

1-1 By: Schwertner S.B. No. 821
 1-2 (In the Senate - Filed February 25, 2013; March 5, 2013,
 1-3 read first time and referred to Committee on Criminal Justice;
 1-4 March 25, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 0; March 25, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13			X	
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 821 By: Schwertner

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the prosecution of certain criminal offenses involving
 1-20 theft or involving fraud or other deceptive practices.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. The heading to Section 31.06, Penal Code, is
 1-23 amended to read as follows:

1-24 Sec. 31.06. PRESUMPTION FOR THEFT BY CHECK OR SIMILAR SIGHT
 1-25 ORDER.

1-26 SECTION 2. Subsection (a), Section 31.06, Penal Code, is
 1-27 amended to read as follows:

1-28 (a) If the actor obtained property or secured performance of
 1-29 service by issuing or passing a check or similar sight order for the
 1-30 payment of money, when the issuer did not have sufficient funds in
 1-31 or on deposit with the bank or other drawee for the payment in full
 1-32 of the check or order as well as all other checks or orders then
 1-33 outstanding, it is prima facie evidence of the issuer's [~~his~~]
 1-34 intent to deprive the owner of property under Section 31.03 (Theft)
 1-35 including a drawee or third-party holder in due course who
 1-36 negotiated the check or order or to avoid payment for service under
 1-37 Section 31.04 (Theft of Service) (except in the case of a postdated
 1-38 check or order) if:

1-39 (1) the issuer [~~he~~] had no account with the bank or
 1-40 other drawee at the time the issuer [~~he~~] issued the check or sight
 1-41 order; or

1-42 (2) payment was refused by the bank or other drawee for
 1-43 lack of funds or insufficient funds, on presentation within 30 days
 1-44 after issue, and the issuer failed to pay the holder in full within
 1-45 10 days after receiving notice of that refusal.

1-46 SECTION 3. The heading to Section 32.41, Penal Code, is
 1-47 amended to read as follows:

1-48 Sec. 32.41. ISSUANCE OF BAD CHECK OR SIMILAR SIGHT ORDER.

1-49 SECTION 4. Subsection (e), Section 32.41, Penal Code, is
 1-50 amended to read as follows:

1-51 (e) A person charged with an offense under this section may
 1-52 make restitution for the bad checks or sight orders. Restitution
 1-53 shall be made through the prosecutor's office if collection and
 1-54 processing were initiated through that office. In other cases
 1-55 restitution may be, with the approval of the court in which the
 1-56 offense is filed:

1-57 (1) made through the court; or

1-58 (2) collected by a law enforcement agency if a peace
 1-59 officer of that agency executes a warrant against the person
 1-60 charged with the offense.

2-1 SECTION 5. Subdivision (1), Subsection (a), Section 32.45,
2-2 Penal Code, is amended to read as follows:

2-3 (1) "Fiduciary" includes:

2-4 (A) a trustee, guardian, administrator,
2-5 executor, conservator, and receiver;

2-6 (B) an attorney in fact or agent appointed under
2-7 a durable power of attorney as provided by Chapter XII, Texas
2-8 Probate Code;

2-9 (C) any other person acting in a fiduciary
2-10 capacity, but not a commercial bailee unless the commercial bailee
2-11 is a party in a motor fuel sales agreement with a distributor or
2-12 supplier, as those terms are defined by Section 162.001 [~~153.001~~],
2-13 Tax Code; and

2-14 (D) an officer, manager, employee, or agent
2-15 carrying on fiduciary functions on behalf of a fiduciary.

2-16 SECTION 6. Subsection (a), Section 3.507, Business &
2-17 Commerce Code, is amended to read as follows:

2-18 (a) On return of a check or similar sight order, as defined
2-19 by Section 1.07, Penal Code, to the holder following dishonor of the
2-20 check or sight order by a payor and prior to the check or sight order
2-21 being referred for prosecution, the holder, the holder's assignee,
2-22 agent, or representative, or any other person retained by the
2-23 holder to seek collection of the dishonored check or sight order may
2-24 charge the drawer or indorser of the check or sight order the cost
2-25 of delivery notification by registered or certified mail with
2-26 return receipt requested under Section 31.06 or Section 32.41,
2-27 Penal Code, as applicable.

2-28 SECTION 7. The heading to Article 102.007, Code of Criminal
2-29 Procedure, is amended to read as follows:

2-30 Art. 102.007. FEE FOR COLLECTING AND PROCESSING CHECK OR
2-31 SIMILAR SIGHT ORDER.

2-32 SECTION 8. Subsections (a) and (e), Article 102.007, Code
2-33 of Criminal Procedure, are amended to read as follows:

2-34 (a) A county attorney, district attorney, or criminal
2-35 district attorney may collect a fee if the attorney's [~~his~~] office
2-36 collects and processes a check or similar sight order, as defined by
2-37 Section 1.07, Penal Code, if the check or similar sight order:

2-38 (1) has been issued or passed in a manner that makes
2-39 the issuance or passing an offense under:

2-40 (A) Section 31.03, Penal Code;

2-41 (B) Section 31.04, Penal Code; or

2-42 (C) Section 32.41, Penal Code; or

2-43 (2) has been forged, as defined by Section 32.21,
2-44 Penal Code.

