

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 711  
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### **DIGEST AND PURPOSE**

Currently, the Sale of Checks Act regulates persons or businesses selling checks as a service or fee. However, due to the rapidly changing nature of business, a number of entities have begun to engage in electronic transactions that would, if conducted with traditional paper instruments, fall under the Sale of Checks Act. As proposed, S.B. 711 amends Chapter 152, Finance Code, to redefine “check” to ensure that electronic transactions will be covered by the Sale of Checks Act.

### **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, as follows:

Sec. 152.002. DEFINITIONS. Defines “business of selling of checks,” redefines “check,” defines “commission,” “commissioner,” redefines “deliver,” defines “financial institution,” “license holder,” “money,” redefines “permissible investment,” defines “principal,” and redefines “sell.” Makes a conforming change.

SECTION 2. Amends Chapter 152B, Finance Code, as follows:

#### **SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION**

Sec. 152.102. RULES. Authorizes the Finance Commission of Texas (commission) to adopt rules necessary to enforce and administer this chapter, including rules to meet certain criteria. Deletes text regarding commissioner my adopt and enforce rules.

Sec. 152.103. New heading: EXAMINATIONS. Requires the banking commissioner of Texas 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. Deletes text regarding exceptions to requirements and deletes previous Section title to 152.104. Authorizes the commissioner, in the exercise of discretion and as necessary for the efficient enforcement of this chapter or other applicable law, to exercise certain powers. Provides that information in a report of an examination under this section is confidential and is authorized to be disclosed only under the circumstances provided by Section 152.105. Provides that disclosure of information to the commissioner under an examination request does not waive or otherwise effect or diminish a privilege to which the information is otherwise subject. Deletes text regarding the commissioner accepting an annual report and audit.

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

perform certain duties. 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 certain entities in accordance with an agreement between the commissioner and the agency.

Sec. 152.105. CONFIDENTIAL INFORMATION; DISCLOSURE. Provides that except as provided by Subsection (b), information obtained by the commissioner, rather than (or the commission), under this chapter and any, (rather than from a person who holds a license under this chapter or through an examination) file or record of the Texas Department of Banking (department) relating to that information is confidential and is prohibited from being disclosed if the information, as determined by the commissioner meets certain criteria. Authorizes the commissioner to release confidential information if the license holder consents to the release of information, other than the information described by Subsection (a)(3), or has published the information contained in the release; the commissioner finds that release of the information is required for an administrative hearing, in which case the information is authorized to be released to the parties to the hearing by an order of the hearings officer that requires the parties to maintain confidentiality; or the commissioner finds that release of the information is reasonably necessary to protect the public and is in the interest of justice, in which case the information is authorized to be released only to certain entities with whom the United States currently maintains diplomatic relations. 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. Makes conforming changes.

SECTION 3. Amends Chapter 152C, Finance Code, as follows:

#### SUBCHAPTER C. APPLICATION FOR ISSUANCE OF LICENSE

Sec. 152.201. LICENSE REQUIRED. Requires a person, except as provided by Section 152.202, to hold a license issued under this chapter to engage in the business of selling checks to purchasers located in this state, rather than as a service or for consideration; or wherever located if the seller is located in this state. 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. Makes conforming changes.

Sec. 152.202. EXEMPTIONS FROM LICENSING. Provides that Section 152.201 does not apply to a federally insured financial institution, an agent, rather than subagent, of a license holder unless the agent receives or at any time has access to a record, rather than check, of the license holder that contains information pertaining to payment of the license holder's obligations under checks sold by the agent for purposes of verification, reconciliation, or accounting; a state, an agency, political subdivision, or instrumentality of a state, the United States, or an agency or instrumentality of the United States, including the United States Postal Service; or with the commissioner's prior written consent, a person that meets the licensing requirements of this chapter, including a demonstration of net worth as reflected by the financial statements required by Section 152.205; deletes the requirement that the person has a net worth of at least 250,000; maintains a bond payable to the commissioner or an amount deposited with the commissioner, for the purposes specified in both this chapter and Chapter 153, in an amount equal to the greater of the amount of bond required by Section 152.206 or Chapter 153, rather than in a certain amount; sells checks only in conjunction with currency exchange or transmission transactions subject to Chapter 153, and separately accounts for proceeds from transactions under Chapter 153 and this chapter; and complies with Subsection (b); with the commissioner's prior written determination that the exemption is in public interest, a person that

meets certain criteria; any other person exempted by rule, rather than that transaction from the sale of checks. Provides that a person who meets the requirements of Subsection (a)(5) is subject to all provisions, rather than any other provision, of this chapter other than the license requirement of Section 152.201 to the extent the person engages in the business of selling checks; and rules adopted under this chapter, rather than by the commissioner, to administer and carry out that subsection, including rules to meet certain criteria. Deletes text regarding institution that does not sell checks. Deletes text regarding subagent that sells the license. Makes conforming changes.

