

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1166
By: Denny (Carona)
Business & Commerce
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Committee Report (Substituted)

DIGEST AND PURPOSE

Selling checks can generally be characterized as the practice of accepting money in exchange for issuing a payment instrument that the purchaser can then use to make a payment, in lieu of using the purchaser's personal check or sending cash. Traditional non-bank check sellers are licensed in Texas under the Sale of Checks Act. The rapidly changing business environment due to the emerging electronic economy has raised concerns that the Sale of Checks Act does not extend its traditional protections beyond paper checks to electronic transactions that are substantively the same. C.H.H.B. 1166 provides regulatory license requirements for check sellers and expands the definition of "check" to include electronic checks.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 2 (Section 152.102, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 152.002, Finance Code, to define "business of selling checks," "financial institution," "license holder," "money," and "principal," and redefine "check," "deliver," and "permissible investment."

SECTION 2. Amends Chapter 152B, Finance Code, to authorize the Finance Commission (commission) to adopt rules necessary to enforce and administer this chapter, including rules to implement and clarify this chapter, establish fees for applications, licenses, notices, and examinations to defray the cost of administering this chapter create additional exemptions or reduced requirements applicable to specific circumstances, if the exemption or reduction is in the public interest and subject to appropriate requirements or conditions, identify additional permissible investments subject to appropriate investment limits and protect the interests of check purchasers. Deletes language regarding unsafe and unsound investment.

Sec. 152.103. New heading: EXAMINATIONS. Requires the Banking Commissioner of Texas (commissioner) to examine each license holder annually, on a periodic basis as required by any rules adopted under this chapter, or more often as the commissioner considers necessary to efficiently enforce this chapter and other applicable law.

(b) Authorizes the commissioner, in the exercise of discretion and as necessary for the efficient enforcement of this chapter or other applicable law, to examine a license holder at its primary place of business, examine off-site documents that the license holder furnishes to the department and defer a required examination for not more than six months.

(c) Provides that information in a report of an examination under this section is confidential and may be disclosed only under the circumstances provided by Section 152.105.

(d) Provides that disclosure of information to the commissioner under an examination request does not waive or otherwise affect or diminish a privilege to which the information is otherwise subject. Deletes language regarding an audit.

Sec. 152.104. REGULATORY COOPERATION. (a) Authorizes the commissioner, to efficiently carry out the purposes of this chapter and reduce the regulatory burden on license holders, to take certain actions.

(b) Authorizes supervisory or examination fees assessed in accordance with this chapter to be shared with another federal, state, or foreign governmental agency that regulates the activities described in this chapter or that otherwise has concurrent regulatory or supervisory jurisdiction with respect to license holders under this chapter in accordance with an agreement between the commissioner and the agency. Authorizes the commissioner to also receive a portion of supervisory or examination fees assessed by a federal, state, or foreign governmental agency in accordance with an agreement between the commissioner and the agency.

Sec. 152.105. CONFIDENTIAL INFORMATION; DISCLOSURE. (a) Provides that, except as provided by Subsection (b), information obtained by the commissioner under this chapter and any file or record of the department relating to that information is confidential and may not be disclosed if the information, as determined by the commissioner, meets certain criteria.

(b) Authorizes the commissioner to release confidential information if certain criteria is met.

(c) Requires the commissioner, before releasing information the commissioner determines is not proprietary under Subsection (a)(2), to notify the license holder unless the notification is prohibited by other law.

SECTION 3. Amends Chapter 152C, Finance Code, to require, except as provided by Section 152.202, a person to hold a license issued under this chapter to engage in the business of selling checks to purchasers, located in this state or wherever located if the seller is located in this state.

(b) Provides that for purposes of this section, a seller is located in this state if the seller employs or otherwise uses an agent that is located in this state or maintains, uses or otherwise controls an account at a financial institution office located in this state for the purpose of engaging in the business of selling checks.

Sec. 152.202. EXEMPTIONS FROM LICENSING. (a) Provides that Section 152.201 does not apply to certain persons.

(b) Provides that certain persons selling checks are subject to certain statutory provisions and rules.

Sec. 152.203. QUALIFICATIONS FOR LICENSE. (a) Provides that subject to Subsection (b), to qualify for a license under this chapter, a person must meet certain requirements.

(b) Prohibits a license from being issued to an applicant unless each person identified under Section 152.204(b)(1), meets certain requirements.

Sec. 152.204. APPLICATION. Requires the application to meet certain requirements.

Sec. 152.205. ACCOMPANYING FEE, STATEMENTS, AND BOND. Requires an

application for a license be accompanied by certain items.

Sec. 152.206. SURETY BOND. (a) Requires, except as provided by Section 152.207, a license holder to post a surety bond issued by a bonding company or insurance company authorized to do business in this state that is acceptable to the commissioner.

(b) Requires the commissioner, on application and otherwise from time to time, to determine the amount of the surety bond but prohibits the commissioner from determining the amount to be less than \$100,000 or greater than \$1 million. Requires the commissioner, in making a determination under this subsection, to consider certain factors.

(c) Requires the bond to be payable to the commissioner on behalf of any claimants against the license holder or the license holder's agent to secure the faithful performance of the obligations of the license holder or agent with respect to the receipt, handling, transmission, and payment of money in connection with the sale of checks. Deletes language regarding providing a bond of \$1 million.

