

PENAL CODE  
CHAPTER 32. FRAUD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. In this chapter:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, savings and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

(2) "Property" means:

(A) real property;  
(B) tangible or intangible personal property including anything severed from land; or  
(C) a document, including money, that represents or embodies anything of value.

(3) "Service" includes:

(A) labor and professional service;  
(B) telecommunication, public utility, and transportation service;  
(C) lodging, restaurant service, and entertainment; and  
(D) the supply of a motor vehicle or other property for use.

(4) "Steal" means to acquire property or service by theft.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.02. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c), value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b), the property or service is deemed to have a value of \$500 or more but less than \$1,500.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) to determine value for purposes of this chapter.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER B. FORGERY

Sec. 32.21. FORGERY. (a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no

such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B).

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided in Subsections (d) and (e) an offense under this section is a Class A misdemeanor.

(d) 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.

(e) An offense under this section is a felony of the third degree if the writing is or purports to be:

(1) part of an issue of money, securities, postage or revenue stamps;

(2) a government record listed in Section 37.01(2)(C); or

(3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

(f) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more writings of the same type and if each writing is a government record listed in Section 37.01(2)(C).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 113, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 1, eff. May 21, 1997; Acts 2003, 78th Leg., ch. 1104, Sec. 1, eff. Sept. 1, 2003.

Sec. 32.22. CRIMINAL SIMULATION. (a) A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(3) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(b) An offense under this section is a Class A misdemeanor. Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.23. TRADEMARK COUNTERFEITING. (a) In this section:

(1) "Counterfeit mark" means a mark that is identical to or substantially indistinguishable from a protected mark the use or production of which is not authorized by the owner of the protected mark.

(2) "Identification mark" means a data plate, serial number, or part identification number.

(3) "Protected mark" means a trademark or service mark or an identification mark that is:

(A) registered with the secretary of state;  
(B) registered on the principal register of the United States Patent and Trademark Office;

(C) registered under the laws of another state; or

(D) protected by Section 16.30, Business & Commerce Code, or by 36 U.S.C. Section 371 et seq.

(4) "Retail value" means the actor's regular selling price for a counterfeit mark or an item or service that bears or is identified by a counterfeit mark, except that if an item bearing a

counterfeit mark is a component of a finished product, the retail value means the actor's regular selling price of the finished product on or in which the component is used, distributed, or sold.

(5) "Service mark" has the meaning assigned by Section 16.01, Business & Commerce Code.

(6) "Trademark" has the meaning assigned by Section 16.01, Business & Commerce Code.

(b) A person commits an offense if the person intentionally manufactures, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute a counterfeit mark or an item or service that:

(1) bears or is identified by a counterfeit mark; or

(2) the person knows or should have known bears or is identified by a counterfeit mark.

(c) A state or federal certificate of registration of intellectual property is prima facie evidence of the facts stated in the certificate.

(d) For the purposes of Subsection (e), when items or services are the subject of counterfeiting in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the retail value of the items or services aggregated in determining the grade of offense.

(e) An offense under this section is a:

(1) Class C misdemeanor if the retail value of the item or service is less than \$20;

(2) Class B misdemeanor if the retail value of the item or service is \$20 or more but less than \$500;

(3) Class A misdemeanor if the retail value of the item or service is \$500 or more but less than \$1,500;

(4) state jail felony if the retail value of the item or service is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the retail value of the item or service is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the retail value of the item or service is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the retail value of the item or service is \$200,000 or more.

Added by Acts 1997, 75th Leg., ch. 1161, Sec. 2, eff. Sept. 1, 1997.

Sec. 32.24. STEALING OR RECEIVING STOLEN CHECK OR SIMILAR SIGHT ORDER. (a) A person commits an offense if the person steals an unsigned check or similar sight order or, with knowledge that an unsigned check or similar sight order has been stolen, receives the check or sight order with intent to use it, to sell it, or to transfer it to a person other than the person from whom the check or sight order was stolen.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1999, 76th Leg., ch. 1413, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER C. CREDIT

Sec. 32.31. CREDIT CARD OR DEBIT CARD ABUSE. (a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card or debit card to whom or for whose benefit the card is issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. The term includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(3) "Expired credit card" means a credit card bearing an expiration date after that date has passed.

