

BILL ANALYSIS

Senate Research Center

S.B. 1862
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law defines a credit services organization (CSO), and permits such organizations to receive payment for the service of obtaining an extension of consumer credit for a consumer. Texas law governing CSOs was originally adopted in 1987. The intent, according the House Research Organization analysis, was "consumer protection legislation that would address the problem of certain credit-repair services taking advantage of consumers."

Though intended as a consumer protection measure to address problems with credit-repair services, the laws governing CSOs are currently being used by payday, auto title, and other consumer loan businesses to obtain extensions of consumer credit for consumers.

The activities and fees of CSOs are not regulated by the state through licensing or agency oversight, which prevents the ability of the state to collect consumer data or properly investigate and respond to complaints.

S.B. 1862 removes the ability for payday and auto title lenders to operate under the CSO statute, Chapter 393 (Credit Services Organizations), Finance Code, and instead creates two new subchapters under Chapter 342 (Consumer Loans), Finance Code, the state's primary consumer lending statute – one for payday lenders and another for auto title lenders.

For payday loans, the bill places a limit of 15 percent on a loan, and addresses maximum loan limits, renews and rollovers, and gives a borrower a once per year ability to enter into a repayment plan. It requires payday lenders to report customer statistics annually to the consumer credit commissioner (commissioner). It prohibits the threat or pursuit of criminal charges against a borrower. Finally, it requires the commissioner to study the feasibility of a comprehensive data reporting mechanism.

For auto title loans, a tiered rate system is created depending on the amount of the loan, which varies from 20 percent to 15 percent. Like the payday lending subchapter, it addresses renewals, the ability to enter into a once per year repayment plan, and a prohibition on threats or pursuit of criminal charges. It requires auto title lenders to report customer statistics annually to the commissioner, and requires the lender to consider a borrower's ability to repay the loan.

As proposed, S.B. 1862 amends current law relating to the requirements for certain extensions of credit to consumers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 (Section 342.606, Finance Code) and SECTION 5 (Section 342.660, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 302, Finance Code, by adding Section 302.003, as follows:

Sec. 302.003. PROHIBITION ON THIRD-PARTY FEES TO ARRANGE OR GUARANTEE CERTAIN EXTENSIONS OF CONSUMER CREDIT. (a) Prohibits a

fee paid or to be paid to a third party to assist a consumer in the transacting, arranging, guaranteeing, or negotiating of an extension of credit from being contracted for, charged, or received by a creditor or third party in connection with the extension of credit if:

(1) the extension of credit is secured by a non-purchase money security interest in personal property or is unsecured; and

(2) the proceeds of the extension of credit are used for personal, family, or household purposes.

(b) Provides that the amount of a fee contracted for, charged, or received in violation of Subsection (a) is considered interest for usury purposes under state law.

SECTION 2. Amends Section 342.604, Finance Code, by adding Subsection (c) to require a creditor who extends consumer credit to a member of the United States military or a dependent of a member of the United States military to comply with Section 670, Public Law 109-364 or any regulation adopted pursuant thereto.

SECTION 3. Amends Subchapter M, Chapter 342, Finance Code, by adding Section 342.606, as follows:

Sec. 342.606. REQUIREMENTS FOR DEFERRED PRESENTMENT TRANSACTIONS. (a) Provides that the provisions of Subchapter F (Alternate Charges for Certain Loans) apply to a deferred presentment transaction made under the authority of this subchapter.

(b) Authorizes a deferred presentment transaction made under this subchapter with a maximum cash advance computed under Subchapter C (Revised Ceilings and Brackets), Chapter 341 (General Provisions), using a reference base amount that is not more than \$200, as an alternative to the rate provided by Sections 342.252 (Alternate Interest Charge), 342.253 (Maximum Interest Charge for Loan with Single Repayment), and 342.259 (Loans with Larger Advances), to provide for a finance charge that does not exceed 15 percent of the cash advance.

(c) Prohibits an authorized lender from entering into a deferred presentment transaction in which the amount of cash advanced exceeds 35 percent of the borrower's gross monthly income.

(d) Provides that on the prepayment of a deferred presentment transaction, the finance charge authorized under this section is considered to be earned at the time the loan is made and is not subject to refund.

(e) Requires an authorized lender to accept partial payment of the outstanding principal balance at any time during regular business hours.

(f) Prohibits an authorized lender from for a fee renewing, rollovering, or otherwise consolidating a deferred presentment transaction. Defines "rollover" in this subsection.

