

BILL ANALYSIS

Senate Research Center
87R26553 MWC-F

C.S.H.B. 2240
By: Smithee (Creighton)
Business & Commerce
5/20/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Based on the rapidly changing payments landscape and the significant increase in wire fraud, secure digital escrow payments as an option are in the best interest of Texas homebuyers. This legislation permits the use of innovative and secure ways to transmit escrow funds in connection with real estate transactions.

This legislation clarifies that Automated Clearing House (ACH) transfers that result in funds being irrevocably transferred to an escrow holder's account represent "good funds" in accordance with the Texas Department of Insurance (TDI) title insurance rules. This secure and irrevocable ACH payment type is currently available in over 40 other states. This bill is permissive.

Expanding the TDI interpretation of the definition of "good funds" to include ACH transactions that provide the elements of finality, irrevocability, and security required by the legislation will preserve title insurers' authority to refuse other forms of payments that have chargeback and pullback risk while maintaining the narrow effect consistent of permitting irrevocable ACH transfers consistent with the statute and rules.

The committee substitute contains more specific language but retains the original purpose of the legislation. It clarifies that the ACH transaction must be a bank-to-bank transfer of funds or a deposit of funds from a customer's account at a depository institution and must not be treated by the depository institution as a consumer payment with respect to chargeback and pullback consumer payment protections. The transferred funds must be: directly linked to and backed by funds in the customer's account at the depository institution; and directly transferred and deposited into the settlement service provider's escrow account.

The language was added as a result of stakeholder discussions with the Texas Land Title Association (TLTA) and its members. TLTA asked that we include specifics about the process that ensures the finality of these ACH transactions to ensure the funds are irrevocable resulting in "good funds." Each of the changes helps ensure the finality of the funds transfer, the integrity of source, and the chain of custody of the funds. These provide certainties that prevent fraud and compliance with accounting standards and principles for any company that may offer this type of transaction.

C.S.H.B. 2240 amends current law relating to the disbursement of funds from a trust fund account by a title insurance company, title insurance agent, or escrow officer.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2651.202, Insurance Code, by adding Subsection (a-1), as follows:

(a-1) Provides that for the purpose of Section 2651.202 (Trust Fund Account Disbursements), "good funds" includes United States dollars received and deposited in an account through an Automated Clearing House (ACH) transaction if the ACH transaction

is irrevocable and final and cannot be canceled or reversed by the consumer once the funds have been directly transferred from the consumer's bank account. Requires that the ACH transaction be a bank-to-bank transfer of funds or a deposit of funds from a consumer's account at a depository institution and prohibits the ACH transaction from being treated as a consumer payment with respect to chargeback and pullback consumer payment protections. Requires that the transferred funds:

- (1) be directly linked to and directly backed by funds in the consumer's account at the depository institution;
- (2) be directly transferred from the consumer's bank account and directly deposited into the settlement service provider's escrow account by ACH transfer in accordance with the standards of any applicable governing body or standards organization with oversight over ACH transactions;
- (3) at all points during the transfer process, utilize a unique identification and tracking system that designates the funds for their authorized purpose;
- (4) not be subject to third-party access or commingling of funds at any point during the transfer process; and
- (5) not utilize an intermediary account other than by a financial institution acting as ACH originator and operator as part of the ACH network.

SECTION 2. Amends Section 2652.004, Insurance Code, by adding Subsection (a-1), as follows:

(a-1) Provides that for the purpose of Section 2652.004 (Trust Fund Account Disbursements), "good funds" includes United States dollars received and deposited in an account through an ACH transaction if the ACH transaction is irrevocable and final and cannot be canceled or reversed by the consumer once the funds have been directly transferred from the consumer's bank account. Requires that the ACH transaction be a bank-to-bank transfer of funds or a deposit of funds from a consumer's account at a depository institution and prohibits the ACH transaction from being treated as a consumer payment with respect to chargeback and pullback consumer payment protections. Requires that the transferred funds:

- (1) be directly linked to and directly backed by funds in the consumer's account at the depository institution;
- (2) be directly transferred from the consumer's bank account and directly deposited into the settlement service provider's escrow account by ACH transfer in accordance with the standards of any applicable governing body or standards organization with oversight over ACH transactions;
- (3) at all points during the transfer process, utilize a unique identification and tracking system that designates the funds for their authorized purpose;
- (4) not be subject to third-party access or commingling of funds at any point during the transfer process; and
- (5) not utilize an intermediary account other than by a financial institution acting as ACH originator and operator as part of the ACH network.

SECTION 3. Effective date: September 1, 2021.