

Texas Department of Banking

Press Release

Federal Judge Blocks New Texas Law

Date: August 31, 2001

On August 30, 2001, Judge James R. Nowlin of the United States district court in Austin, Texas, issued a preliminary injunction allowing five banks to continue charging check cashing fees to Texas citizens pending trial on the banks' challenge to new Texas law. These five banks, Wells Fargo Bank, Texas, N.A., Bank of America, N.A., Bank One, N.A., Chase Manhattan Bank, and Comerica Bank, Texas currently control about 45% of bank deposits in Texas.

To protect Texas consumers, the Texas Legislature voted this year to require a bank to pay checks drawn on that bank at "par value", meaning the bank could not charge a fee to a non-accountholder that cashes a check drawn on that bank at its facilities.

The four banks currently charging such fees (Bank of America is not currently charging such a fee, but indicated it would soon begin doing so) estimated their revenue to be between \$80,000 and \$150,000 per month.

The national banks that are parties to the litigation sought and obtained assistance from the United States Office of the Comptroller of the Currency (OCC), the federal regulator of national banks. Julie Williams, General Counsel for the OCC, submitted letters in support of the national banks. She declared that the National Bank Act permitted the banks to charge fees, including check cashing fees, to bank customers. Her letter further opined that persons seeking to cash checks, but having no other relationship with a bank, were considered customers for purposes of the National Bank Act. However, the Texas Attorney General, acting on behalf of Banking Commissioner Randall S. James, replied that the individuals paying these fees are in fact not bank customers in the real sense of the term. The real bank customers are the depositors on whose accounts the checks are written.

"Five large financial institutions have argued they would be irreparably harmed if they could not collect these fees from non-bank customers. All the remaining 700 banks in Texas apparently recognize that cashing checks drawn on the bank is a normal and necessary part of discharging their core obligation to a checking account customer," Commissioner James stated.

"Effectively, the OCC has declared that 'pay to the order of' no longer means what it has meant for over a hundred years. I regret that these important financial institutions believe charging non-customers this fee is appropriate. The people that cash these checks are mainly Texas workers that simply want to get paid for their work. I suspect the employers who use these banks are not aware of the impact this practice is having on their employees."

The banks will be able to continue charging these fees until the lawsuit is resolved. A trial date has not been set.