

SUBJECT: Protecting third-party holder from theft by check

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Place, Talton, Farrar, Greenberg, Hudson, Nixon, Pickett, Pitts, Solis
0 nays

WITNESSES: For — Raymond C. Hemmig and Michael Stucker, Texas Association of Check Cashers; W.R. (Bill) Lyon
Against — None

DIGEST: CSHB 576 would amend Penal Code sec. 31.06 by making the issuance of a check without sufficient funds prima facie evidence of the issuer's intent to deprive a person of property under theft statutes, instead of creating a presumption of intent. Such action would also be prima facie evidence of the person's intent to deprive of property a third-party holder who negotiated the check.

This bill would take effect September 1, 1995, and would apply only to offenses in which any element was committed on or after that date.

SUPPORTERS SAY: CSHB 576 would provide check-cashing businesses greater recourse against hot check writers. Businesses that cash checks for people provide a valuable service to the community and yet are not fully protected by the law.

Because of statutory vagueness, many district attorneys and justices of the peace will not now prosecute hot check writers for theft if the person's action victimized a check-cashing business, as the third-party holder in due course, rather than the person to whom the check was made. At the very least, prosecution requires the involvement of the person to whom the check was made. This is because the intent to deprive the check cashing business cannot now be presumed under the law. CSHB 576 would alleviate this injustice by clarifying that issuing a check without sufficient

funds is prima facie evidence of intent to defraud a third-party holder in due course who cashed the check.

Clarifying the criminality of hot check writing against third-party holders in due course, including check-cashing businesses, is necessary because of the limited civil recourse available. Even if a check-cashing business obtains a judgment against a hot check writer, collecting the judgment is often thwarted because of the bar against garnishing wages, the personal property exemption from general creditors of \$30,000 for a single person and \$60,000 for married persons and the homestead exemption from forced sale.

Check-cashing businesses lose millions of dollars a year to hot check writers who need to be punished and deterred from theft. CSHB 576 would make sure that the person who writes a hot check is punished for victimizing the check-writing business as well as for victimizing the person to whom the check was made. The crime is the same.

OPPONENTS
SAY:

No apparent opposition

NOTES:

The original bill would have added subsection (f) to 31.06 of the Penal Code making the "owner of property" the holder of a dishonored check who exchanged goods, money, or services for the check, rather than the third-party holder in due course language now in subsection (a) of 31.06.