

BILL ANALYSIS

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S.B. 821
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This legislation is required to bring Texas law up to date regarding the electronic transfer of funds in modern business transactions. Current law addresses the issue of "hot checks," or paper transactions, but does not address insufficiently funded electronic funds transfers, or "hot drafts." Currently, district and county attorneys lack the authority to file charges against individuals or corporations that submit insufficiently funded accounts for electronic funds transfers. Bringing the code up to date will give prosecutors the authority to prosecute those who pay with hot drafts. Moreover, wholesale fuel distributors, who frequently receive payment by electronic funds transfers, would be provided a tool to spur the collection of difficult to collect accounts.

This legislation replaces the phrase "check or similar sight order" with "payment device" to encompass electronic funds transfers. It also updates a reference in the Penal Code to a section regarding motor fuel taxes in the Tax Code.

The legislation amends Sections 31.03, 32.04, 31.06, and 32.41 of the Penal Code; Section 3.507 of the Business & Commerce Code; Articles 102.007 and 102.0071 of the Code of Criminal Procedure; Sections 102.101 and 102.102 of the Government Code; and Section 162.409 of the Tax Code.

As proposed, S.B. 821 amends current law relating to the prosecution of certain criminal offenses involving theft or involving fraud or other deceptive practices.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.03, Penal Code, by amending Subsection (e) and adding Subsection (e-1), as follows:

(e) Changes references to check or similar sight order to payment device.

(e-1) Defines "payment device" in this section.

SECTION 2. Amends Section 31.04(g), Penal Code, as follows:

(g) Provides that it is a defense to prosecution under this section that the defendant secured the performance of the service by giving a post-dated payment device, as defined by Section 3.506 (Processing Fee by Holder of Payment Device), Business & Commerce Code, rather than giving a post-dated check or similar sight order, to the person performing the service and the person performing the service or any other person presented the payment device for payment before the date on the payment device. Makes conforming changes.

SECTION 3. Amends the heading to Section 31.06, Penal Code, to read as follows:

Sec. 31.06. PRESUMPTION FOR THEFT BY PAYMENT DEVICE.

SECTION 4. Amends Sections 31.06(a), (b), and (f), Penal Code, as follows:

(a) Changes references to check or order to payment device. Provides that if the actor obtained property or secured performance of service by issuing or passing a payment device, as defined by Section 3.506, Business & Commerce Code, rather than 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 payment device as well as all other payment devices 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 payment device or to avoid payment for service under Section 31.04 (Theft of Service) (except in the case of a postdated payment device) if:

(1) the issuer had no account with the bank or other drawee at the time the issuer issued the payment device; 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 10 days after receiving notice of that refusal.

Makes conforming and nonsubstantive changes.

(b) and (f) Makes conforming changes.

SECTION 5. Amends the heading to Section 32.41, Penal Code, to read as follows:

Sec. 32.41. ISSUANCE OF BAD PAYMENT DEVICE.

SECTION 6. Amends Sections 32.41(a), (b), (c), (e), and (f), Penal Code, as follows:

(a) Changes references to check or order to payment device. Provides that a person commits an offense if the person issues or passes a payment device, as defined by Section 3.506, Business & Commerce Code, rather than a check or similar sight order, for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the payment device as well as all other payment devices, outstanding at the time of issuance. Makes nonsubstantive changes.

(b) Makes conforming and nonsubstantive changes.

(c), (e), and (f) Makes conforming changes.

SECTION 7. Amends Section 32.45(a)(1), Penal Code, to redefine "fiduciary."

SECTION 8. Amends the heading to Section 3.507, Business & Commerce Code, to read as follows:

Sec. 3.507. DELIVERY NOTIFICATION FEE BY HOLDER OF PAYMENT DEVICE.

SECTION 9. Amends Sections 3.507(a) and (c), Business & Commerce Code, as follows:

(a) Changes references to check or sight order to payment device.

(c) Makes a conforming change.

SECTION 10. Amends the heading to Section 102.007, Code of Criminal Procedure, to read as follows:

Art. 102.007. FEE FOR COLLECTING AND PROCESSING PAYMENT DEVICE.

SECTION 11. Amends Articles 102.007(a), (c), (d), (e), and (g), Code of Criminal Procedure, as follows:

(a) Authorizes a county attorney, district attorney, or criminal district attorney to collect a fee if the attorney's office collects and processes a payment device, as defined by Section 3.506, Business & Commerce Code, rather than a check or similar sight order, if the payment device:

(1) has been issued or passed in a manner that makes the issuance or passing an offense under certain statutes; or

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

Makes a conforming and nonsubstantive change.

(c)-(d) Makes conforming changes.

(e) Authorizes the county attorney, district attorney, or criminal district attorney, in addition to the collection fee specified in Subsection (c) of this article, to collect the fee authorized by Section 3.506, Business & Commerce Code, for the benefit of the holder of a payment device, or the holder's assignee, agent, representative, or any other person retained by the holder to seek collection of the payment device. Makes conforming and nonsubstantive changes.

(g) Makes conforming changes.

SECTION 12. Amends Article 102.0071, Code of Criminal Procedure, as follows:

Art. 102.0071. New heading: JUSTICE COURT DISHONORED PAYMENT DEVICE. Authorizes the court, on conviction in justice court of an offense under Section 32.41, Penal Code, or an offense under Section 31.03 or 31.04, Penal Code, in which it is shown that the defendant committed the offense by issuing or passing a payment device, as defined by Section 3.506, Business & Commerce Code, rather than a check, that was subsequently dishonored, to collect from the defendant and pay to the holder of the payment device the fee permitted by Section 3.506, Business & Commerce Code. Makes a conforming change.

SECTION 13. Amends Sections 102.101 and 102.102, Government Code, to change references to a check to a payment device.

SECTION 14. Amends the heading to Section 162.409, Tax Code, to read as follows:

Sec. 162.409. ISSUANCE OF BAD PAYMENT DEVICE TO LICENSED DISTRIBUTOR, LICENSED SUPPLIER, OR PERMISSIVE SUPPLIER.

SECTION 15. Amends Sections 162.409(a) and (d), Tax Code, as follows:

(a) Changes references to check or sight order to payment device. Provides that a person commits an offense if among other actions, the person issues or passes a payment device, as that term is defined by Section 3.506, Business & Commerce Code, rather than a check or similar sight order, for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the payment device as well as all other payment devices, outstanding at the time of issuance and the payee on the payment device is a licensed distributor, licensed supplier, or permissive supplier.

(d) Makes a conforming change.

SECTION 16. Makes application of the changes in law made by this Act prospective.

SECTION 17. Effective date: September 1, 2013.