

BILL ANALYSIS

H.B. 2223
By: Giddings
Financial Institutions
Committee Report (Amended)

BACKGROUND AND PURPOSE

Currently, when a check has been forged, there is no requirement that the check be noted as “forgery” nor does current law require that electronic records pertaining to that check carry the notation “forgery” as the transaction is pending with financial institutions. It is necessary that such notation be made so that financial institutions and check payees be alerted that the check was written and signed by someone other than the person whose name is on the account against which the check is drawn.

H.B. 2223 provides for the making of a notation on a forged check by a financial institution.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2223 amends Subchapter D, Chapter 35, Business and Commerce Code, as follows:

The bill defines “victim of identity theft” as a person who has filed with an appropriate law enforcement agency a criminal complaint alleging commission of fraudulent use of possession of identifying information.

The bill provides that if a victim of identity theft closes an account at a financial institution as a result of the identity theft and notifies the financial institution that the identity theft is the reason for closing the account, the financial institution must (1) make a physical notation of “forgery” on the front and back of any document later presented to the institution for payment that purports to be a check drawn on the closed account or (2) make an electronic notation of “forgery” on each electronic record pertaining to any document that is electronically presented to the financial institution for payment and that purports to be a check drawn on the closed account.

The bill provides that if a financial institution does not possess the document presented for payment, then the financial institution shall instruct the person in possession of the document to make a physical notation of “forgery” on the front and back of the document.

The bill clarifies that its provisions would not apply to a check if the financial institution takes reasonable measures to verify the check’s authenticity with the victim of identity theft.

The bill provides that if a financial institution does not physically note that a document is a forgery, does not make an electronic notation that a document is a forgery, or does not instruct a person in possession of a document to make a notation that a document is a forgery as required by this section, then the financial institution assumes the obligation of the victim of identity theft with respect to the document.

EFFECTIVE DATE

September 1, 2005

H.B. 2223 79(R)

EXPLANATION OF AMENDMENT

Committee Amendment No. 1 provides that the consumer may submit to the financial institution a copy of the criminal complaint described by Subsection (a) of the bill and may request that that the financial institution return checks with the notation "forgery."

The amendment requires financial institutions to process as forgeries the checks received after the customer takes certain actions, in accordance with their customary procedures.

The amendment provides that the victim of identity theft who requests that a financial institution return checks with the notation "forgery" may not assert that the financial institution is liable under Section 4.402 for wrongfully dishonoring a check returned after the victim makes a request and hold the financial institution harmless for acting in accordance with the victim's request.