(g) Requires an authorized lender, if a borrower enters into a third consecutive loan, to provide the borrower an option to repay the advance and each consecutive loan pursuant to a written repayment plan. Defines "consecutive loan" in this subsection. Authorizes the authorized lender to assess a processing fee of ten percent of the principal amount of the loan per loan not to exceed \$15 for administration of the payment plan. Provides that a lender is not required to enter into a payment plan with a borrower more frequently than once every 12 months. Requires the borrower to:

(1) request the repayment plan, either orally or in writing;

(2) repay the loan in four equal installments with one installment due on each of the next four dates on which the borrower receives regular wages or compensation;

(3) agree not to enter into any additional deferred presentment transactions during the repayment plan term and for a period of fifteen days after termination of the repayment plan term.

(h) Prohibits an authorized lender from imposing a default charge in connection with a deferred presentment transaction.

(i) Authorizes the Finance Commission of Texas (finance commission) by rule to require a licensee to provide materials approved by the consumer credit commissioner (commissioner) that are designed to:

(1) inform the borrower of the duties, rights, and responsibilities of parties to a deferred presentment transaction; and

(2) educate a borrower about matters of financial literacy.

(j) Requires a licensee that engages in deferred presentment transactions, as part of the annual report required under Section 342.559 (Annual Report), to submit the following to the commissioner:

(1) the amount of cash advanced under each deferred presentment transaction made, serviced, or brokered by the lender during the preceding calendar year;

(2) the total number of deferred presentment transactions made, serviced, or brokered by the lender during the preceding calendar year;

(3) data regarding extended payment plans and alternative payment arrangements offered by the lender;

(4) the gross monthly income reported by an individual to whom a cash advance was made under a deferred presentment transaction during the preceding calendar year, if the lender collects that information from individuals and provided that a lender that submits data provided by individuals is not responsible for an individual borrower's failure to provide accurate information;

(5) the total amount of interest, fees, or charges collected by the lender during the preceding calendar year for making, servicing, or brokering deferred presentment transactions; and

(6) any other information required by the commissioner.

(k) Prohibits a person from threatening or pursuing criminal charges against a borrower related to a check or other debit authorization provided by the borrower as part of a deferred presentment transaction.

(l) Requires the commissioner to prepare and publish a report no later than December 1, 2012, regarding the use of deferred presentment transactions in Texas. Requires the commissioner, in preparing the study, to study the need for comprehensive data reporting and the value and feasibility of a real-time statewide database to provide data for policy development and to enhance a lender's evaluation of a borrower's ability to repay. Provides that in reviewing the value and feasibility of a real-time statewide database, the study should consider

the use of a database verification fee collected from the borrower to recover the actual costs of the system.

SECTION 4. Amends Section 342.501(a), Finance Code, to prohibit an authorized lender from inducing or permitting a person or a husband and wife to be directly or indirectly obligated under more than one loan contract at any time for the purpose or with the effect of obtaining an amount of interest greater than the amount of interest otherwise authorized under this chapter for a loan of that aggregate amount with a maximum interest charge computed under Section 342.201(a) (relating to a certain additional charges on a loan contract that is a regular transaction and is not secured by real property), Section 342.201(e) (relating to using the true daily earnings method or the scheduled installment earnings method on a loan contract that is not secured by real property), Section 342.252, Section 342.259, Section 342.606, Section 342.654, or any combination of those sections.

SECTION 5. Amends Chapter 342, Finance Code, by adding Subchapter N, as follows:

SUBCHAPTER N. AUTO TITLE LOANS

Sec. 342.651. DEFINITION. (a) Defines "auto title loan" in this subchapter.

Sec. 342.652. GENERAL REQUIREMENTS. Requires that an auto title loan be in writing and have a loan term of 30 days.

Sec. 342.653. APPLICABILITY OF OTHER SUBCHAPTERS. (a) Provides that the provisions of Subchapter E (Interest Charges on Non-Real Property Loans) and Subchapter F apply to an auto title loan made under this subchapter.

Sec. 342.654. AUTHORIZED FINANCE CHARGES. (a) Authorizes an auto title loan made under this subchapter, as an alternative to the rate provided by Sections 342.201 (Maximum Interest Charge), 342.252, 342.253 and 342.259, to provide for a finance charge that does not exceed:

- (1) 20 percent per month on the portion of the cash advance that does not exceed \$700;
- (2) 18 percent per month on the portion of the cash advance balance that is greater than \$700 but less than \$1,400; and
- (3) 15 percent per month on the portion of the cash advance that exceeds \$1,400.

(b) Provides that on the prepayment of an auto title loan, the finance charge authorized under this section is considered to be earned at the time the loan is made and is not subject to refund.

Sec. 342.655. ACCEPTANCE OF PARTIAL PAYMENTS. Requires a lender to accept partial payment of the principal loan balance of an auto title loan at any time during regular business hours.

Sec. 342.656. RENEWALS. (a) Defines "renewal" for the purposes of this subsection.

