
26 may charge the drawer or indorser of the payment device [~~check or~~  
27 ~~sight order~~] the cost of delivery notification by registered or

1 certified mail with return receipt requested under Section 31.06 or  
2 Section 32.41, Penal Code, as applicable.

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

7 SECTION 10. The heading to Article 102.007, Code of  
8 Criminal Procedure, is amended to read as follows:

9 Art. 102.007. FEE FOR COLLECTING AND PROCESSING PAYMENT  
10 DEVICE [~~SIGHT ORDER~~].

11 SECTION 11. Articles 102.007(a), (c), (d), (e), and (g),  
12 Code of Criminal Procedure, are amended to read as follows:

13 (a) A county attorney, district attorney, or criminal  
14 district attorney may collect a fee if the attorney's [~~his~~] office  
15 collects and processes a payment device, as defined by Section  
16 3.506, Business & Commerce Code, [~~check or similar sight order~~] if  
17 the payment device [~~check or similar sight order~~]:

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

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

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

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

26 (1) \$10 if the face amount of the payment device [~~check~~  
27 ~~or sight order~~] does not exceed \$10;

1           (2) \$15 if the face amount of the payment device [~~check~~  
2 ~~or sight order~~] is greater than \$10 but does not exceed \$100;

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

5           (4) \$50 if the face amount of the payment device [~~check~~  
6 ~~or sight order~~] is greater than \$300 but does not exceed \$500; and

7           (5) \$75 if the face amount of the payment device [~~check~~  
8 ~~or sight order~~] is greater than \$500.

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

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

21           (g) In addition to the collection fee specified in  
22 Subsections (b) and (c), the issuer of a payment device [~~check or~~  
23 ~~similar sight order~~] that has been issued or passed as described by  
24 Subsection (a)(1) is liable for a fee in an amount equal to the  
25 costs of delivering notification by registered or certified mail  
26 with return receipt requested. The fee under this subsection must  
27 be collected in all cases described by Subsection (a)(1), and on

1 receipt of proof of the actual costs expended, the fee shall be  
2 remitted to the holder of the payment device [~~check or similar sight~~  
3 ~~order~~].

4 SECTION 12. Article 102.0071, Code of Criminal Procedure,  
5 is amended to read as follows:

6 Art. 102.0071. JUSTICE COURT DISHONORED PAYMENT DEVICE  
7 [~~CHECK~~]. On conviction in justice court of an offense under Section  
8 32.41, Penal Code, or an offense under Section 31.03 or 31.04, Penal  
9 Code, in which it is shown that the defendant committed the offense  
10 by issuing or passing a payment device, as defined by Section 3.506,  
11 Business & Commerce Code, [~~check~~] that was subsequently dishonored,  
12 the court may collect from the defendant and pay to the holder of  
13 the payment device [~~check~~] the fee permitted by Section 3.506,  
14 Business & Commerce Code.

15 SECTION 13. Sections 102.101 and 102.102, Government Code,  
16 are amended to read as follows:

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

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

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

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

1 (4) a security fee on a misdemeanor offense (Art.  
2 102.017, Code of Criminal Procedure) . . . \$4;

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

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

8 (7) a fee on conviction of certain offenses involving  
9 issuing or passing a subsequently dishonored payment device [~~check~~]  
10 (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed  
11 \$30;

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

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

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

24 SECTION 14. The heading to Section 162.409, Tax Code, is  
25 amended to read as follows:

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

1 SECTION 15. 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 payment device, as  
5 that term is defined by Section 3.506, Business & Commerce Code,  
6 ~~[check or similar sight order]~~ for the payment of money knowing that  
7 the issuer does not have sufficient funds in or on deposit with the  
8 bank or other drawee for the payment in full of the payment device  
9 ~~[check or order]~~ as well as all other payment devices ~~[checks or~~  
10 ~~orders]~~ outstanding at the time of issuance;

11 (2) the payee on the payment device ~~[check or order]~~ is  
12 a licensed distributor, licensed supplier, or permissive supplier;  
13 and

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

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

23 SECTION 16. The change in law made by this Act applies only  
24 to an offense committed on or after the effective date of this Act.  
25 An offense committed before the effective date of this Act is  
26 governed by the law in effect on the date the offense was committed,  
27 and the former law is continued in effect for that purpose. For

1 purposes of this section, an offense was committed before the  
2 effective date of this Act if any element of the offense occurred  
3 before that date.

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