2-45 (e) In addition to the collection fee specified in
2-46 Subsection (c) [~~of this article~~], the county attorney, district
2-47 attorney, or criminal district attorney may collect the fee
2-48 authorized by Section 3.506, Business & Commerce Code, for the
2-49 benefit of the holder of a check or similar sight order or the
2-50 holder's [~~its~~] assignee, agent, representative, or any other person
2-51 retained by the holder to seek collection of the check or order.

2-52 SECTION 9. Article 102.0071, Code of Criminal Procedure, is
2-53 amended to read as follows:

2-54 Art. 102.0071. JUSTICE COURT DISHONORED CHECK OR SIMILAR
2-55 SIGHT ORDER. On conviction in justice court of an offense under
2-56 Section 32.41, Penal Code, or an offense under Section 31.03 or
2-57 31.04, Penal Code, in which it is shown that the defendant committed
2-58 the offense by issuing or passing a check or similar sight order, as
2-59 defined by Section 1.07, Penal Code, that was subsequently
2-60 dishonored, the court may collect from the defendant and pay to the
2-61 holder of the check or order the fee permitted by Section 3.506,
2-62 Business & Commerce Code.

2-63 SECTION 10. Sections 102.101 and 102.102, Government Code,
2-64 are amended to read as follows:

2-65 Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN
2-66 JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice
2-67 court shall collect fees and costs under the Code of Criminal
2-68 Procedure on conviction of a defendant as follows:

2-69 (1) a jury fee (Art. 102.004, Code of Criminal

3-1 Procedure) . . . \$3;

3-2 (2) a fee for withdrawing request for jury less than 24

3-3 hours before time of trial (Art. 102.004, Code of Criminal

3-4 Procedure) . . . \$3;

3-5 (3) a jury fee for two or more defendants tried jointly

3-6 (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

3-7 (4) a security fee on a misdemeanor offense (Art.

3-8 102.017, Code of Criminal Procedure) . . . \$4;

3-9 (5) a fee for technology fund on a misdemeanor offense

3-10 (Art. 102.0173, Code of Criminal Procedure) . . . \$4;

3-11 (6) a juvenile case manager fee (Art. 102.0174, Code

3-12 of Criminal Procedure) . . . not to exceed \$5 if the court employs a

3-13 juvenile case manager;

3-14 (7) a fee on conviction of certain offenses involving

3-15 issuing or passing a subsequently dishonored check or similar sight

3-16 order (Art. 102.0071, Code of Criminal Procedure) . . . not to

3-17 exceed \$30;

3-18 (8) a court cost on conviction of a Class C misdemeanor

3-19 in a county with a population of 3.3 million or more, if authorized

3-20 by the county commissioners court (Art. 102.009, Code of Criminal

3-21 Procedure) . . . not to exceed \$7; and

3-22 (9) a civil justice fee (Art. 102.022, Code of

3-23 Criminal Procedure) . . . \$0.10.

3-24 Sec. 102.102. ADDITIONAL COURT COSTS ON CONVICTION IN

3-25 JUSTICE COURT: BUSINESS & COMMERCE CODE. The clerk of a justice

3-26 court shall collect from a defendant a court cost not to exceed \$30

3-27 under Section 3.506, Business & Commerce Code, on conviction of

3-28 certain offenses involving issuing or passing a subsequently

3-29 dishonored check or similar sight order.

3-30 SECTION 11. The heading to Section 162.409, Tax Code, is

3-31 amended to read as follows:

3-32 Sec. 162.409. ISSUANCE OF BAD CHECK OR SIMILAR SIGHT ORDER

3-33 TO LICENSED DISTRIBUTOR, LICENSED SUPPLIER, OR PERMISSIVE

3-34 SUPPLIER.

3-35 SECTION 12. Subsections (a) and (d), Section 162.409, Tax

3-36 Code, are amended to read as follows:

3-37 (a) A person commits an offense if:

3-38 (1) the person issues or passes a check or similar

3-39 sight order, as defined by Section 1.07, Penal Code, for the payment

3-40 of money knowing that the issuer does not have sufficient funds in

3-41 or on deposit with the bank or other drawee for the payment in full

3-42 of the check or order as well as all other checks or orders

3-43 outstanding at the time of issuance;

3-44 (2) the payee on the check or order is a licensed

3-45 distributor, licensed supplier, or permissive supplier; and

3-46 (3) the payment is for an obligation or debt that

3-47 includes a tax under this chapter to be collected by the licensed

3-48 distributor, licensed supplier, or permissive supplier.

3-49 (d) A person who makes payment on an obligation or debt that

3-50 includes a tax under this chapter and pays with an insufficient

3-51 funds check or similar sight order, as defined by Section 1.07,

3-52 Penal Code, issued to a licensed distributor, licensed supplier, or

3-53 permissive supplier may be held liable for a penalty equal to the

3-54 total amount of tax not paid to the licensed distributor, licensed

3-55 supplier, or permissive supplier.

3-56 SECTION 13. The change in law made by this Act applies only

3-57 to an offense committed on or after the effective date of this Act.

3-58 An offense committed before the effective date of this Act is

3-59 governed by the law in effect on the date the offense was committed,

3-60 and the former law is continued in effect for that purpose. For

3-61 purposes of this section, an offense was committed before the

3-62 effective date of this Act if any element of the offense occurred

3-63 before that date.

3-64 SECTION 14. This Act takes effect September 1, 2013.

3-65

* * * * *