

SUBJECT: Third-party affidavits for theft or fraud in hot-check cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Dunnam, Garcia, Keel, Wise

0 nays

1 present, not voting — Nixon

3 absent — Green, Smith, Talton

WITNESSES: For — Bill Archer

Against — None

BACKGROUND: A person can be charged with a criminal offense through an indictment issued by a grand jury or through a document called “an information” filed and presented in behalf of the government by a district or county attorney. Code of Criminal Procedure, art. 21.22 prohibits the presentation of an information against someone until a credible person has made an affidavit charging the defendant with an offense.

DIGEST: HB 2734 would allow a check holder’s assignee, agent, representative, or other person designated to collect a check to make affidavits used to develop a formal charge against someone accused of theft or fraud involving a check.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: HB 2734 would make it clear that prosecutors can accept affidavits from third parties in hot-check cases. While some prosecutors do this now, others are unsure of their authority to do so. The bill would not require prosecutors to take affidavits from anyone but simply would make it clear that they can do so if they want.

Some retailers retain third parties, often companies, to try to collect on hot checks. If a third-party company cannot collect a check, it might want to turn

the matter over to a prosecutor who, in turn, could charge a hot-check writer with theft or fraud. However, some prosecutors say they cannot accept the necessary affidavits from third-party check collectors. HB 2734 would clear up this gray area.

Clearly authorizing third parties to make affidavits in hot-check cases could lead to a more efficient use of the criminal justice system. A third party can aggregate all the hot checks that it is pursuing, and if restitution is made, a prosecutor can issue the third party one large check. The third party then can divide the restitution among all the merchants. Simply filing an affidavit in a hot-check case often can lead the check writer to realize the seriousness of the situation and to make restitution.

Concerns about the validity of the affidavits are unfounded. Some prosecutors already accept third-party affidavits. Affidavits still would have to have all the proper and valid information for prosecutors to accept them. HB 2734 would not require prosecutors to accept any affidavits they did not want to accept.

**OPPONENTS  
SAY:**

HB 2734 is unnecessary because a third-party check collector who has the proper knowledge and information can make an affidavit now. However, a third party who lacks the proper knowledge about an alleged offense cannot make a valid affidavit. Third-party check collectors often lack the proper knowledge of a situation, such as when a check was issued or who accepted it. HB 2734 could lead some to believe that prosecutors are obligated to accept all third-party affidavits even if the third party lacked the proper knowledge or the affidavit was otherwise invalid.