(b) Requires the borrower, beginning with the first renewal and at each successive renewal thereafter, to reduce the principal balance by at least ten percent of the original principal balance of the auto title loan. Provides that if the borrower fails to pay the amount necessary to reduce the principal balance by 10 percent at any renewal, then the lender is authorized to renew the transaction, provided that the lender is required to calculate the finance charge as if the principal balance of the loan were reduced by 10 percent of the original principal balance. Provides that this reduction in principal continues to be due from the borrower in accordance with the auto title loan agreement, but that amount is not

entitled to accrue interest or finance charges. Authorizes the lender, alternatively if the borrower fails to pay, to declare the outstanding principal balance and any finance charge to be immediately due and payable.

(c) Provides that after three renewals of an auto title loan, if a borrower is unable to pay on the due date the amount owing, then the lender is required to offer a repayment plan to the borrower. Provides that a lender is not required to enter into a payment plan with a borrower more frequently than once every 12 months. Provides that if the borrower agrees to the repayment plan, then the borrower is required to repay the amount owed according to the following terms:

(1) the borrower is required to be allowed to repay the loan in not more than four substantially equal installments with one installment due on each of the next four dates on which the borrower receives regular wages or compensation; and

(2) the authorized lender is prohibited from charging a borrower any additional interest or fee for using the repayment plan.

(d) Authorizes an authorized lender and a borrower to agree to enter a repayment plan described by Subsection (c) at any time during the term of an auto title loan or during the term of any renewal.

(e) Prohibits an authorized lender from imposing a default charge in connection with an auto title loan.

Sec. 342.657. POSSESSION OF MOTOR VEHICLE OR CERTIFICATE OF TITLE.

(a) Requires the borrow, in an auto title loan subject to this subchapter, to agree to the authorized lender's possession of the certificate of title.

(b) Requires the borrower to have the exclusive right to redeem the certificate of title by repaying the auto title loan in full and by complying with the auto title loan agreement. Requires the authorized lender, when the certificate of title is redeemed, to release the security interest in the motor vehicle, and return the certificate of title to the borrower.

(c) Requires that the auto title loan agreement provide that, on failure by the borrower to redeem the certificate of title at the end of the original 30-day term period, or at the end of any 30-day renewal or renewals of the agreement period or extended payment plan agreements, the lender is allowed to take possession of the motor vehicle.

(d) Requires the lender to retain physical possession of the certificate of title for the entire term of the auto title loan agreement, but is not required to retain physical possession of the motor vehicle at any time.

(e) Authorizes a lender to only hold unencumbered certificates of title for pledge.

Sec. 342.658. NO CRIMINAL PROSECUTION. Prohibits a person from threatening or pursuing criminal charges against a borrower related to a check or other debit authorization provided by the borrower as part of an auto title loan.

Sec. 342.659. CONSIDERATION OF BORROWER'S ABILITY TO REPAY. Requires the lender, when making or negotiating an auto title loan, to consider, in determining the size, duration, and schedule of installments of the loan, the financial ability of the borrower to repay the loan, and specifically evaluate whether the borrower will be reasonably able to pay the loan in cash at the time and in the manner provided in the auto title loan agreement.

Sec. 342.660. CONSUMER INFORMATION. Authorizes the finance commission by rule to require a licensee to provide materials approved by the commissioner that are designed to:

- (1) inform the borrower of the duties, rights, and responsibilities of parties to an auto title loan; and
- (2) educate a borrower about matters of financial literacy.

Sec. 342.661. INFORMATION REQUIRED FOR ANNUAL REPORT. Requires a licensee that engages in auto title loans, as part of the annual report required under Section 342.559, to submit the following to the commissioner:

- (1) the amount of cash advanced under each auto title loan made, serviced, or brokered by the lender during the preceding calendar year;
- (2) the total number of auto title loans made, serviced, or brokered by the lender during the preceding calendar year;
- (3) the total number of auto title loans renewed during the preceding calendar year;
- (4) data regarding any alternative payment arrangements or extended payment plans offered by the lender;
- (5) the gross monthly income reported by an individual to whom a cash advance was made under an auto title loan during the preceding calendar year, if the lender collects that information from individuals and provided that a lender that submits data provided by individuals is not responsible for an individual borrower's failure to provide accurate information;
- (6) the total amount of interest, fees, or charges collected by the lender during the preceding calendar year for making, servicing, or brokering auto title loans;
- (7) the total number of motor vehicles repossessed; and
- (8) any other information required by the commissioner.

SECTION 6. Amends Section 393.001(3), Finance Code, to redefine "credit services organization."

SECTION 7. Amends Subchapter D, Chapter 393, Finance Code, by adding Section 393.308, as follows:

Sec. 393.308. OBTAINING EXTENSIONS OF CONSUMER CREDIT PROHIBITED. Prohibits a credit services organization from obtaining an extension of consumer credit for a consumer or assist a consumer in obtaining an extension of consumer credit.

SECTION 8. Repealer: Section 342.601(1) (defining "lender"), Finance Code.

SECTION 9. Effective date: September 1, 2011.