

SUBJECT: Requiring debt collectors to provide payors a copy of a dishonored check

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 8 ayes — Giddings, Elkins, Bailey, Bohac, Martinez, Taylor, Vo, Zedler

0 nays

1 absent — Solomons

WITNESSES: For — None

Against — None

On — Dudley Kidwell, Instachek; Scott Swindell, Checksmart Recovery and American Collectors Association of Texas

DIGEST: HB 1854, as amended, would establish the duty of a debt collector who contacted a consumer — an individual who had a consumer debt — about a debt resulting from the consumer's alleged issuance of a dishonored check. At the consumer's request, the collector would be required to provide a photocopy of the check or substitute check to the consumer not later than 10 days after the date of the request.

A debt collector who failed to provide a copy of the check within this time would be liable to the state for a civil penalty of up to \$1,000 for each violation. The attorney general could recover reasonable expenses incurred in obtaining a civil penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

The bill would take effect September 1, 2005, and would apply only to an action by a debt collector to collect a consumer debt incurred on or after that date.

SUPPORTERS SAY: HB 1854, as amended, would require that a debt collector attempting to recover on a bad check provide an image of the dishonored check, upon request, to the payor. Because this currently is not required, a consumer in this situation has difficulty determining whether he or she issued the check or whether the check bounced because someone else wrote it fraudulently.

With a substitute check — a paper reproduction of the original that contains an image of the front and back — or a photocopy of the bad check in hand, the consumer could review such information as the date of the check, the handwriting on the check, the payee, the amount, and the financial institution from which the check was drawn. Access to this information would allow the consumer to determine whether or not he or she had authorized the check.

The bill particularly would assist victims of identity theft with regard to unauthorized check transactions, which would be especially helpful as electronic check transactions become more prevalent. In cases of identity theft, the victim often is treated like a criminal because a debt collector aggressively pursues the payor of the dishonored check. HB 1854 would make it easy for the consumer to obtain the necessary information to determine the source of the check and to begin the process of clearing the consumer's name and credit.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee amendment would require the debt collector to provide a copy of the bad check only at the consumer's request. As filed, the bill would require the debt collector to provide the copy of the check to the consumer "at the time of initial contact," but the amended version would allow the collector 10 days. Finally, the original version would assess the \$1,000 fine for each day the violation continued, but the amendment would penalize the collector a flat \$1,000 for each violation.

The companion bill, SB 1219 by Ellis, has been referred to the Senate Business and Commerce Committee.