Sec. 152.203. QUALIFICATIONS FOR LICENSE. Provides that subject to Subsection (b), to qualify for a license under this chapter, a person is required to have a net worth of at least \$500,000, computed according to generally accepted accounting principles as reflected by the financial statements required by Section 152.205; is prohibited from being indebted to any local, state, or federal government, or political subdivision of the government for delinquent taxes, fines, penalties, or fees, rather than a fee or penalty imposed under this chapter or a rule of the commission. Prohibits a license from being issued to an applicant unless each person identified under Section 152.204(b)(1) possesses certain conditions that would reasonably warrant the belief that issuance of the license will be in the public interest; and has not been convicted during the preceding 10 years of an offense under a state or federal law that involves deception, dishonesty, or defalcation, or that relates to currency exchange, transportation, or transmission, money laundering, or a reporting requirement of the Bank Secrecy Act (12 U.S.C. Section 1951 et seq.); or under the laws of a foreign country that involves deception, dishonesty, or defalcation, or that would be a felony under state or federal law if committed in the United States, unless the applicant demonstrates to the satisfaction of the commissioner that the conviction was based on extenuating circumstances unrelated to the person's reputation for honesty and obedience to law. Deletes text regarding an individual being convicted of a felony or a crime involving moral turpitude. Deletes text regarding information contained in the license application. Makes conforming changes.

Sec. 152.204. APPLICATION. Requires the application to contain certain information. Deletes text regarding proprietor. Deletes text regarding if the applicant is a partnership. Deletes text regarding association and each officer and director of the association. Deletes text regarding applicant is a corporation. Makes conforming changes.

Sec. 152.205. ACCOMPANYING FEE; STATEMENTS, AND BOND. Requires an application for a license to be accompanied by a nonrefundable application, rather than investigation, fee in an amount established by rule, rather than set by the commissioner, that is sufficient to administer this chapter; audited financial statements of the applicant that are reasonably satisfactory to the commissioner; and a surety bond or deposit in the amount of \$100,000 subject to the additional bonding or deposit requirements of Section 152.206 or 152.207. Deletes text regarding a list of locations. Makes a conforming change.

Sec. 152.206. SURETY BOND. Requires a license holder, except as provided by Section 152.207, 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. Requires the commissioner, on application and otherwise from time to time, to determine the amount of the surety bond but is prohibited 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 information. Requires the bond to be payable to the commissioner, rather than this state, 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 text regarding surety bond. Deletes text regarding commissioner requiring a license holder to provide the bond.

Sec. 152.207. ALTERNATIVE TO BOND. Authorizes an applicant or license holder, instead of furnishing all or part of the amount of the surety bond required by Section 152.206, rather than 152.205(4), to deposit with the commissioner, or with a financial institution possessing trust powers that is authorized to conduct a trust business, rather than bank, trust company, or national bank, 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. Provides that the license holder is entitled to receive all income generated by the assets in (rather than interest and dividends on) the deposit; and with the commissioner's approval, to substitute other permissible assets or securities for those deposited. Requires the license holder, on written order of the commissioner made for good cause shown, to substitute other assets or securities for those deposited. Redefines "securities." Deletes text regarding designated by the applicant. Makes a conforming change.

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

Sec. 152.209. ISSUANCE OF LICENSE. 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, (deletes text regarding the commissioner approving the documents) and receives an acceptable bond or bonds and deposits aggregating to the amount required by the commissioner. 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. Deletes Section 152.210 (Denial of License; Hearing). Makes conforming changes.

SECTION 4. Amends Sections 152.301(b) and (c), Finance Code, to provide that the net worth of the license holder for purposes of subsection (a), rather than subsection (a)(3), is shown by an audited financial statement reasonably satisfactory to the commissioner. Deletes text regarding term defined by Section 201.101.

SECTION 5. Amends Section 152.304(a), Finance Code, to require a license holder, not later than June 30, rather than April 15, of each year, to pay the commissioner a license renewal fee in an amount established by rule, rather than of \$500.

SECTION 6. Amends Section 152.305, Finance Code, as follows:

Sec. 152.305. FINANCIAL STATEMENTS AND REPORTS. Requires 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. Requires a license holder, not later than June 30, rather than April 15, of each year, or a later date the commissioner approves in writing for good cause shown, to 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. Makes conforming changes.

SECTION 7. Amends Section 152.307(a), Finance Code, to require the commissioner to give a license holder an opportunity for a hearing (rather than requiring a hearing to be held) before a license is authorized to be revoked.

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

Sec. 152.401. New heading: BUSINESS CONDUCTED BY AGENT. 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, rather than subagent, appointed by the license holder. Makes conforming changes.

SECTION 9. Amends Section 152.402, Finance Code, as follows:

Sec. 152.402. DISCLOSURE OF RESPONSIBILITY. Requires directly or through an agent, each check sold by a license holder, 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 a license holder's agent, notwithstanding Subsection (a), 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 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. Deletes text regarding aggregate face amount.

SECTION 11. Amends Section 152.405, Finance Code, as follows:

Sec. 152.405. LIABILITY FOR PAYMENT OF CHECK. Provides that 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 (Negotiable Instruments), Business & Commerce Code, regardless of whether the license holder signed or assumed primary liability for obligations evidenced by the check.

SECTION 12. Effective date: September 1, 2001.