

SUBJECT: Regulation of sale of checks

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 9 ayes — Marchant, Carona, Elkins, Giddings, Grusendorf, Gutierrez,  
Hudson, Patterson, Romo

0 nays

WITNESSES: For — James C. Duff, Ad Hoc Group of Money Transmitters (Thomas  
Cook, Inc., Travelers Express Company, Inc., Western Union, Citicorp  
Services, etc.)

Against — None

On — Catherine A. Ghiglieri, Texas Department of Banking

BACKGROUND: The banking department regulates non-bank sellers of money orders,  
traveler's checks and other vehicles for funds payment or transmission.

DIGEST: CSHB 1608 would make a number of changes to the Sale of Checks Act,  
effective September 1, 1995

**Rule-making authority.** The bill would require the banking department to administer the act and would grant the Finance Commission rule-making authority to enforce and administer the act. The commission could adopt rules for license applications, qualifications of applicants and any other matter to protect the public interest. Commission rules would not apply to an agent or sub-agent of a licensee.

The bill would add savings banks and out-of-state banks to the financial institutions exempt from the Sale of Checks Act. The bill would allow the banking commissioner to exempt or reduce requirements for licenses, fees, investments, and reports if an individual or company is not primarily in the business of selling checks, does not sell checks to the public and the commissioner decides it is in the public interest to grant the exemptions.

**Licensing qualifications.** The bill would require an applicant to have a minimum net worth of \$500,000, be in good financial condition, have no felony convictions;, be of good moral character and be have no charges or penalties under the Sale of Check Act.

**Fees and bonds.** The bill would allow the banking commissioner to set the license fee, instead of the current flat fee of \$500. The commissioner could raise the surety bond from the current maximum \$500,000 to a maximum of \$1 million after a hearing, based on the licensee's financial condition compared to the amount of outstanding checks.

The bill would expand the types of securities that licensees could use in lieu of a surety bond to include cash, certificates of deposit or other securities acceptable to the commissioner.

The bill would allow claimants to directly sue or make a claim against the bond if a licensee is in bankruptcy or receivership. The person could sue for an amount equal to the amount of the unpaid judgment. The bill would allow the attorney general to bring suit in Travis County district court on behalf of claimants.

**Hearings procedures.** The hearing procedures would be changed to conform with the Administrative Procedures and Texas Register Act.

**Cease-and-desist orders.** The bill would authorize the banking commissioner to issue cease-and-desist orders if a licensee violates the act or a rule adopted under the act, breached their fiduciary responsibility, committed an act that threatens their solvency, refused to submit to a commission examination, conducted business in an unsafe manner or violated the condition of the license. The bill sets out specifics of such orders.

**Other changes.** The bill would set specific time periods by which a licensee would have to notify the commissioner of additional check-selling locations and submit quarterly and annual reports.

The bill would require an agent of a licensee to remit all funds due from the sale of a check within 10 business days of the sale (business days

would not include Saturdays, Sundays or federal holidays), unless the commissioner orders otherwise or the agent has on deposit in a federally insured financial institution at least equal to the value of checks sold daily.

The bill would require that checks sold either have the licensees' mailing address or telephone number printed on the check or on another document given to the purchaser of a check.

The bill would make information submitted by the licensee to the commissioner confidential except under certain conditions, such as when the commissioner finds a waiver is in the public interest.

**SUPPORTERS  
SAY:**

CSHB 1608 would improve the banking department's ability to regulate the Sale of Checks Act and make changes that reflect current realities in selling checks and money orders. The additional regulations would safeguard the public in its dealings with sellers of checks and money orders. The bill is the product of the industry's and the banking department's efforts to clarify the law and make it more workable and efficient to protect the interests of the public and industry.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The committee substitute made technical changes and defines "business day."

A similar bill, HB 1888 by D. Smith, was approved by the House in 1993 but died in the Senate Economic Development Committee.

HB 1259 by Carona, also on today's calendar, would place financial security requirements on check sellers.