

Texas Department of Banking Testimony

Testimony Presented to the House Committee on Financial Institutions, House Bill 1166

Date: February 19, 2001

On Behalf Of the Texas Department of Banking
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HB 1166 Proposed Amendments to Chapter 152, Finance Code The Business of Selling Checks

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Attachments:

1. [Legislative summary prepared by the Department of Banking](#)
2. [Support letter from Non-Bank Funds Transmitters Group](#)

1) Description of the Business

- Selling checks – the business of a payment intermediary, who accepts money for forwarding to complete a payment transaction
- 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- Outdated bonding requirements - based on overall financial stability and number of locations (easily circumvented through electronic availability)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 current net worth guideline, 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
- Exemptions – eliminates licensing requirements in situations where consumers are not at risk and adds authority to create new exemptions by rule
- Rulemaking authority – changed from the Commissioner to the Finance Commission
- Key regulatory issue – whether non-bank financial service providers hold customer funds at any time during the course of the transaction