

By: Garcia

S.B. No. 1121

A BILL TO BE ENTITLED

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

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

5 SECTION 1. Section 31.06, Penal Code, is amended by  
6 amending Subsection (a) and adding Subsection (g) to read as  
7 follows:

8 (a) If the actor obtained property or secured performance of  
9 service by issuing or passing a check or similar sight order for the  
10 payment of money, when the issuer did not have sufficient funds in  
11 or on deposit with the bank or other drawee for the payment in full  
12 of the check or order as well as all other checks or orders then  
13 outstanding, it is prima facie evidence of the issuer's intent to  
14 deprive the owner of property under Section 31.03 (Theft) including  
15 a drawee or third-party holder in due course who negotiated the  
16 check or order or to avoid payment for service under Section 31.04  
17 (Theft of Service) (except in the case of a postdated check or order  
18 or of a check or order issued or passed in connection with a  
19 consumer debt, an extension of consumer credit, or services related  
20 to a consumer debt or an extension of consumer credit) if:

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

23 (2) payment was refused by the bank or other drawee for  
24 lack of funds or insufficient funds, on presentation within 30 days

1 after issue, and the issuer failed to pay the holder in full within  
2 10 days after receiving notice of that refusal.

3 (g) In this section:

4 (1) "Consumer debt" has the meaning assigned by  
5 Section 392.001, Finance Code.

6 (2) "Extension of consumer credit" has the meaning  
7 assigned by Section 393.001, Finance Code.

8 SECTION 2. Section 32.41, Penal Code, is amended by  
9 amending Subsection (b) and adding Subsection (h) to read as  
10 follows:

11 (b) This section does not prevent the prosecution from  
12 establishing the required knowledge by direct evidence; however,  
13 for purposes of this section, the issuer's knowledge of  
14 insufficient funds is presumed (except in the case of a postdated  
15 check or order or of a check or order issued or passed in connection  
16 with a consumer debt, an extension of consumer credit, or services  
17 related to a consumer debt or an extension of consumer credit) if:

18 (1) he had no account with the bank or other drawee at  
19 the time he issued the check or order; or

20 (2) payment was refused by the bank or other drawee for  
21 lack of funds or insufficient funds on presentation within 30 days  
22 after issue and the issuer failed to pay the holder in full within  
23 10 days after receiving notice of that refusal.

24 (h) In this section:

25 (1) "Consumer debt" has the meaning assigned by  
26 Section 392.001, Finance Code.

27 (2) "Extension of consumer credit" has the meaning

1 assigned by Section 393.001, Finance Code.

2           SECTION 3. The changes in law made by this Act apply only to  
3 an offense committed on or after the effective date of this Act. An  
4 offense committed before the effective date of this Act is governed  
5 by the law in effect on the date the offense was committed, and the  
6 former law is continued in effect for that purpose. For purposes of  
7 this section, an offense was committed before the effective date of  
8 this Act if any element of the offense occurred before that date.

9           SECTION 4. This Act takes effect September 1, 2017.