

BILL ANALYSIS

Senate Research Center

S.B. 471
By: Carona
Business & Commerce
3/18/2001
As Filed

DIGEST AND PURPOSE

In recent years a growing number of lenders have begun to offer short-term loans to consumers under the names “deferred deposit,” “cash advances,” and “payday loans,” among others. These lenders are typically not regulated and the consumer has little protection or legal recourse. As proposed, S.B. 471 regulates certain aspects of payday loans.

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 Chapter 342, Finance Code, by adding Subchapter M, as follows;

SUBCHAPTER M. DEFERRED DEPOSIT LOANS

Sec. 342.601. DEFINITIONS. Defines “deferred deposit loan,” “instrument,” “lender,” “loan amount,” and “renewal.”

Sec. 342.602. WRITTEN AGREEMENT REQUIREMENTS. Requires each deferred deposit loan transaction and renewal to be documented by a written agreement. Requires the written agreement to contain the name of the borrower, transaction date, the amount of the instrument, and a statement of the total amount of finance charges, expressed both as a dollar amount and as an annual percentage rate. Requires the written agreement to include all disclosures required by Section 342.603. Requires the written agreement to set a date, not more than 31 days after the loan transaction date, on which the instrument is authorized to be deposited, negotiated, or presented for payment.

Sec. 342.603. NOTICE TO CONSUMERS. Requires a lender to provide a certain notice in a prominent place on each deferred deposit loan agreement in at least 10-point type.

Sec. 342.604. AUTHORIZED FINANCE CHARGE. Authorizes a lender, notwithstanding any other provision of this chapter, to charge for each deferred deposit loan a finance charge not to exceed \$15 for every \$100 advanced. Requires the charge to be deemed fully earned as of the date of the transaction. Authorizes the lender to charge only those charges expressly authorized in this subchapter in connection with a deferred deposit loan.

Sec. 342.605. MAXIMUM LOAN AMOUNT-RIGHT TO RESCIND. Requires a lender to not advance to a borrower a loan amount greater than \$500. Requires a borrower to have the right to rescind the deferred deposit loan no later than 5 p.m. on the next business day following the deferred deposit loan transaction.

Sec. 342.606. MAXIMUM TERM. Prohibits a lender from engaging in making a deferred

deposit loan with a term of more than 31 days.

Sec. 342.607. MAXIMUM OUTSTANDING TRANSACTIONS NOTICE. Requires a lender to provide a notice in certain language in a prominent place on each deferred deposit agreement in at least 10-point type.

Sec. 342.608. RENEWAL. Prohibits a deferred deposit loan from being renewed more than three consecutive times. Requires the borrower, after the last such renewal, to pay the debt in cash or its equivalent. Authorizes the lender, if the borrower does not pay the debt, to negotiate, or otherwise present for payment the borrower's instrument. Authorizes the lender, on renewal of a deferred deposit loan, to assess additional finance charges not to exceed \$15 for every \$100 advanced as authorized under Section 342.604. Provides that a transaction is completed when the lender presents the instrument for payment or initiates an Automated Clearing House (ACH) debit to the borrower's bank account to collect on the instrument or when the borrower redeems the instrument by paying the full amount of the instrument to the holder. Authorizes the lender, after the borrower has completed the deferred deposit loan transaction, to enter into a new deferred deposit loan agreement with the borrower and provides that the new transaction not to be deemed a renewal of the previous transaction. Provides that nothing in this section prohibits a lender from refinancing a deferred deposit loan without limitation as to the number of refinancings if the total amount of the charges would not exceed the total amount authorized by Section 342.252, taking into account the amount of the cash advance and the time the cash advance is outstanding.

Sec. 342.609. FORM OF LOAN PROCEEDS. Authorizes a lender to pay the proceeds from a deferred deposit loan to the borrower in the form of a business instrument, a money order, or cash. Requires that the borrower not be charged an additional finance charge or fee for cashing the lender's business instrument.

Sec. 342.610. ENDORSEMENT OF INSTRUMENT. Prohibits a lender from negotiating or presenting an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

Sec. 342.611. REDEMPTION OF INSTRUMENT. Requires the borrower, prior to the lender's negotiating or presenting the instrument, to have the right to redeem any instrument held by the lender as a result of a deferred deposit loan if the borrower pays the full amount of the instrument to the lender.

Sec. 342.612. AUTHORIZED DISHONORED INSTRUMENT CHANGE. Requires the lender, if an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a payor financial institution due to insufficient funds, a closed account, or a stop-payment order, to have the right to exercise all civil means authorized by law to collect the face value of the instrument. Authorizes the lender, in addition, to contract for and collect a returned instrument charge, not to exceed \$25, plus court costs and reasonable attorney's fees as awarded by a court and incurred as a result of the default. Requires such attorney's fees to not exceed the loan amount. Prohibits the lender from collecting any other fees as a result of default. Requires a returned instrument charge to not be allowed if the loan proceeds instrument is dishonored by the financial institution or if the borrower places a stop-payment order due to forgery or theft.

Sec. 342.613. POSTING OF CHARGES. Requires a lender offering a deferred deposit loan to post at any place of business where deferred deposit loans are made a notice of the charges imposed for the deferred deposit loans.

Sec. 342.614. NOTICE ON ASSIGNMENT OR SALE OF INSTRUMENTS. Requires the lender, prior to the sale or assignment of instruments held by a lender as a result of a deferred

deposit loan, to place a notice on the instrument in at least 10-point type containing certain language.

Sec. 342.615. RECORDS AND ANNUAL REPORTS. Requires a lender to maintain records and file an annual report in accordance with Sections 342.558 and 343.559.

Sec. 342.616. AUTHORITY TO CONDUCT DEFERRED DEPOSIT LOAN BUSINESS. Provides that only an authorized lender may lawfully engage in the deferred deposit loan business. Requires a lender to be required to obtain and maintain a separate license for each location where deferred deposit loan business is conducted. Provides that deferred deposit loans are deemed to be loans subject to this chapter for purposes of the application of Section 342.051.

Sec. 342.617. EXAMINATION AND INVESTIGATION. Authorizes a licensed lender to be examined and investigated in accordance with Section 342.552.

Sec. 342.618. DISCIPLINARY ACTION. Requires the consumer credit commissioner (commissioner), if the commissioner finds that a lender has violated any provisions of this subchapter, to notify the lender of the violations and the actions the lender is required to take to cure the violations. Requires the commissioner to allow the lender 30 days to cure the violations before taking disciplinary action. Requires the lender, if the commissioner determines that the lender has taken the actions contained in the notice, to not be subject to disciplinary action for the violations that have been cured unless the lender is found to have knowingly committed the violations.

Sec. 342.619. APPLICABILITY TO LENDER. Authorizes a bank, savings association, or credit union to be exempted by federal law from this subchapter's interest and finance charge and licensure provisions, all other applicable provisions of this subchapter apply to both a deferred deposit loan and a lender.

Sec. 342.620. APPLICABILITY OF PROVISIONS OF CHAPTER 341 AND THIS CHAPTER. Provides that the provisions of Chapter 341 and other provisions of this chapter apply to a lender unless those provisions are inconsistent with this subchapter.

Sec. 342.621. CRIMINAL CULPABILITY. Requires a borrower to not be subject to any criminal penalty for entering into a deferred deposit loan agreement. Requires a borrower to not be subject to any criminal penalty in the event the instrument is dishonored, unless the borrower violated Section 32.32 (False Statement to Obtain Property or Credit), Penal Code.

SECTION 2. Effective date: September 1, 2001.

Makes application of this Act prospective.