(4) "Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal or obtain property or services by debit to an account at a financial institution. The term includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.

(5) "Expired debit card" means a debit card bearing as its expiration date a date that has passed.

(6) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated by a customer, by which a customer may communicate to a financial institution a request to withdraw a benefit for himself or for another directly from the

customer's account or from the customer's account under a line of credit previously authorized by the institution for the customer.

(7) "Customer convenience terminal" means an unmanned teller machine the use of which does not involve personnel of a financial institution.

(b) A person commits an offense if:

(1) with intent to obtain a benefit fraudulently, he presents or uses a credit card or debit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

(2) with intent to obtain a benefit, he uses a fictitious credit card or debit card or the pretended number or description of a fictitious card;

(3) he receives a benefit that he knows has been obtained in violation of this section;

(4) he steals a credit card or debit card or, with knowledge that it has been stolen, receives a credit card or debit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;

(5) he buys a credit card or debit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card or debit card;

(7) he uses or induces the cardholder to use the cardholder's credit card or debit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) not being the cardholder, and without the effective consent of the cardholder, he possesses a credit card or debit card with intent to use it;

(9) he possesses two or more incomplete credit cards or debit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a card is incomplete if part of the matter that an issuer requires to appear on the card before it can be used, other than the signature of the cardholder, has not yet been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card or debit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card or debit card obtained or retained in violation of this section or a credit card or debit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card or debit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card or debit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

(d) An offense under this section is a state jail felony. Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1104, Sec. 2, 3, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 1054, Sec. 1, eff. Sept. 1, 2005.

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT. (a) For purposes of this section, "credit" includes:

- (1) a loan of money;
- (2) furnishing property or service on credit;
- (3) extending the due date of an obligation;
- (4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;
- (5) a line or letter of credit; and

(6) a credit card, as defined in Section 32.31 (Credit Card or Debit Card Abuse).

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the property or the amount of credit is less than \$50;

(2) a Class B misdemeanor if the value of the property or the amount of credit is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the value of the property or the amount of credit is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the property or the amount of credit is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the property or the amount of credit is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the property or the amount of credit is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property or the amount of credit is \$200,000 or more.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.50, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1245, Sec. 3, eff. Sept. 1, 2001.

Sec. 32.33. HINDERING SECURED CREDITORS. (a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

(1) to pay the part then due; and

(2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) An offense under Subsection (b) is a:

(1) Class C misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is less than \$20;

(2) Class B misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$200,000 or more.

(e) A person who is a debtor under a security agreement, and who does not have a right to sell or dispose of the secured property or is required to account to the secured party for the proceeds of a permitted sale or disposition, commits an offense if the person

sells or otherwise disposes of the secured property, or does not account to the secured party for the proceeds of a sale or other disposition as required, with intent to appropriate (as defined in Chapter 31) the proceeds or value of the secured property. A person is presumed to have intended to appropriate proceeds if the person does not deliver the proceeds to the secured party or account to the secured party for the proceeds before the 11th day after the day that the secured party makes a lawful demand for the proceeds or account. An offense under this subsection is:

(1) a Class C misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of less than \$20;

(2) a Class B misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$20 or more but less than \$500;

(3) a Class A misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$500 or more but less than \$1,500;

(4) a state jail felony if the proceeds obtained from the sale or other disposition are money or goods having a value of \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$200,000 or more.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 501, ch. 232, Sec. 1, eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch. 914, Sec. 5, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.34. FRAUDULENT TRANSFER OF A MOTOR VEHICLE. (a) In this section:

(1) "Lease" means the grant of use and possession of a motor vehicle for consideration, whether or not the grant includes an option to buy the vehicle.

