

- SUBJECT:** Collecting consumer debt on unauthorized transactions
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 7 ayes — Solomons, McCall, Chavez, Flynn, Guillen, Orr, Riddle
0 nays
- WITNESSES:** For — Karen Neeley, Independent Bankers Association of Texas;
(*Registered, but did not testify:* Dwain James, American Collectors Association of Texas)

Against — None
- BACKGROUND:** Debt collection agencies may repeatedly contact a person in whose name a debt has been incurred to encourage the individual to pay the debt. Finance Code, sec. 392.303, outlines the practices considered unfair or unconscionable that collectors may not use in collecting a debt. These include seeking to collect unauthorized charges, fees, or expenses assessed on the obligation or obtaining an acknowledgment that an obligation was obtained for life necessities when it was not.
- DIGEST:** CSHB 628 would prohibit collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment if:
- an authorized user did not initiate the transaction for which the collector was pursuing payment;
 - the debt collector had received written notice from an authorized user that the check, draft, or payment was unauthorized; and
 - the authorized user had filed a report concerning the unauthorized check, draft, or payment with a law enforcement agency and had provided the debt collector with a copy of that report.
- The debt collector could collect on such obligations if the debt collector had credible evidence that the report filed with a law enforcement agency was fraudulent and that the check, draft, or payment was indeed authorized.

The bill would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

Identity theft is a rapidly growing crime in Texas, and debt collectors may vigorously pursue the innocent victims of this crime for debts that they never actually owed. This harassment often continues whether or not a victim provides the debt collector with a police report filed regarding the identity theft crime. Debt collectors engaging in such practices further victimize the individual by trying to bully that person into paying a debt with no regard to who actually incurred that debt.

CSHB 628 would prohibit this sort of harassment and take away one of the burdens that victims of identity theft face. It is understandable that a creditor would want to collect property owed, yet these individuals should be targeting the true source of the debt. Providing the police report to a collector should be enough evidence to demonstrate that the victim of identity theft was not the responsible party. The collector still reasonably could pursue collection of a debt if credible evidence existed to prove that the police report was fraudulent. Few fraudulent reports would likely be filed given that any one who did so would open the door to investigation, and should it be proven that the report was false, the person would be subject to perjury charges.

**OPPONENTS
SAY:**

Although identity theft is a devastating crime, one cannot blame an individual to whom a debt is owed for wishing to collect on that debt. While most people filing police reports will do so for legitimate reasons, some individuals would see an opportunity to escape pursuit by debt collectors by filing false reports of identity theft. If a person were willing to employ such deceptive tactics, that person would be unlikely to be deterred by the threat of perjury charges. A police report is simply an individual's account of what occurred, and unfortunately not all individuals who file reports can be trusted. A debt collector should not be forced to stop pursuing a debt that an investigation has yet to prove was not incurred by the individual authorized to use the account.

NOTES:

The committee substitute added the requirement that a copy of the report filed with law enforcement be provided to the debt collector and the provision that a debt collector could continue to pursue the debt with credible evidence that the report was fraudulent.