

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 2180  
By: Averitt (Cain)  
Economic Development  
5/12/1999  
Committee Report (Substituted)

### **DIGEST**

Various provisions and ambiguities have resulted from the passage of certain legislation regarding consumer and commercial loans. C.S.H.B. 2180 would establish provisions regarding usury and the regulation of lenders.

### **PURPOSE**

As proposed, C.S.H.B. 2180 establishes provisions regarding usury and the regulation of lenders.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. AMENDMENTS TO TITLE 79, REVISED STATUTES

SECTION 1.01. Amends Articles 5069-1B.002(b) and (c), V.T.C.S., to provide that the rulemaking applies to the title rather than the subtitle. Deletes requirements that definitions be liberally construed.

SECTION 1.02. Amends Article 5069-1C.102, V.T.C.S., as follows:

Art. 1C.102. New heading: PROHIBITION ON PREPAYMENT PENALTY. Provides that a prepayment penalty may not be collected on the loan unless the penalty is required by an agency created by federal law, if the interest rate on a loan for property that is or is to be the residential homestead of the borrower is greater than a rate of 12 percent a year. Deletes text regarding a prepayment charge.

SECTION 1.03. Amends Article 5069-1D.003(c), V.T.C.S., to provide the definition of "auction rate" for this subchapter, rather than article.

SECTION 1.04. Amends Article 5069-3A.001, V.T.C.S., to define "regulated loan license." Makes a conforming change.

SECTION 1.05. Amends Article 5069-3A.002, V.T.C.S., to provide that the schedule installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount, rather than the amount financed, as if all payments will be made upon the scheduled installment date. Makes a conforming change.

SECTION 1.06. Amends Articles 5069-3A.101(a) and (c), V.T.C.S., to set forth conditions by which a person must hold an issued license. Establishes that certain financial institutions organized under the laws of the United States or under the laws of the institution's state of domicile are not required to obtain a license under Subsection (a).

SECTION 1.07. Amends Articles 5069-3A.102(b) and (c), V.T.C.S., to require a person who is required to hold a license under this chapter to hold a separate license for each office at which loans are made, negotiated, serviced, held, or collected. Makes conforming changes.

SECTION 1.08. Amends Article 5069-3A.102(a), V.T.C.S., to provide that if the commissioner of finance (commissioner) cannot verify that an applicant for a license meets the net assets requirement or

if the commissioner questions the financial responsibility or general fitness of the applicant, the commissioner may require the applicant to file with the application a bond for a certain amount.

SECTION 1.09. Amends Article 5069-3A.302, V.T.C.S., to provide that an effective return is determined as a true daily earnings rate.

SECTION 1.10. Amends Article 5069-3A.303(a), V.T.C.S., to authorize a loan contract that includes precomputed interest or uses the scheduled installment earnings method and that is a regular transaction to provide for additional interest for default if certain conditions exist.

SECTION 1.11. Amends Article 5069-3A.303(a), V.T.C.S., to make conforming changes.

SECTION 1.12. Amends Article 5069-3A.403, V.T.C.S., to authorize the lender, if a loan that has a term of one month or more is prepaid in full, to earn a minimum of the acquisition charge and interest charge for one month. Authorizes the lender, if a loan has an initial term of less than one month, to earn a minimum of the acquisition charge and an interest charge that produces the same effective return as the installment account handling charge computed at a daily rate for the term the loan is outstanding.

SECTION 1.13. Amends Article 5069-3A.503(a), V.T.C.S., to make conforming changes.

SECTION 1.14. Amends Article 5069-3A.507, V.T.C.S., to delete text regarding a fee for the return by a depository institution of a dishonored payment of a secondary mortgage loan.

SECTION 1.15. Amends Article 5069-3A.508(a), V.T.C.S., to provide that a lender or a person who is assigned a secondary mortgage loan to collect on or before the closing of the loan, or include in the principal of the loan certain reasonable fees including for an appraisal of real property offered as security for the loan prepared by a licensed or certified appraiser who is not a salaried employee of the lender. Deletes text regarding a statement addressed to the lender. Makes a conforming change.