(2) "Motor vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.

(3) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(4) "Third party" means a person other than the actor or the owner of the vehicle.

(5) "Transfer" means to transfer possession, whether or not another right is also transferred, by means of a sale, lease, sublease, lease assignment, or other property transfer.

(b) A person commits an offense if the person acquires, accepts possession of, or exercises control over the motor vehicle of another under a written or oral agreement to arrange for the transfer of the vehicle to a third party and:

(1) knowing the vehicle is subject to a security interest, lease, or lien, the person transfers the vehicle to a third party without first obtaining written authorization from the vehicle's secured creditor, lessor, or lienholder;

(2) intending to defraud or harm the vehicle's owner, the person transfers the vehicle to a third party;

(3) intending to defraud or harm the vehicle's owner, the person disposes of the vehicle in a manner other than by transfer to a third party; or

(4) the person does not disclose the location of the vehicle on the request of the vehicle's owner, secured creditor, lessor, or lienholder.

(c) For the purposes of Subsection (b)(2), the actor is presumed to have intended to defraud or harm the motor vehicle's owner if the actor does not take reasonable steps to determine whether or not the third party is financially able to pay for the vehicle.

(d) It is a defense to prosecution under Subsection (b)(1) that the entire indebtedness secured by or owed under the security interest, lease, or lien is paid or satisfied in full not later than the 30th day after the date that the transfer was made.

(e) It is not a defense to prosecution under Subsection (b)(1) that the motor vehicle's owner has violated a contract creating a security interest, lease, or lien in the motor vehicle.

(f) An offense under Subsection (b)(1), (b)(2), or (b)(3) is:

(1) a state jail felony if the value of the motor vehicle is less than \$20,000; or

(2) a felony of the third degree if the value of the motor vehicle is \$20,000 or more.

(g) An offense under Subsection (b)(4) is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 954, Sec. 1, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Penal Code, Sec. 32.36 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.35. CREDIT CARD TRANSACTION RECORD LAUNDERING. (a) In this section:

(1) "Agent" means a person authorized to act on behalf of another and includes an employee.

(2) "Authorized vendor" means a person authorized by a creditor to furnish property, service, or anything else of value upon presentation of a credit card by a cardholder.

(3) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued, and includes the named person's agents.

(4) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. It includes the number or description on the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(5) "Creditor" means a person licensed under Chapter 342, Finance Code, a bank, savings and loan association, credit union, or other regulated financial institution that lends money or otherwise extends credit to a cardholder through a credit card and that authorizes other persons to honor the credit card.

(b) A person commits an offense if the person is an authorized vendor who, with intent to defraud the creditor or cardholder, presents to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(c) A person commits an offense if, without the creditor's authorization, the person employs, solicits, or otherwise causes an authorized vendor or the vendor's agent to present to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(d) It is presumed that a person is not the agent of an authorized vendor if a fee is paid or offered to be paid by the person to the authorized vendor in connection with the vendor's presentment to a creditor of a credit card transaction record.

(e) An offense under this section is a:

(1) Class C misdemeanor if the amount of the record of a sale is less than \$20;

(2) Class B misdemeanor if the amount of the record of a sale is \$20 or more but less than \$500;

(3) Class A misdemeanor if the amount of the record of a sale is \$500 or more but less than \$1,500;

(4) state jail felony if the amount of the record of a sale is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the amount of the record of a sale is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the amount of the record of a sale is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the amount of the record of a sale is \$200,000 or more.

Added by Acts 1991, 72nd Leg., ch. 792, Sec. 1, eff. Aug. 26, 1991. Renumbered from V.T.C.A., Penal Code Sec. 32.37 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 38, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.83, eff. Sept. 1, 1999.

#### SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Sec. 32.41. ISSUANCE OF BAD CHECK. (a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer 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.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) may be actual notice or notice in writing that:

(1) is sent by registered or certified mail with return receipt requested, by telegram with report of delivery requested, or by first class mail if the letter was returned unopened with markings indicating that the address is incorrect and that there is no current forwarding order;

(2) is addressed to the issuer at his address shown on:  
(A) the check or order;  
(B) the records of the bank or other drawee; or  
(C) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

(d) If notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent.

