

SUBJECT: Deleting electronic records concerning unauthorized dishonored checks

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 6 ayes — Giddings, Elkins, Martinez, Taylor, Vo, Zedler
0 nays
3 absent — Bailey, Bohac, Solomons

WITNESSES: For — None
Against — None
On — Dwain James, American Collectors Association of Texas; Steve Scurlock, Independent Bankers Association of Texas

DIGEST: HB 1855, as amended, would direct a business that accepted checks from customers in the ordinary course of business to delete any electronic record indicating that a customer had issued a dishonored check or any other information on which the business based a refusal to accept a check from a customer. The business would delete these records not later than the 30th day after the date that:

- both the customer and the business agreed that the information contained in the electronic record was incorrect; or
- the customer presented to the business both written notice and a report filed by the customer with local law enforcement saying that the dishonored check was unauthorized.

A business that did not comply with these provisions would be liable to the state for a civil penalty of up to \$1,000. The attorney general could sue to collect the penalty and could recover reasonable expenses, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

HB 1855 would not apply to a financial institution as defined by federal law and would take effect September 1, 2005.

SUPPORTERS
SAY:

HB 1855 would create an incentive for businesses to delete inaccurate information about a customer's check transactions when the business and the customer agreed such information was incorrect. A customer also would have to provide the business with written notice, along with a police report filed by the customer saying the dishonored check transactions were unauthorized.

The bill would aim to have victims of unauthorized checks restored to financial credibility within a reasonable time. The information age has abundant benefits but also accompanying problems. Some businesses are unbending about deleting any data about financial transactions once it is in their computer systems. This bill would require the deleting of incorrect computer data regarding dishonored checks if the business and customer reached an agreement and the other specifications were met.

The bill particularly would assist victims of identify theft with unauthorized check transactions. In those situations, the victim often is treated like the criminal because businesses flag that person's checks not to be honored. Identity theft victims often are unable for months to do something as routine as cash checks to buy groceries. HB 1855 would offset the inconveniences associated with check fraud and provide authority for the attorney general to sue businesses in violation and collect a civil penalty of up to \$1,000.

The bill would exempt financial institutions because they are required to maintain certain financial records for five years under the federal Gramm-Leach-Bliley Act to combat federal money-laundering and other crimes.

OPPONENTS
SAY:

By forcing business to delete records associated with unauthorized check transactions, this bill could eliminate criminal evidence sufficient to prove fraud. Although the bill would impose a civil penalty of \$1,000 for each violation by a business, that money would not be paid to the victim of fraud but to the state, so the customer would still have no compensation or reciprocity. In addition, the definition of "financial institutions" under the cited federal law covers 26 different entities ranging from travel agencies to car dealerships. Exempting so many businesses could affect the customer adversely.

NOTES:

The committee amendment would exempt a "financial institution" as that term is defined by 31 U.S.C., sec. 5312 (a) (2) from the provisions of the bill.

A companion bill, SB 1222 by Ellis, has been referred to the Senate Business and Commerce Committee.