

SUBJECT: Graduated penalties for check forgery depending on amount of the check

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway

0 nays

4 absent — Hodge, Moreno, Pierson, Talton

WITNESSES: For — Celeste Villareal, Texas Criminal Defense Lawyers Assoc.

Against — None

BACKGROUND: Under Penal Code, sec. 31.21, it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to forge a check.

Under current law, prosecutors have the discretion to charge check forgers under the theft statutes in Penal Code, ch. 31. They often do this because high-value theft can be punished as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000), or even a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) depending on the amount of goods or services stolen with the forged check. Prosecutors rarely use the theft statutes to prosecute low-value check forgeries because they are punished as misdemeanors instead of the more serious state-jail felony.

DIGEST: CSHB 1611 would amend, Penal Code, sec. 31.21 to change the penalty for check forgery from a state-jail felony to the standard penalty ladder in the rest of the theft statutes. CSHB 1611 would provide:

- a class C misdemeanor (maximum fine of \$500) if the face value of the forged check was less than \$50;
- a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the face value of the forged check was \$50 or more but less than \$500;

- a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the face value of the forged check was \$500 or more but less than \$1,500;
- a state-jail felony if the face value of the check was \$1,500 or more but less than \$20,000 or the face value of the forged check was less than \$1,500 and the defendant previously had been convicted two or more times of check forgery;
- a third-degree felony if the face value of the forged check was \$20,000 or more but less than \$100,000;
- a second-degree felony if the face value of the forged check was \$100,000 or more but less than \$200,000; or
- a first-degree felony if the face value of the forged check was \$200,000 or more.

CSHB 1611 would take effect on September 1, 2007, and would apply only to an offense committed on or after the effective date.