(e) A person charged with an offense under this section may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court.

(f) Except as otherwise provided by this subsection, an offense under this section is a Class C misdemeanor. If the check or similar sight order that was issued or passed was for a child support payment the obligation for which is established under a court order, the offense is a Class B misdemeanor.

(g) An offense under this section is not a lesser included offense of an offense under Section 31.03 or 31.04.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5050, ch. 911, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 687, Sec. 2, eff. June 18, 1987; Acts 1989, 71st Leg., ch. 1038, Sec. 1, eff. June 16, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 753, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 702, Sec. 14, eff. Sept. 1, 1997.

Sec. 32.42. DECEPTIVE BUSINESS PRACTICES. (a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Commodity" means any tangible or intangible personal property.

(4) "Contest" includes sweepstake, puzzle, and game of chance.

(5) "Deceptive sales contest" means a sales contest:

(A) that misrepresents the participant's chance of winning a prize;

(B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game piece, entry blank, or other paraphernalia required for participation in the contest (if the contest is not conducted by or through a retail outlet):

(i) the geographical area or number of

outlets in which the contest is to be conducted;

(ii) an accurate description of each type of prize;

(iii) the minimum number and minimum amount of cash prizes; and

(iv) the minimum number of each other type of prize; or

(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

(6) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of a property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand;

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another;

(8) advertising property or service with intent:

(A) not to sell it as advertised, or

(B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(A) in an advertisement for the purchase or sale of property or service; or

(B) otherwise in connection with the purchase or sale of property or service.

(c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) is:

(1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or

(2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.

(d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1350, ch. 508, Sec. 1, 2, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.43. COMMERCIAL BRIBERY. (a) For purposes of this section:

(1) "Beneficiary" means a person for whom a fiduciary is acting.

(2) "Fiduciary" means:

(A) an agent or employee;  
(B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;

(C) a lawyer, physician, accountant, appraiser, or other professional advisor; or

(D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

(b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.

(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b).

(d) An offense under this section is a state jail felony.

(e) In lieu of a fine that is authorized by Subsection (d), and in addition to the imprisonment that is authorized by that subsection, if the court finds that an individual who is a fiduciary gained a benefit through the commission of an offense under Subsection (b), the court may sentence the individual to pay a fine in an amount fixed by the court, not to exceed double the value of the benefit gained. This subsection does not affect the application of Section 12.51(c) to an offense under this section committed by a corporation or association.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 1942, ch. 357, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST. (a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

(1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:

(A) a participant in the contest to induce him not to use his best efforts; or

(B) an official or other person associated with the contest; or

(2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a).

(c) An offense under this section is a Class A misdemeanor. Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.441. ILLEGAL RECRUITMENT OF AN ATHLETE. (a) A person commits an offense if, without the consent of the governing body or a designee of the governing body of an institution of higher education, the person intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another on an agreement or understanding that the benefit will influence the conduct of the person in enrolling in the institution and participating in intercollegiate athletics.

(b) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (a).

(c) It is an exception to prosecution under this section that the person offering, conferring, or agreeing to confer a benefit and the person soliciting, accepting, or agreeing to accept a benefit are related within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

(d) It is an exception to prosecution under Subsection (a) that, not later than the 60th day after the date the person accepted or agreed to accept a benefit, the person contacted a law enforcement agency and furnished testimony or evidence about the offense.

(e) An offense under this section is a:

(1) Class C misdemeanor if the value of the benefit is less than \$20;

(2) Class B misdemeanor if the value of the benefit is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the benefit is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the benefit is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the benefit is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the benefit is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the benefit is \$200,000 or more.

