

SUBJECT: Processing as forgeries checks received after account closed for ID theft

COMMITTEE: Financial Institutions — favorable, with amendment

VOTE: 6 ayes — Solomons, McCall, Guillen, Chavez, Flynn, Orr

0 nays

1 absent — Riddle

WITNESSES: For — Dwain James, American Collectors Association of Texas

Against — John Heasley, Texas Bankers Association

On — Steve Scurlock, Independent Bankers Association of Texas;
(*Registered, but did not testify:* Mance Bowden, Texas Credit Union League; Randall S. James, Bank Commissioner, Texas Department of Banking)

BACKGROUND: When a bank account has been closed and checks are written on the account following closure, the bank typically returns the physical check or an electronic copy with a notation such as “refer to maker,” “account closed,” or “insufficient funds.” Such notations typically are used even when the account has been closed due to a proven case of identity theft in which the victim has presented the bank with a forgery affidavit and a copy of a police report.

When payees receive returned checks for which the bank has not authorized payment, they often undertake efforts to contact those that were authorized on the account in order to obtain payment, including enlisting the services of collection agencies.

DIGEST: HB 2223, as amended, would require a financial institution to process checks received after an account closure as forgeries in accordance with the financial institution’s customary procedures if a victim of identity theft:

- closed the account because of the identify theft;

- presented evidence of a criminal complaint filed with a law enforcement agency; and
- requested that the financial institution return checks with the notation “forgery.”

The individual requesting closure of an account due to identity theft could not assert that the financial institution wrongfully dishonored a check returned after the request and would hold the institution harmless for acting in accordance with the individual’s request.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

HB 2223 would provide an added protection to the rapidly growing population of Texans who have been victims of identity theft. When checks are returned to a merchant or other payee with a notation such as “account closed,” the payee has no way of determining the reason for which the account was closed. This often leads to the check being turned over to a collection agency, causing the victim to spend time and effort corresponding with the collection agency in what can be a fruitless attempt to resolve the issue. In many cases, without the knowledge of the victim, an arrest warrant is issued on the false basis of non-payment, and some victims even have been wrongfully jailed.

All of these repercussions could be prevented if the financial institution simply made a notation of “forgery” on checks from accounts that had been closed at the request of a victim of identity theft. This would make it clear to a payee that the person named on the account had not authorized the transaction for which the payee was trying to collect. Victims of identity theft should not be further traumatized by the harassment of debt collectors. They deserve this simple protection that would grant immeasurable relief from the many problems they must face as a result of identity theft.

HB 2223 also would benefit merchants who refer checks to collection agencies because they are not aware that the check has been forged. These merchants equally are the victims of identity theft when they cannot collect payments that are owed them, and it would benefit them to know that attempts at collection from the owner of the account would be fruitless. Collection agencies also would be prevented from wasting time on an account from which they could never collect fees.

The bill also would protect financial institutions, which could not be held liable for not honoring a legitimate check that the customer failed to notify the bank to honor. Banks would be willing to undertake these measures, because they are also adversely affected by identity theft and should have a stake in efforts to both counteract this crime and rectify the wrongs that arise from it.

OPPONENTS
SAY:

Although the intent of HB 2223 is good, it would not offer banks sufficient protection from possible liability and would create an administrative burden for them. Procedures for processing forgeries vary widely among banks, and some currently do not utilize a process that would notate forgeries in a manner that readily would be apparent to merchants. While it may be simple for some smaller banks to institute a process that would conform to the requirements of this bill, many larger institutions utilize complex computerized systems to process both physical and electronic documents. This bill would require them to reprogram computers or institute manual interventions in processing forged checks to reduce the risk of the institution incurring liability if such a check mistakenly was forwarded by a merchant to a debt collector.

NOTES:

Without the committee amendment, the original bill would not have required the victim of identity theft to provide a copy of the criminal complaint to the financial institution. It would have imposed more specific requirements about how the forgery would have been notated, including requiring the placement of a physical notation of "forgery" on the front and back of the check or an electronic notation of "forgery" on all electronic records pertaining to an electronic request for payment. If the financial institution did not possess the copy of the document, it would have been required to request anyone in possession of the document to notate it as a forgery. This would not have applied to checks for which the financial institution had verified the authenticity with the victim of identity theft. If the financial institution had not made the required notations of "forgery," the institution would have assumed the obligation of the victim with respect to the document.