

SUBJECT: Prohibiting denial of extension of credit to victims of identity theft

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Giddings, Elkins, Martinez, Taylor, Vo, Zedler

0 nays

3 absent — Bailey, Bohac, Solomons

WITNESSES: For — None

Against — None

On — Steve Scurlock, Independent Bankers Association of Texas; Larry Temple, Texas Mortgage Bankers Association

DIGEST: CSHB 2013 would prohibit a lender from denying or restricting the extension of credit because an individual had been a victim of identity theft if there otherwise was no cause for denial or restriction of that individual's credit.

A person licensed to engage in the business of making, transacting, or negotiating loans who violated this provision would be subject to license suspension or revocation.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 2013 would help victims of identity theft get their lives back on track by removing an unfair barrier to obtaining credit. Identity theft is the fastest growing crime in the United States, and Texas is among the 10 states with the highest rates of reported identity theft complaints. Financial institutions and private citizens lose large sums of money due to this crime, and victims must overcome great challenges in repairing a tarnished credit record.

Among the harmful repercussions of identity theft, victims of this crime often face great difficulty in obtaining future credit because it may appear

that their credit history is poor due to criminal activity on their accounts. To further victimize these individuals by unjustly denying them an extension of credit that under other circumstances would be approved is needlessly discriminatory and serves only to further punish someone who has been the victim of a crime. Lenders often are adversely affected by identity theft as well and should have a stake in efforts to both counteract this crime and rectify the wrongs that arise from it.

It is implicit in being a victim of identity theft that evidence would be available upon which the victim could file a police report and obtain a forgery affidavit. This documentation could be presented to any lenders concerned about whether or not an individual truly had been a victim of identity theft.

**OPPONENTS
SAY:**

Although the intent of this bill is good and no one should be denied credit for reasons beyond their control, CSHB 2013 would leave room for harmful repercussions to lenders. Lenders should not have to make themselves vulnerable to becoming the victims of fraud themselves in order help others who may have been the subjects of identity theft.

Some individuals may try to abuse this legislation by claiming that they were the victims of identity theft in order to have a lender overlook a poor credit history. Also, individuals that had been denied credit and later discovered that they had been victims of identity theft could use this bill as a basis to sue the lender for discrimination even though the lender had no way of knowing that an individual's credit had been tampered with. In order to ensure that this bill would not open others to victimization and abuse, it should protect lenders by adding provisions requiring a victim of identity theft to undergo a formal process to notify the lender of identity theft, as well as specify what a lender could recognize as formal notification.

NOTES:

The original bill would have amended Finance Code 341.401(a) to include identity theft among the conditions for which a lender could not discriminate against a borrower. The substitute instead would place the same provision in Business & Commerce Code, sec. 35.585. The original bill also would not have included a provision for the suspension or revocation of a license.

The companion bill, SB 99 by Ellis, passed the Senate on the Local and Uncontested Calendar on April 16 and was reported favorably, without amendment, by the House Business and Industry Committee on May 3, making it eligible to be considered in lieu of HB 2013.