

## **BILL ANALYSIS**

Senate Research Center  
76R1676 DWS-F

S.B. 88  
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Economic Development  
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As Filed

### **DIGEST**

Currently, Texas law does not provide regulation for check-holding and sale-leaseback operations. A check-holding transaction involves a person leaving a post-dated check with a quick cash business in exchange for cash. A sale-leaseback transaction involves a customer taking the serial number of a piece of personal property, selling that property to a sale-leaseback operation, and leaving a post-dated check for a cash advance under the guise of leasing the property back to the customer. A business can deposit checks left with them, knowing that the checks will most likely be returned for non-sufficient funds, if the customer is unable to repay. S.B. 88 would set parameters for check-holding and sale-leaseback operations without using the threat of criminal prosecution for enforcing civil contracts.

### **PURPOSE**

As proposed, S.B. 88 sets forth requirements for transactions subject to regulation as loans.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 342A, Finance Code, by adding Sections 342.007 and 342.008, as follows:

Sec. 342.007. DELAYED DEPOSIT OF CERTAIN INSTRUMENTS. Defines "check." Provides that a transaction is a loan subject to this subtitle if the transaction involves certain actions. Provides that a charge or other amount received by the person making a cash advance in a transaction described by Subsection (b), other than repayment of the cash advance, is interest subject to this subtitle. Prohibits a person from avoiding the application of this section by any subterfuge or device, including a claim or contract providing that a transaction described by Subsection (b) is a retail sale or involves a service fee. Provides that this section does not apply to a bona fide retail sale of merchandise that does not involve a cash advance and an agreement to delay or defer deposit or negotiation of a check.

Sec. 342.008. CERTAIN SALES OF PERSONAL PROPERTY. Provides that a sale or purported sale of personal property used primarily for personal, family, or household use is a loan subject to this subtitle if it has certain characteristics. Provides that if, in a transaction the total amount received by the buyer exceeds the price paid for the property by the buyer, the excess amount is interest subject to this subtitle. Provides that the purported taking of title to or a security interest or other lien in property by a buyer in connection with a transaction described by Subsection (a) is a deceptive trade practice under Chapter 17E, Business & Commerce Code. Provides that title to the property is not transferred and the security interest or other lien does not attach. Provides that this section does not apply to a sale or purported sale of personal property used for business, commercial, investment, agricultural, or similar purposes.

SECTION 2. Amends Chapter 392D, Finance Code, by adding Section 392.307, as follows:

Sec. 392.307. THREATENING OR PURSUING ACTION TO COLLECT CERTAIN CHECKS. Defines "check." Prohibits a person from filing or threatening to file a charge, complaint, or a criminal prosecution under Section 31.03, 31.04, or 32.41, Penal Code, based on nonpayment of a check, if the person from whom collection is sought gave the check under certain conditions.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.