

## **BILL ANALYSIS**

Senate Research Center

H.B. 2190  
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Criminal Justice  
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Engrossed

### **DIGEST**

Currently, a presumption of intent to steal is created when a defendant passes a check to obtain property and at the time does not have sufficient funds to cover the payment in full. In the event that a product is delivered to a purchaser before the actual receipt of the payment, the courts have interpreted the Penal Code to require the check to be given before the exchange of property or services in order for the recipient of the dishonored check to prove intent to defraud. Amending the Penal Code would allow the issuance of a check or similar sight order with insufficient funds to be used as prima facie evidence of theft in the in which the check or similar sight order is issued within seven days after obtaining the property, rather than only when the instrument and property are simultaneously exchanged. H.B. 2190 would make the issuance of a check with insufficient funds to be used as primae facie evidence of theft.

### **PURPOSE**

As proposed, H.B. 2190 allows the issuance of a check with insufficient funds to be used as prima facie evidence of theft if issued within a certain number of days of obtaining the property.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 31.06(a), Penal Code, to allow the issuance of a check or similar sight order with insufficient funds to be used as prima facie evidence of theft in the case in which the check or similar sight order is issued not later than seven days after obtaining the property, rather than only when the instrument and property are simultaneously exchanged.

SECTION 2. Amends Chapter 31, Penal Code, by adding Section 31.061, as follows:

Sec. 31.061. THREATENING OR PURSUING ACTION TO COLLECT CERTAIN CHECKS. Prohibits a person from filing or threatening to file a charge, complaint, or criminal prosecution under Section 31.03, 31.04, or 32.41, based on nonpayment of a check if the checkwriter gave the check in exchange for a cash advance and the person making the advance received compensation exceeding five percent of the amount of the check. Prohibits this section from being constructed to authorize the practice of requiring a check to be given as a security for a loan.

SECTION 3. Effective date: September 1, 1999.  
Makes application of this Act prospective.

SECTION 4. Emergency clause.