

- SUBJECT:** Prohibiting compelled production of certain records without payment
- COMMITTEE:** Investments and Financial Services — favorable, without amendment
- VOTE:** 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson
- 0 nays
- WITNESSES:** For — Karen Neeley and Stephen Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify:* Melodie Durst, Credit Union Coalition of Texas; John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; John Fleming, Texas Mortgage Bankers Association; Marla Flint)
- Against — None
- BACKGROUND:** Finance Code, sec. 59.006 provides the exclusive method to compel a financial institution to produce customer records as litigation discovery. The provisions of this section do not apply to certain record requests, including demands or inquiries from a state or federal government agency.
- Sec. 59.006(b) lists the conditions under which a financial institution must produce records in response to a request, including that:
- the record request be made at least 24 days before the date that compliance with the request is required; and
  - the party requesting the records pay the cost of production or post a bond to cover the cost before the financial institution complies with the request.
- DIGEST:** HB 2394 would amend Finance Code, sec. 59.006 to prohibit a court from ordering a financial institution to produce a record or finding the financial institution in contempt of court for failing to produce a record if the requesting party had not paid the costs of production or posted a cost bond.

The bill would take effect September 1, 2015, and would apply only to a record request submitted on or after this date.

**SUPPORTERS  
SAY:**

HB 2394 would emphasize existing law that requires certain requestors to pay financial institutions to produce records. In some cases, such as commercial real estate disputes, requests for customer records can be voluminous, requiring a substantial amount of time and money for the financial institution to fulfill the request. Responding to requests from state or federal law enforcement agencies, which are exempted from paying financial institutions to produce records, is just a cost of doing business. However, when a private party requests records from a financial institution that is not otherwise involved in the litigation, it is unfair to force banks to either produce expensive records or face contempt of court.

Although the cost burden is explicit, some lawyers continue to request customer records from financial institutions without paying for them. When a presiding judge has been unclear on the law, some financial institutions have been compelled to produce documents for which they were not paid.

**OPPONENTS  
SAY:**

HB 2394 could further delay record requests and take power away from the judiciary. Financial institutions can be reluctant to respond to record requests, and this bill could make it more difficult to obtain records by providing one more cause for delay.

This bill could create roadblocks for litigants with fewer resources than opponents who may be wealthier or have assets in several different banks. If there were a disparity in the wealth of litigants, a judge could choose to relax disclosure law, but HB 2394 would take away discretion a judge may have in this regard.

**NOTES:**

The Senate companion bill, SB 926 by Creighton, was referred to the Senate Business and Commerce Committee on March 9.