

**SUBJECT:** Use of regular mail sworn by affidavit to provide notice of theft by check

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Keel, Riddle, Ellis, Dunnam, Hodge, Talton  
0 nays  
3 absent — Denny, P. Moreno, Pena

**WITNESSES:** For — Chuck Courtney, Texas Retailers Association; Dwain James, American Collectors Association of Texas; Scott Swindell  
Against — None

**BACKGROUND:** Under Penal Code, sec. 31.06, a person commits theft by check if the person buys an item or service by issuing a check without sufficient bank funds for payment. The person who is owed the money may notify the debtor of delinquency by sending the debtor a notice demanding payment through registered or certified mail with return receipt requested or by telegram with report of delivery requested.

**DIGEST:** CSHB 619 would amend Penal Code, sec. 31.06 to authorize the use of regular mail evidenced with an affidavit of service as adequate notice to a person who has committed theft by check.  
The bill would apply only to offenses committed on or after its effective date of September 1, 2003.

**SUPPORTERS SAY:** CSHB 619 would update an archaic statute by expanding the options for a business to obtain payment for goods or services. In contrast to the telegraph, an antiquated technology that rarely is used any more, a business easily can use regular mail sworn by an affidavit to notify a delinquent customer. The bill would allow a business to demand payment from a delinquent customer through regular mail, make it easier for a business to fulfill its obligations before taking criminal action against the customer.

CSHB 619 would create significant cost savings for many Texas businesses. Whereas sending a letter through regular first-class mail may cost a business only 37 cents, certifying a letter can cost at least an additional two to three dollars. The requirement that a victim of theft by check use certified mail to notify the perpetrator creates a needless and unfair expense.

The bill would facilitate enforcement efforts against perpetrators of theft by check. Because some bad checks are written for only a few dollars, it often is not worth the trouble or expense for a business to track down a person who has stolen goods or services. CSHB 619 would help clamp down on criminals who write bad checks for small amounts with virtual impunity.

Certified mail is no more reliable than first-class mail with an affidavit. Both types of notification rely on the U.S. Postal Service, and there is no reason to favor one type of service over the other.

Concerns about the falsification of affidavits sworn for this purpose are unfounded. A business's primary concern is obtaining payment for its services, and that business has no reason to avoid or fabricate contact with the crime's perpetrator. A business owner is not likely to risk jail time for perjury by inaccurately testifying that a notice has been sent.

**OPPONENTS  
SAY:**

CSHB 619 could introduce uncertainty into the process of prosecuting theft by check. While a certified mail notice can verify that the addressee received a letter, regular mail provides no such certainty, even if the sender attested by affidavit to sending it. If the person who wrote the check no longer lives at the address to which the letter is mailed, that person likely will never see the notice. Because bad checks often are written by a person other than the account holder, the state needs to ensure that the account holder is made aware of the violation to prevent wrongful prosecution.

CSHB 619 would provide no safeguard against the filing of a false affidavit by a business. Because it would be impossible to prove an affidavit false in court, a jury could rely only on the word of the person who filed the affidavit. While certified mail or a telegram could prove that a letter was sent, regular mail with an affidavit provides no such certainty.

HB 619  
House Research Organization  
page 3

**NOTES:** HB 619 as filed would have allowed notice of theft by check to be sent by first-class mail evidenced by a certificate of mailing if the mail was returned unopened.