

- SUBJECT:** Presumption of theft by check after stop payment order
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Place, Talton, Farrar, Greenberg, Pickett, Pitts  
0 nays  
3 absent — Hudson, Nixon, Solis
- WITNESSES:** For — Harold Moore  
Against — None
- BACKGROUND:** Penal Code sec. 31.06 establishes a presumption of intent for the offenses of theft and theft of service for issuing or passing a check for payment when the issuer does not have sufficient funds on deposit for payment in full if the issuer had no account at the time the check was issued or payment was refused for lack of or insufficient funds within 30 days after issue and the issuer fails to pay the check holder in full within 10 days of receiving notice. The penalties for theft are graduated depending on the amount involved.
- DIGEST:** HB 1074 would add subsection (f) to Section 31.06 of the Penal Code creating a presumption of intent to deprive an owner of property if the following sequence of events occurred:
- the actor obtains property by issuing a check;
  - the actor orders the bank to stop payment on the check;
  - the bank refuses payment to the holder of the check within 30 days after issuance of the check;
  - the owner gives the actor notice of refusal of payment and demands payment and

- the actor fails to make payment within 10 days after the demand or fails to return the property to the owner within 10 days after demand.

The bill would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

Implementation of HB 1074 would prevent and punish calculated theft by a person who purchases a product with a check, such as a stereo, and then stops payment on the check to keep the product without paying for it. Because the law does not specifically address this issue, district attorneys are reluctant to prosecute this obvious criminal activity. Current law only presumes intent to deprive if the check is drawn on an account with insufficient funds or on a non-existent account.

The bill would sufficiently protect consumers by allowing a consumer to return property perceived as defective within 10 days of an owner's demand for payment after a stop payment order.

**OPPONENTS  
SAY:**

HB 1074 might lead to an innocent consumer's prosecution if an owner demands payment for property and then refuses to accept the returned merchandise.

This may occur if the owner and the actor disagree about whether the property is defective. A defense to the presumption in the event of an owner's refusal of property should be added as a safeguard.