SECTION 1.16. Amends Articles 5069-3A.701(a) and (b), V.T.C.S., to make nonsubstantive changes.

SECTION 1.17. Amends Articles 5069-3A.702(a) and (c), V.T.C.S., to make nonsubstantive changes.

SECTION 1.18. Amends Article 5069-3A.804, V.T.C.S., to delete text regarding pledged property.

SECTION 1.19. Amends Article 5069-3A.852, V.T.C.S., by amending Subsection (b) and adding Subsection (c), to authorize a lender on a loan to assess and collect a fee that does not exceed the prescribed amount for the return by a depository institution of a dishonored payment of a loan. Makes a conforming change.

## ARTICLE 2. AMENDMENTS TO FINANCE CODE

SECTION 2.01. Amends Sections 301.002(b) and (c), Finance Code, to authorize the Finance Commission of Texas, by rule, to adopt definitions to accomplish the purposes of this title, rather than subtitle. Deletes text regarding liberally construed definitions.

SECTION 2.02. Amends Section 302.102, Finance Code, to make a nonsubstantive change.

SECTION 2.03. Amends Section 303.003(c), Finance Code, to provide that the definition for “auction rate” applies to this subchapter, rather than section.

SECTION 2.04. Amends Section 342.001, Finance Code, to define “regulated loan license.” Makes conforming changes.

SECTION 2.05. Amends Sections 342.002 (a) and (b), Finance Code, to make conforming changes.

SECTION 2.06. Amends Sections 342.051(a) and (c), Finance Code, to make conforming changes.

SECTION 2.07. Amends Sections 342.052(b) and (c), Finance Code, to make conforming changes.

SECTION 2.08. Amends Section 342.102(a), Finance Code, to make conforming changes.

SECTION 2.09 Amends Section 342.202, Finance Code, to make conforming changes.

SECTION 2.10. Amends Section 342.203(a), Finance Code, to make conforming changes.

SECTION 2.11. Amends Section 342.204(a), Finance Code, to make conforming changes.

SECTION 2.12. Amends Section 342.253, Finance Code, to make conforming changes.

SECTION 2.13. Amends Section 342.303(a), Finance Code, to make conforming changes.

SECTION 2.14. Amends Section 342.307, Finance Code, to delete text regarding a fee for the return by a depository institution of a dishonored payment of a secondary mortgage loan.

SECTION 2.15. Amends Section 342.308(a), Finance Code, to make conforming changes.

SECTION 2.16. Amends Sections 342.401(a) and (b), to make conforming changes.

SECTION 2.17. Amends Sections 342.402(a) and (c), to make conforming changes.

SECTION 2.18. Amends Section 342.454, Finance Code, to make a conforming change.

SECTION 2.19. Amends Section 342.502, Finance Code, to make conforming changes.

SECTION 2.20. Amends Section 348.301, Finance Code, to provide that notwithstanding any other applicable law of this state, no person acquiring or assigning a retail installment contract, or any balance under a contract, has any duty to disclose to any other person the terms on which a contract or balance under a contract is acquired, including any discount or difference between rates, charges or balance acquired.

### ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. (a) Effective date: September 1, 1999, except as provided by Subsections (b), (c), and (d).

(b) Provides that Article 1 of this Act takes effect only if the Act of the 76th Legislature, Regular Session, 1999, relating to nonsubstantive additions and corrections in enacted codes does not take effect.

(c) Provides that Article 2 of this Act takes effect only if the Act of the 76th Legislature, Regular Session, 1999, relating to nonsubstantive additions and corrections in enacted codes does take effect.

(d) Provides that the changes made by SECTION 2.20 of this Act take effect immediately, and shall apply to any civil action pending on or after the date of enactment.

SECTION 3.02. Emergency clause.