

SUBJECT: Requirements for delivery of check form orders

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — Giddings, Elkins, Bailey, Bohac, Martinez, Solomons, Taylor, Vo, Zedler

0 nays

WITNESSES: For — None

Against — None

On — John Heasley, Texas Bankers Association; Curt Nelson, Deluxe Corporation; Steve Scurlock, Independent Bankers Association of Texas

DIGEST: CSHB 607 would amend the Business and Commerce Code to add sec. 35.395, requirement for delivery of a check form.

A courier would have to obtain a signature from an addressee or the addressee's representative upon delivery of a check form, unless the addressee specifically notified the person who printed the check forms that such a signature was not necessary. It would be acceptable to notify the person printing the check forms or that person's representative in writing on the check form order, by electronic means if an order were placed over the Internet, by e-mail to an address provided by the person who printed the check form or that person's agent, by recorded oral notice, or by another method that effectively would communicate the addressee's intent.

The bill would require a person who printed a check form to notify the courier if a signature were required by the addressee for delivery. A courier notified that a signature was required for delivery could not deliver a check form before obtaining the signature of the addressee or that person's representative.

The bill would designate "check form" as a device for the transmission or payment of money that, if completed, would constitute a negotiable instrument and that would be printed with information related to the financial institution on which payment could be drawn. It would define

"addressee" as a person to whom a check form was sent and "courier" as a business, other than the United States Postal Service (USPS), that delivered parcels for a fee.

A person who violated the notification provisions would be subject to a civil penalty of \$1,000 for each violation. A courier who violated requirements to obtain a signature would be subject to a civil penalty of \$1,000 for each violation.

The attorney general could bring suit to recover the civil penalty. The attorney general also could recover reasonable expenses incurred, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition expenses.

The bill would take effect January 1, 2006.

**SUPPORTERS
SAY:**

CSHB 607 would prohibit check-printing companies or banks from delivering check form orders by courier to unattended addresses without the consent of customers, providing a \$1,000 civil penalty per violation. This legislation would address reported widespread concern about check orders stolen from residences. By including a civil penalty, the bill would recognize the serious consequences for improper delivery.

Identity theft increasingly is a concern. Texas ranks second in the nation in reported identity theft. According to a Federal Trade Commission report, more than 25,000 Texans' identities were stolen last year. Fraudulent use of checks and checking account numbers is a major aspect of identity theft. Bankers, check printers, couriers, and any other parties associated with check orders should be more aware of the potential for identity theft as a result of check orders left unattended or unaccepted. The bill would create notification and delivery standards for check printers and other related parties and for couriers, with a goal of reducing check thefts and resulting identity thefts.

Victims of identity theft in Texas now have little recourse. They are hit with negative credit reports that linger for years, often are unable to cash checks, are subject to arrest, and face tremendous hassles trying to get their financial affairs back in order. Consumers willingly would pay a few extra dollars for the assurance that their check orders arrived safely. The threat of identity theft or fraudulent use of checks—and all the burdens

that come with it—would offset any possible inconvenience that customers might experience with check deliveries.

The bill would not interfere with a consumer's option to continue having check orders sent through the mail if a person requesting checks considered that to be a safer option. Although most check orders in Texas arrive through the mail, those deliveries are regulated by federal law and the Legislature could not directly address such problems.

Victims of improperly delivered checks and resulting check fraud could have difficulties persuading law enforcement officials to take action. By creating civil penalties and authorizing the attorney general to collect reasonable costs, CSHB 607 would establish a more effective remedy.

**OPPONENTS
SAY:**

Although the inconvenience associated with check theft can be severe, this bill would not address appropriately the problems related to delivery of blank checks. However well-meaning the intentions behind CSHB 607, it would impose burdens on consumers, increasing costs to them while providing them with no real legal remedies.

First, the bill would not affect the most common method by which consumers receive check orders – through the U.S. mail. More than 80 percent of all printed check orders in Texas are delivered by mail. Second, of the 14 million check deliveries in Texas during 2004—by USPS or delivery service (courier)—the number of reported actual or attempted fraudulent incidents involving check orders was .00035 of one percent. This is fewer than 10 deliveries out of 14 million statewide. While one incident of fraud associated with delivery of checks is too many, this bill would impose unnecessary burdens on consumers placing check orders and would not rectify the perceived problems.

Under the bill, consumers who ordered checks would have to opt out of a requirement that a courier must obtain a signature before delivering checks. On average, it takes 2.2 delivery attempts when a signature is required. With an opt-out system imposed by law, the number of delivery attempts likely would increase, causing delays, inconvenience, and probable expense to consumers and small businesses, who would have to pick up undelivered packages of checks from courier distribution centers. The accepted practice by couriers is an opt-in system by which consumers must request a signature. Being confronted with a legally mandated

signature for courier services, however, could cause many consumers to feel that a signature waiver was unsafe when evidence suggests otherwise.

Although consumers could decide whether to use a courier, the requirement for a signature would increase charges by an estimated \$2 per check order delivered by courier.

The bill would impose a civil penalty of \$1,000 for each person or courier who violated the notification and delivery provisions of the bill. That money would not be paid to the victim of fraud but to the state, so the bill would not offer redress or reciprocity for victims.

Although CSHB 607 would allow the attorney general to recover expenses, it would include no real enforcement mechanism. The attorney general does not bring lawsuits on behalf of individuals, so the most likely way an individual victim of check fraud related to a delivery could get relief would be if the attorney general brought a class action suit resulting from widespread practice. Given the small amount of check fraud associated with courier deliveries, this is not likely to happen.

CSHB 607 would enumerate several methods by which a consumer (addressee) could notify an intermediary, usually a bank or check printer, if the customer chose to have delivery by a courier. The bill, however, would not specify how an intermediary would have to notify the courier. This could easily cause confusion and could create a burden for banks, check printers, couriers, and others to provide a chain of unspecified evidence for an offense for which they could be liable.

While the harms caused by check fraud or identity theft are serious, CSHB 607 would not offer customers sufficient redress when balanced with the problems it could generate for other innocent parties.

**OTHER
OPPONENTS
SAY:**

CSHB 607 would make Texas the only state where a courier could be charged a civil penalty for delivering a package. Under this bill, a courier or delivery service could be fined \$1,000 for failure to obtain a signature, even if the courier had made repeated delivery attempts, knew the area to be safe, and had not experienced previous problems on the route.

Furthermore, this legislation would mandate requirements for couriers—private entities—yet would not address the USPS, a government-subsidized agency that makes the vast majority of check deliveries in

Texas, most of which are by third-class bulk mail. By placing statutory requirements on couriers, the bill would put couriers at a disadvantage with the USPS, their biggest competitor.

NOTES:

The committee substitute added a definition of "courier" and substituted "courier" for "deliverer." The substitute differs further from the original bill by not exempting delivery of printed checks by the USPS and by deleting the phrase "on delivery" when outlining requirements for an addressee or addressee representative's signature. Also, the substitute provides that the attorney general could recover reasonable expenses incurred in obtaining a civil penalty.

A companion bill, SB 1221 by Ellis, has been referred to the Senate Business and Commerce Committee.