Added by Acts 1989, 71st Leg., ch. 125, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 41, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. (a) For purposes of this section:

(1) "Fiduciary" includes:

(A) a trustee, guardian, administrator, executor, conservator, and receiver;

(B) an attorney in fact or agent appointed under a durable power of attorney as provided by Chapter XII, Texas Probate Code;

(C) any other person acting in a fiduciary capacity, but not a commercial bailee unless the commercial bailee is a party in a motor fuel sales agreement with a distributor or supplier, as those terms are defined by Section 153.001, Tax Code; and

(D) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the property misapplied is less than \$20;

(2) a Class B misdemeanor if the value of the property misapplied is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the value of the property misapplied is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the property misapplied is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the property misapplied is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the property misapplied is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property misapplied is \$200,000 or more.

(d) An offense described for purposes of punishment by Subsections (c)(1)-(6) 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.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1991, 72nd Leg., ch. 565, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1036, Sec. 14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1047, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.137, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 14, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 728, Sec. 23.001(77), eff. Sept. 1, 2005.

Sec. 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION. (a) A person commits an offense if, with intent to defraud or harm any person, he, by deception:

(1) causes another to sign or execute any document affecting property or service or the pecuniary interest of any person; or

(2) causes or induces a public servant to file or record any purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court that is not expressly created or established under the constitution or the laws of this state or of the United States;

(B) a purported judicial entity that is not expressly created or established under the constitution or laws of this state or of the United States; or

(C) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A) or (B).

(b) An offense under Subsection (a)(1) is a:

(1) Class C misdemeanor if the value of the property, service, or pecuniary interest is less than \$20;

(2) Class B misdemeanor if the value of the property, service, or pecuniary interest is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the property, service, or pecuniary interest is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property, service, or pecuniary interest is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property, service, or pecuniary interest is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the property, service, or pecuniary interest is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the property, service, or pecuniary interest is \$200,000 or more.

(c) An offense under Subsection (a)(2) is a state jail felony.

(c-1) An offense described for purposes of punishment by Subsections (b)(1)-(6) and (c) 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.

(d) In this section, "deception" has the meaning assigned by Section 31.01.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 2, eff. May 21, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.138, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 15, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 4, eff. Sept. 1, 2003.

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING. (a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) universal product codes, labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a state jail felony if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 21, Sec. 1, eff. Sept. 1, 2001.

Sec. 32.48. SIMULATING LEGAL PROCESS. (a) A person commits an offense if the person recklessly causes to be delivered to another any document that simulates a summons, complaint, judgment, or other court process with the intent to:

(1) induce payment of a claim from another person; or

(2) cause another to:

(A) submit to the putative authority of the document; or

(B) take any action or refrain from taking any action in response to the document, in compliance with the document, or on the basis of the document.

(b) Proof that the document was mailed to any person with the intent that it be forwarded to the intended recipient is a sufficient showing that the document was delivered.

(c) It is not a defense to prosecution under this section that the simulating document:

(1) states that it is not legal process; or

(2) purports to have been issued or authorized by a person or entity who did not have lawful authority to issue or authorize the document.

(d) If it is shown on the trial of an offense under this section that the simulating document was filed with, presented to, or delivered to a clerk of a court or an employee of a clerk of a court created or established under the constitution or laws of this state, there is a rebuttable presumption that the document was delivered with the intent described by Subsection (a).

(e) Except as provided by Subsection (f), an offense under this section is a Class A misdemeanor.

(f) If it is shown on the trial of an offense under this section that the defendant has previously been convicted of a violation of this section, the offense is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 3, eff. May 21, 1997.

Sec. 32.49. REFUSAL TO EXECUTE RELEASE OF FRAUDULENT LIEN OR CLAIM. (a) A person commits an offense if, with intent to defraud or harm another, the person:

(1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent, as described by Section 51.901(c), Government Code; and

(2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested, to the person's last known address, or by telephonic document transfer to the recipient's current telecopier number, requesting the execution of a release of the fraudulent lien or claim, refuses to execute the release on the request of:

(A) the obligor or debtor; or

(B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.

