

By: Garcia

S.B. No. 1486

A BILL TO BE ENTITLED

AN ACT

relating to the presumption of intent in the prosecution of certain criminal cases involving theft by check or issuance of a bad check.

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

SECTION 1. Section 31.06(a), 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 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 or of a check or order given in connection with a consumer debt, an extension of consumer credit, or services related to a consumer debt or an extension of consumer credit) if:

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

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within

1 10 days after receiving notice of that refusal.

2 SECTION 2. Section 32.41(b), Penal Code, is amended to read
3 as follows:

4 (b) This section does not prevent the prosecution from
5 establishing the required knowledge by direct evidence; however,
6 for purposes of this section, the issuer's knowledge of
7 insufficient funds is presumed (except in the case of a postdated
8 check or order or of a check or order given in connection with a
9 consumer debt, an extension of consumer credit, or services related
10 to a consumer debt or an extension of consumer credit) if:

11 (1) he had no account with the bank or other drawee at
12 the time he issued the 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 SECTION 3. The change in law made by this Act applies only
18 to an offense committed on or after the effective date of this Act.
19 An offense committed before the effective date of this Act is
20 governed by the law in effect on the date the offense was committed,
21 and the former law is continued in effect for that purpose. For
22 purposes of this section, an offense was committed before the
23 effective date of this Act if any element of the offense occurred
24 before that date.

25 SECTION 4. This Act takes effect September 1, 2015.