

SUBJECT: Collection by law enforcement officers of restitution for writing hot checks

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 — Cecil Lacey, Justices of the Peace and Constables Association and Harris County Pct. #4, Constables Dept; (*Registered, but did not testify:* Bruce Elfant and Suzan Thompson, Justices of the Peace and Constables Association of Texas; Elwood Mitchell, Harris County Constable Pct. #4; Brad Shields, Texas Retailers Association; Jeffery Klein)

Against — David Gonzalez, Texas Criminal Defense Lawyers Association

BACKGROUND: Under Penal Code, sec. 32.41(a), a person commits a crime by issuing or passing a check or money order knowing that he or she does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance. Hot check writing is a class C misdemeanor (maximum fine of \$500), unless the check or money order was for a child support payment, in which case it is punishable as a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Under sec. 32.41(e), a person charged with issuing a bad check may make restitution. Restitution is made through the local prosecutor's office if collection and processing were initiated through that office. It also can be made through the court.

DIGEST: CSHB 485 would amend Penal Code, sec. 31.41(e) to allow a law enforcement agency to collect restitution from a hot check writer if a peace officer of that agency executed a warrant against the person charged with the offense.

The bill would amend Code of Criminal Procedure, art. 45.041 to change the amount of restitution a justice or judge could order from the current \$500 limit to a new maximum of \$5,000.

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

**SUPPORTERS
SAY:**

CSHB 485 would improve the efficiency of collecting restitution from people who write hot checks. Merchants rely on a continuous stream of funds to stay in business. Prosecuting a hot check writer takes time and resources. This investment and the delay in payment has serious costs for the business community. The bill would help to address this situation by allowing police officers to collect restitution from hot check writers.

The bill would reduce the amount of time the courts had to spend on hot check cases. If law enforcement were able to collect restitution, then cases would be dismissed much earlier because restitution would be collected sooner.

CSHB 485 would not corrupt peace officers through direct exposure to cash. This is because, unlike a traffic ticket, for example, the amount of restitution collected from hot check writers is part of a well documented court record created before the collection attempt.

**OPPONENTS
SAY:**

By turning peace officers into private debt collectors, this bill would invite corruption. Historically, exchanges of money between police officers and citizens have been handled through a centralized location to ensure accountability, which protects the citizen as well as the officer from accusations of overpayment or underpayment. This principle is so deeply ingrained in society that a person cannot even buy postage directly from a neighborhood letter carrier. In this light, it would be inappropriate to allow police officers to collect up to \$5,000 in restitution from citizens.

Instead of relying on intimidation from peace officers' going to people's homes as collection agents, the bill should contain positive incentives for defendants to pay restitution. For example, the bill should automatically dismiss charges in cases where restitution was paid according to its provisions. If the bill did not result in increased, more timely payments, it would amount to little more than taxpayers subsidizing the collection of private debt without the benefit of fewer collections cases clogging the courts.