# BILL ANALYSIS

H.B. 1855
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Business & Industry
Committee Report (Amended)

## BACKGROUND AND PURPOSE

Currently, a business that accepts checks from customers in the ordinary course of business may enter into an internal electronic database derogatory information about that customer relative to dishonored checks. With the rapidly-growing crime of "identity theft," in a number of cases, it was actually someone other than the customer who fraudulently paid the merchant with a forged check. However, many businesses after entering derogatory data into their databases, are unable to subsequently delete that information when it is later determined that the derogatory information was inaccurate or did not properly pertain to that customer. The committee adopted an amendment to the bill to exempt financial institutions as defined by 31 U.S.C. Section 5312(a)(2), as amended.

## RULEMAKING AUTHORITY

It is the opinion of the Committee on Business & Industry that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## ANALYSIS

This bill provides that a merchant accepting checks from customers in the ordinary course of business shall delete any electronic record indicating that a customer has issued a dishonored check or any other information on which the business bases a refusal to accept a check from a customer not later than the 30th day after the date that:

(1) both the customer and the business agree that the information contained in the electronic record is incorrect; or

(2) the customer presents to the business:

- (A) a report filed by the customer with a law enforcement agency stating that the dishonored check was unauthorized; and
- (B) a written notice from the customer that the dishonored check was unauthorized.

The bill provides that a business that fails to comply its provision is liable to the state for a civil penalty of up to $1,000. The Attorney General may sue to collect the penalty and is entitled to recover reasonable expenses incurred in the course of doing so.

## EFFECTIVE DATE

September 1, 2005.

## EFFECT OF COMMITTEE AMENDMENT

Committee Amendment No. 1 merely exempts from the bill's mandates a "financial institution" as that term is defined by 31 U.S.C. Section 5312(a)(2), as amended. The original bill did not afford that exemption.