

By: Giddings

H.B. No. 2223

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the making of a notation on a forged check by a
3 financial institution.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter D, Chapter 35, Business & Commerce
6 Code, is amended by adding Section 35.591 to read as follows:

7 Sec. 35.591. NOTATION OF FORGED CHECK. (a) In this
8 section, "victim of identify theft" means a person who has filed
9 with an appropriate law enforcement agency a criminal complaint
10 alleging commission of an offense under Section 32.51, Penal Code.

11 (b) If a victim of identity theft closes an account at a
12 financial institution as a result of the identity theft and
13 notifies the financial institution that the identity theft is the
14 reason for closing the account, the financial institution shall:

15 (1) make a physical notation of "forgery" on the front
16 and back of any document presented to the institution for payment
17 that purports to be a check drawn on the closed account; or

18 (2) make an electronic notation of "forgery" on each
19 electronic record pertaining to any document that is electronically
20 presented to the financial institution for payment and that
21 purports to be a check drawn on the closed account.

22 (c) If a financial institution does not possess the document
23 presented for payment as described by Subsection (b), the financial
24 institution shall instruct the person in possession of the document

1 to make a physical notation of "forgery" on the front and back of
2 the document.

3 (d) This section does not apply to a check if the financial
4 institution takes reasonable measures to verify the check's
5 authenticity with the victim of identity theft.

6 (e) If a financial institution does not physically note that
7 a document is a forgery, make an electronic notation that a document
8 is a forgery, or instruct a person in possession of a document to
9 make a notation that a document is a forgery as required by this
10 section, the financial institution assumes the obligation of the
11 victim of identity theft with respect to the document.

12 SECTION 2. This Act takes effect September 1, 2005.

COMMITTEE AMENDMENT NO. 1

Amend H.B. No. 2223 as follows:

(1) On page 1, line 12, strike "and" and substitute ",".

(2) On page 1, line 14, between "account," and "the financial" insert "provides the financial institution with a copy of the criminal complaint described by Subsection (a), and requests that the financial institution return checks with the notation 'forgery',".

(3) On page 1, line 14, strike ":" and substitute the following:

process as forgeries the checks received after the customer takes those actions, in accordance with the financial institution's customary procedures.

(c) A victim of identity theft who requests that a financial institution return checks with the notation "forgery" as provided by Subsection (b):

(1) may not assert that the financial institution is liable under Section 4.402 for wrongfully dishonoring a check returned after the victim makes the request; and

(2) shall hold the financial institution harmless for acting in accordance with the victim's request.

(4) Strike page 1, line 15, through page 2, line 11.