

By: Giddings

H.B. No. 2002

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to requiring a financial institution to notify check  
3 verification entities when a customer reports that the customer is  
4 a victim of identity theft and the consequences of the notice;  
5 providing a civil penalty.

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

7 SECTION 1. Subchapter D, Chapter 35, Business & Commerce  
8 Code, is amended by adding Section 35.595 to read as follows:

9 Sec. 35.595. NOTIFICATION BY FINANCIAL INSTITUTION  
10 REQUIRED. (a) In this section:

11 (1) "Check verification" means a determination of  
12 whether the issuer of a check or similar sight order:

13 (A) has sufficient funds in or on deposit with  
14 the bank or other drawee for the payment in full of the check or  
15 order and all other checks or orders then outstanding; or

16 (B) has a history of issuing checks or other  
17 sight orders for which the issuer does not have sufficient funds in  
18 or on deposit with the bank or other drawee for the payment in full  
19 of the check or order and all other checks or orders then  
20 outstanding.

21 (2) "Check verification entity" means a business  
22 entity that provides check verification services to businesses in  
23 this state.

24 (3) "Financial institution" means a bank, savings

1 association, savings bank, or credit union maintaining an office,  
2 branch, or agency office in this state.

3 (b) A financial institution shall give notice as provided by  
4 Subsection (c) to a customer who notifies the financial institution  
5 that the customer was a victim of an offense under Section 32.51,  
6 Penal Code, and presents to the financial institution a copy of:

7 (1) a police report of an offense under Section 32.51,  
8 Penal Code; or

9 (2) a sworn statement by the person that the person was  
10 the victim of an offense under that section.

11 (c) If a customer notifies a financial institution of an  
12 offense under Section 32.51, Penal Code, and presents to the  
13 financial institution the information required by Subsection (b),  
14 the financial institution shall notify the customer that the  
15 financial institution will notify check verification entities, as  
16 provided by Subsection (d), if the customer provides written  
17 authorization to the financial institution.

18 (d) A financial institution that receives written  
19 authorization from a customer under Subsection (c), not later than  
20 48 hours after the customer provides the authorization to the  
21 financial institution, shall notify each check verification entity  
22 on the list maintained by the banking commissioner of Texas, as  
23 required by Section 11.309, Finance Code, through the electronic  
24 notification system established by the Finance Commission of Texas.

25 (e) The notification given by a financial institution under  
26 Subsection (d) must include the name of the customer who reported  
27 the offense under Section 32.51, Penal Code, and the allegation of

1 an offense under that section by the customer.

2 (f) A check verification entity may not approve a check or  
3 similar sight order purportedly issued by a person if a financial  
4 institution notifies the check verification entity that the person  
5 was a victim of an offense under Section 32.51, Penal Code, as  
6 required by this section.

7 (g) A financial institution that violates Subsection (b),  
8 (c), or (d) or a check verification entity that violates Subsection  
9 (f) is liable to the state for a civil penalty of up to \$1,000. The  
10 attorney general may sue to collect the penalty.

11 (h) The attorney general may recover reasonable expenses  
12 incurred in obtaining a civil penalty under this section, including  
13 court costs, reasonable attorney's fees, investigative costs,  
14 witness fees, and deposition expenses.

15 SECTION 2. Subchapter D, Chapter 11, Finance Code, is  
16 amended by adding Section 11.309 to read as follows:

17 Sec. 11.309. RULES RELATING TO CHECK VERIFICATION ENTITIES.

18 (a) In this section, "check verification entity" and "financial  
19 institution" have the meanings assigned by Section 35.595, Business  
20 & Commerce Code.

21 (b) The finance commission shall adopt rules:

22 (1) requiring a check verification entity to register  
23 with the banking commissioner:

24 (A) at the intervals the finance commission  
25 determines, but not less frequently than annually; and

26 (B) by providing to the banking commissioner the  
27 information, including a secure e-mail address, that the finance

1 commission determines is necessary;

2 (2) requiring the banking commissioner to make  
3 available to a financial institution, on the website of the Texas  
4 Department of Banking and on request of the financial institution,  
5 an electronic or paper copy of a list of check verification entities  
6 registered with the commissioner;

7 (3) authorizing the banking commissioner to charge a  
8 check verification entity a reasonable fee not to exceed \$50 to  
9 register with the commissioner; and

10 (4) establishing an electronic notification system,  
11 through secure e-mail or another secure system as determined by the  
12 finance commission, to be used by a financial institution to notify  
13 a check verification entity under Section 35.595, Business &  
14 Commerce Code, that the financial institution's customer was a  
15 victim of identity theft.

16 SECTION 3. This Act takes effect September 1, 2007.