(b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 4, eff. May 21, 1997.

Sec. 32.50. DECEPTIVE PREPARATION AND MARKETING OF ACADEMIC PRODUCT. (a) For purposes of this section:

(1) "Academic product" means a term paper, thesis, dissertation, essay, report, recording, work of art, or other written, recorded, pictorial, or artistic product or material submitted or intended to be submitted by a person to satisfy an academic requirement of the person.

(2) "Academic requirement" means a requirement or prerequisite to receive course credit or to complete a course of study or degree, diploma, or certificate program at an institution of higher education.

(3) "Institution of higher education" means an institution of higher education or private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, or a private postsecondary educational institution as that term is defined by Section 61.302, Education Code.

(b) A person commits an offense if, with intent to make a profit, the person prepares, sells, offers or advertises for sale, or delivers to another person an academic product when the person knows, or should reasonably have known, that a person intends to submit or use the academic product to satisfy an academic requirement of a person other than the person who prepared the product.

(c) A person commits an offense if, with intent to induce another person to enter into an agreement or obligation to obtain or have prepared an academic product, the person knowingly makes or disseminates a written or oral statement that the person will prepare or cause to be prepared an academic product to be sold for use in satisfying an academic requirement of a person other than the person who prepared the product.

(d) It is a defense to prosecution under this section that the actor's conduct consisted solely of action taken as an employee of an institution of higher education in providing instruction, counseling, or tutoring in research or writing to students of the institution.

(e) It is a defense to prosecution under this section that the actor's conduct consisted solely of offering or providing tutorial or editing assistance to another person in connection with the other person's preparation of an academic product to satisfy the other person's academic requirement, and the actor does not offer or provide substantial preparation, writing, or research in the production of the academic product.

(f) It is a defense to prosecution under this section that the actor's conduct consisted solely of typing, transcribing, or reproducing a manuscript for a fee, or of offering to do so.

(g) An offense under this section is a Class C misdemeanor. Added by Acts 1997, 75th Leg., ch. 730, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Penal Code Sec. 32.49 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(87), (88), eff. Sept. 1, 1999.

Sec. 32.51. FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION. (a) In this section:

(1) "Identifying information" means information that alone or in conjunction with other information identifies an individual, including an individual's:

(A) name, social security number, date of birth, and government-issued identification number;

(B) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

(C) unique electronic identification number, address, and routing code, financial institution account number; and

(D) telecommunication identifying information or access device.

(2) "Telecommunication access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another telecommunication access device may be used to:

(A) obtain money, goods, services, or other thing of value; or

(B) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) A person commits an offense if the person obtains, possesses, transfers, or uses identifying information of another person without the other person's consent and with intent to harm or

defraud another.

(c) An offense under this section is a state jail felony.

(d) If a court orders a defendant convicted of an offense under this section to make restitution to the victim of the offense, the court may order the defendant to reimburse the victim for lost income or other expenses, other than attorney's fees, incurred as a result of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 1999, 76th Leg., ch. 1159, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1104, Sec. 4, eff. Sept. 1, 2003.

Sec. 32.52. FRAUDULENT, SUBSTANDARD, OR FICTITIOUS DEGREE. (a) In this section, "fraudulent or substandard degree" has the meaning assigned by Section 61.302, Education Code.

(b) A person commits an offense if the person:

(1) uses or claims to hold a postsecondary degree that the person knows:

(A) is a fraudulent or substandard degree;

(B) is fictitious or has otherwise not been granted to the person; or

(C) has been revoked; and

(2) uses or claims to hold that degree:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain employment;

(ii) obtain a license or certificate to practice a trade, profession, or occupation;

(iii) obtain a promotion, a compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) obtain admission to an educational program in this state; or

(v) gain a position in government with authority over another person, regardless of whether the actor receives compensation for the position.

(c) An offense under this section is a Class B misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2005, 79th Leg., ch. 1039, Sec. 8, eff. Sept. 1, 2005.