

## **BILL ANALYSIS**

Senate Research Center  
85R2088 ADM-F

S.B. 1824  
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Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Last session, the governor signed H.B. 1396, which updated the property crime thresholds to reflect twenty years of inflation. The original bill, S.B. 393, passed the senate unanimously. However, the charge of forgery was unintentionally left out of the threshold adjustment. S.B. 1824 corrects this oversight and updates the threshold ladder for forgery crimes related to fake checks, money orders, and other simple transactions to match the penalty ladder for the rest of Texas' theft offenses.

S.B. 1824 amends Section 32.21, Penal Code, to bring the offense of forgery in line with the damage amounts for all other property crimes, including the similar crime of theft by check. The bill also amends Article 102.0071, Code of Criminal Procedure, to allow a judge to collect fees from an individual convicted of forging a check and return those fees as appropriate for restitution purposes.

Current law designates forgery by check, or "fake checks," to be an automatic state jail felony, along with writings that pretend to be a will, deed, mortgage, or security agreement. Forgery of a will is a far more serious offense than forgery of a check for a small dollar amount. Many forgery charges resulting in a state jail sentence relate to simple check forgery in an amount that would otherwise qualify as misdemeanor under the property threshold structure. Some of these convictions are first-time offenders. Moreover, very similar check-related offenses, trying to cash a hot check or write a bad check for goods and services, were included in the property crime threshold adjustment from last session. S.B. 1824 creates consistency with other check-related offenses and keeps non-violent offenders, many of whom are first time offenders, out of Texas state jails.

Like other check-related offenses, forgery offenders can be put through a restitution process to make the victim whole. This bill would allow the victims of these fake checks to charge a restitution fee to the forger as part of this process just as they can for hot checks. Many district attorney offices, such as the Dallas district attorney, already practice this form of restitution.

As proposed, S.B. 1824 amends current law relating to punishment for the offense of forgery and to a fee imposed on certain defendants who commit the offense.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 32.21, Penal Code, by amending Subsections (d), (e), and (e-1) and adding Subsections (e-2) and (g), as follows:

(d) Provides that subject to Subsection (e-1), an offense under this section is a state jail felony if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check, authorization to debit an account at a financial institution, or similar sight order for payment of money, contract, release, or other commercial instrument. Makes a nonsubstantive change.

(e) Creates an exception under Subsection (e-1) and makes nonsubstantive changes.

(e-1) Provides that if it is shown on the trial of an offense under this section that the actor engaged in the conduct to obtain or attempt to obtain a property or service, an offense under this section is:

(1) a Class C misdemeanor if the value of the property or service is less than \$100;

(2) a Class B misdemeanor if the value of the property or service is \$100 or more but less than \$750;

(3) a Class A misdemeanor if the value of the property or service is \$750 or more but less than \$2,500;

(4) a state jail felony if the value of the property or service is \$2,500 or more but less than \$30,000;

(5) a felony of the third degree if the value of the property or service is \$30,000 or more but less than \$150,000;

(6) a felony of the second degree if the value of the property or service is \$150,000 or more but less than \$300,000; and

(7) a felony of the first degree if the value of the property or service is \$300,000 or more.

(e-2) Provides that, notwithstanding any other provision of this section, an offense under this section, other than an offense described for purposes of punishment by Subsection (e-1)(7), is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual).

(g) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section or the other law.

SECTION 2. Amends Article 102.0071, Code of Criminal Procedure, as follows:

Art. 102.0071. JUSTICE COURT DISHONORED CHECK OR SIMILAR SIGHT ORDER. Authorizes the court, on conviction in justice court of an offense under Section 32.41 (Issuance of Bad Check or Similar Sight Order), Penal Code, or an offense under Section 31.03 (Theft), 31.04 (Theft of Service), or 32.21 (Forgery), Penal Code, in which it is shown that the defendant committed the offense by issuing, passing, or forging a check or similar sight order, as defined by Section 1.07 (Definitions), Penal Code, that was subsequently dishonored, to collect from the defendant and pay to the holder of the check or order the fee permitted by Section 3.506 (Processing Fee by Holder of Payment Device), Business & Commerce Code.

SECTION 3. Makes application of this Act, prospective.

SECTION 4. Effective date: September 1, 2017.