Texas Department of Banking
Testimony

Testimony Presented to the Senate Committee on Business and Commerce, Senate Bill 711

Date: March 13, 2001

On Behalf Of the Texas Department of Banking
By Randall S. James, Banking Commissioner

SB 711
Proposed Amendments to Chapter 152, Finance Code
The Business of Selling Checks

1. **Description of the Business**
2. **Problems with the Current Regulatory Environment**
3. **Proposed Legislation – Strengthens Consumer Protections**
4. **Modernizes the Regulatory Environment**
5. Attachments (pdf):
   Legislative summary prepared by the Department of Banking
   Support letter from Non-Bank Funds Transmitters Group

1. **Description of the Business**
   - Selling checks – the practice of accepting a customer’s money and holding those funds until the recipient’s payment instrument is paid
   - Traditional means - paper transaction (e.g. money orders and traveler’s checks) favored by consumers that do not use depository banking services
   - New technology – electronic transactions facilitated by the Internet, automated teller machines, and automated clearing house systems (electronic bill paying, transfer of funds, and stored value cards) used by a much broader consumer base
   - Note:
     Texas Licensees as of 2/16/01 – 51
     Volume of checks sold in Texas during calendar year 1999 - $34.8 billion
     Aggregate licensee bond requirements as of 2/16/01 - $38.8 million
2. **Problems with the Current Regulatory Environment**
   - The Sale of Check Act of 1963 – enacted to address instruments for the transmission of money
   - Regulatory inflexibility – Attorney General Opinion DM-329 (1995) held that Chapter 152 applies only if a negotiable, "paper" instrument is sold or issued
   - Outdated bonding requirements - based primarily on the number of locations (easily circumvented through electronic availability)
3. **Proposed Legislation – Strengthens Consumer Protections**

- Redefinition of "check" – expands the definition to include any instrument, service, or device by which money may be conveyed from one person to another (including electronic funds transmission)
- Change of focus - from "means" by which money is transferred to the "substance" of the transaction by whatever the means may be
- Financial safeguards – in addition to the existing required net worth, bonding requirements to be based on the financial condition of the check seller, adherence to investment limitations, and the volume of transactions at any point in time
- Licensee safeguards – a conviction for certain felonies would prohibit holding a licensee

4. **Modernizes the Regulatory Environment**
    - Enhances examination efficiency – allows offsite review and enhanced coordination of examination responsibilities with governmental agencies of other states to reduce regulatory burden
    - Modernizes statutory application – more clearly defines the complete nature of the business and who is subject to licensing requirements
    - Clarifies and codifies exemptions – creates exemptions for certain entities regulated under Chapter 153 of the Finance Code, Currency Exchange and Transmission, and provides authority to create new exemptions by rule
    - Authorizes rulemaking – changed from the Commissioner to the Finance Commission