Sec. 152.207. ALTERNATIVE TO BOND. (a) Provides that instead of furnishing all or part of the amount of the surety bond required by Section 152.206, an applicant or license holder may deposit with the commissioner, or with a financial institution possessing trust powers that is authorized to conduct a trust business in this state and is acceptable to the commissioner, an aggregate amount, including cash, certificates of deposit, and interest-bearing securities, that equals the total amount of the required bond or the remaining part of the bond. For purposes of this subsection, the value of the securities is the lesser of the principal amount or the market value of the securities.

(b) Provides that the license holder is entitled to receive all income generated by the assets in the deposit and with the commissioner's approval, to substitute other permissible assets or securities for those deposited.

(c) Requires the license holder, on written order of the commissioner made for good cause shown, to substitute other assets or securities for those deposited.

(d) Defines, "securities."

Sec. 152.208. INVESTIGATION OF APPLICATION. (b) Authorizes the commissioner, to the extent considered advisable by the commissioner, to investigate and consider the qualifications of principals of an applicant in determining whether the qualifications prescribed by Section 152.203(b) have been met.

Sec. 152.209. ISSUANCE OF LICENSE. (a) Requires the commissioner to issue a license to the applicant if the commissioner finds that the qualifications prescribed by Section 152.203 are met, based on the application and investigation, and receives an acceptable bond or bonds and deposits aggregating to the amount required by the commissioner.

(b) Provides that the applicant on request is entitled to a hearing on the denial of the application, to be held not later than the 60th day after the date the commissioner receives the request.

SECTION 4. Amends Sections 152.301(b) and (c), Finance Code, as follows:

(b) Deletes language regarding terms defined by Section 201.101.

(c) Provides that net worth of the license holder for purposes of Subsection (a), rather than

(a)(3), is shown by an audited financial statement reasonably satisfactory to the commissioner.

SECTION 5. Amends Section 152.304(a), Finance Code, to require, not later than June 30, rather than April 15 of each year, a license holder to pay to the commissioner a license renewal fee in an amount established by rule.

SECTION 6. Amends Section 152.305, Finance Code, to require a license holder, unless waived by the commissioner, not later than the 45th day after the last day of each quarter of the license holder's fiscal year, to file with the commissioner a certification of net worth and a report regarding maintaining permissible investments under Section 152.301, rather than Section 152.3015, for the preceding quarter submitted on forms furnished by the commissioner.

(b) Provides that not later than June 30, rather than April 15th, of each year, or a later date the commissioner approves in writing for good cause shown, a license holder shall file an annual audited unconsolidated financial statement dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year.

SECTION 7. Amends Section 152.307(a), Finance Code, to require the commissioner to give a license holder an opportunity for a hearing before a license may be revoked.

SECTION 8. Amends Section 152.401, Finance Code, as follows:

Sec. 152.401. New heading: BUSINESS CONDUCTED BY AGENT. (a) Authorizes a license holder to conduct the business of selling checks under this chapter from any location within or outside of this state, either directly or through an agent appointed by the license holder.

(b) Prohibits a rule adopted under Section 152.102, rather than 152.102(a), from directly applying to a license holder's agent.

(c) Authorizes a license holder or a license holder's agent subject to compliance with this chapter, to sell checks through physical facilities, electronic facilities, including the Internet, or telephonic facilities and to charge a different price for checks based on the type of facility used in the transaction. Provides that a price differential based on the type of facility used does not constitute a surcharge subject to Section 339.001 if certain requirements are met.

SECTION 9. Amends Section 152.402, Finance Code, to require that each check sold by a license holder, directly or through an agent, to include the name and mailing address or telephone number of the license holder clearly printed or displayed on or in connection with sale of the check or be accompanied by a written notice displayed or delivered to the purchaser at the time of sale containing that information.

SECTION 10. Amends Section 152.404(b), Finance Code, to authorize, notwithstanding Subsection (a), a license holder's agent to remit to the license holder all money due from the sale of a check at a later date if the agent maintains on deposit with an office of a federally insured financial institution located in the United States an amount that is in an account solely in the name of the license holder and for each day by which the period before which the remittance is made exceeds 10 business days, is not less than the outstanding obligations of the license holder represented by checks issued by the license holder that the agent usually sells daily.

SECTION 11. Amends Section 152.405, Finance Code, to provide that except as provided by Subsection (b), a license holder that sells a check, directly or through an agent, is liable for the payment of the check in the same manner as a maker or drawer of a negotiable instrument subject to Chapter 3, Business & Commerce Code, regardless of whether the license holder signed or assumed primary liability for obligations evidenced by the check.

(b) Provides that for purposes of determining liability to the holder of a check on which payment has been stopped by the license holder at the request of its purchaser, the license holder is liable in the same manner as a drawee, and the purchaser of the check is liable on the same manner as a drawer of a negotiable instrument subject to Chapter 3, Business & Commerce Code.

SECTION 12. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 8. Amends Engrossed H.B. 1166 by adding Subsection c to Section 152.401, Finance Code.

Amends Engrossed H.B. 1166 adding new language to Section 152.405 Finance Code.