

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 189  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Payday loans, or deferred payment transactions, are designed to be short-term emergency loans for people who have no alternative loan options. Military men and women are often targets of abusive payday lenders, as they have a steady income from the government, often with little to spare. At deployment time, when military families are faced with extra expenses at home and abroad, they may be more vulnerable to the promise of quick cash from payday lenders. As a result, the United States Department of Defense concluded that payday lending and other high-cost lending products are a threat to national security and destructive to the morale of troops on active deployment.

Payday lenders are free to charge excessive interest rates without concern that customers will reject their services. Many payday loans result in triple-digit and even quadruple-digit percentage rates because the borrowers are identified as extremely high-risk, and lenders feel justified in charging high interest rates. The financial burden on the borrower and the potential damage to the borrower's credit should he or she be unable to repay the loan creates a serious pressure on the borrower to refinance the loans that cannot be paid back, creating an onerous cycle of increasing fees.

This bill mirrors recent federal legislation ("Talent Amendment") that became effective in October 2007; however, S.B. 189 would exempt banks and credit unions, while the federal law includes these depository institutions. Although federal legislation has been passed, this bill is necessary because it gives state regulators a role, thereby increasing the likelihood of compliance.

As proposed, S.B. 189 would establish a 36 percent interest rate cap on loans extended to members of the military and their dependents and requires a creditor to provide certain information to a borrower before finalizing an extension of credit. The bill makes it a Class A misdemeanor for a creditor who knowingly violates this Act, and subjects the creditor to all remedies and penalties under Chapter 14 (Consumer Credit Commissioner), Finance Code.

### **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 Subtitle B, Title 4, Finance Code, by adding Chapter 353, as follows:

#### **CHAPTER 353. EXTENSION OF CONSUMER CREDIT TO SERVICEMEMBERS OR THEIR DEPENDENTS**

Sec. 353.001. DEFINITIONS. Defines "creditor," "dependent," "dependent child," "extension of consumer credit," and "servicemember."

Sec. 353.002. INAPPLICABILITY OF CHAPTER. Provides that this chapter does not apply to an insured depository institution, as that term is defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813); or an insured credit union, as that term is defined by Section 101, Federal Credit Union Act (12 U.S.C. Section 1752).

Sec. 353.003. INTEREST. (a) Defines "interest."

(b) Prohibits a creditor who extends consumer credit to a servicemember or a servicemember's dependent from, with respect to the transaction, requiring the servicemember or dependent to pay interest that is not agreed to by the parties under the terms of the agreement or promissory note, or is specifically prohibited by this chapter or other law.

Sec. 353.004. MAXIMUM ANNUAL PERCENTAGE RATE. Prohibits a creditor from imposing an annual percentage rate that exceeds 36 percent with respect to an extension of consumer credit to a servicemember or a servicemember's dependent.

Sec. 353.005. INFORMATION REQUIRED. (a) Requires a creditor, before finalizing an extension of consumer credit to a servicemember or a servicemember's dependent, to provide the servicemember or dependent with the following written information: a statement of the annual percentage rate applicable to the extension of credit; all disclosures required to be made under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); and a clear description of the payment obligations of the servicemember or dependent.

(b) Requires a creditor, before finalizing an extension of consumer credit, to provide a written form, to be signed by the individual, stating whether or not the individual who is the subject of the extension of credit is a servicemember, a servicemember's spouse, or a servicemember's dependent child.

Sec. 353.006. RENEWAL, REFINANCING, OR CONSOLIDATION OF CREDIT. Prohibits a creditor from renewing, repaying, or refinancing consumer credit extended to a servicemember or a servicemember's dependent, or consolidating any part of the proceeds of the extension of credit with proceeds from any other extension of credit to that person by the creditor, unless the creditor executes new loan documentation that is signed by the servicemember or dependent, and provides the information required by Section 353.005(a).

Sec. 353.007. CRIMINAL PENALTY. Provides that a creditor who knowingly violates this chapter commits an offense. Provides that an offense under this section is a Class A misdemeanor.

Sec. 353.008. REMEDIES AND ADDITIONAL PENALTIES. (a) Provides that the remedies and rights available under this chapter are in addition to and do not preclude any remedy otherwise available under law to a servicemember or a servicemember's dependents, including any award for consequential or punitive damages.

(b) Provides that, on violation of this chapter, a creditor is subject to all remedies and penalties authorized by Chapter 14 (Consumer Credit Commissioner).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.