

BILL ANALYSIS

Senate Research Center
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S.B. 317
By: Sibley
Business & Commerce
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DIGEST AND PURPOSE

Periodically, state agencies undergo a review by the Sunset Advisory Commission. As proposed, S.B. 317 continues the Office of Consumer Credit Commissioner for 12 years and makes changes to the statutes that were recommended by the Sunset Advisory Commission.

RULEMAKING AUTHORITY

Rulemaking Authority is expressly given to the Finance Commission in SECTIONS 7, 10, 11, and 14 (Sections 14.107, 341.501, 342.007, 342.008, and 348.513 Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 14.056, Finance Code, as follows:

- (a) Defines "Texas trade association."
- (b) Provides that certain persons may not be employees of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments.
- (c) Prohibits a person from acting as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office. Deletes language regarding certain employees.

SECTION 2. Amends Section 14.058, Finance Code, as follows:

- (a) Requires the commissioner or the commissioner's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.
- (b) Requires the policy statement to include certain items.
- (c) Requires the policy statement to be updated annually, be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and be filed with the governor's office. Deletes language regarding a program of equal employment opportunity.

SECTION 3. Amends Section 14.062, Finance Code as follows, (a) Requires the office to maintain a file on each written complaint filed with the office. Requires the file to include certain information.

- (b) Requires the office to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint

investigation and resolution.

(c) Requires the office, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. Deletes language regarding the commissioner keeping an information file and notification of parties.

SECTION 4. Amends Section 14.066, Finance Code, to provide, that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, the office is abolished September 1, 2013, rather than 2001.

SECTION 5. Amends Chapter 14B, Finance Code, by adding Section 14.067, as follows:

Sec. 14.067. EMPLOYEE INCENTIVE PROGRAM. Requires the commissioner or the commissioner's designee to provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 6. Amends Section 14.106, Finance Code, as follows:

Sec. 14.106. New heading: INFORMATION REGARDING EMPLOYMENT REQUIREMENTS. Requires the commissioner or the commissioner's designee to provide to agency employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees. Deletes language regarding procedures for informing of standards of conduct.

SECTION 7. Amends Section 14.107, Finance Code as follows, (a) Requires the finance commission, rather than the commissioner, to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, and Chapters 371, 392, and 394 and under Chapters 38-41, Business & Commerce Code.

(b) Requires the finance commission by rule to set the fees for licensing and examination under Chapter 342, 348, or 371 at amounts or rates necessary to recover the costs of administering those chapters. Authorizes the rules to provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. Authorizes the commissioner to provide for collection of a single annual fee from a person licensed under Chapter 342, 348, or 371 to include amounts due for both licensing and examination.

SECTION 8. Amends Section 341.001, Finance Code, to define "deferred presentment transaction," "loan," and "sale-leaseback transaction," and redefine "interest."

SECTION 9. Amends Section 341.403, Finance Code, by adding Subsections (c) and (d), as follows:

(c) Prohibits the finance commission from adopting rules restricting advertising or competitive bidding by a license holder regulated by the Office of Consumer Credit Commissioner except to prohibit false, misleading, or deceptive practices.

(d) Prohibits the commission, in its rules to prohibit false, misleading, or deceptive practices, from including a rule that restricts the use of any medium for advertising, restricts the use of a license holder's personal appearance or voice in an advertisement, relates to the size or duration of an advertisement by the license holder, or restricts the license holder's advertisement under a trade name, unless the trade name is deceptive.

SECTION 10. Amends Chapter 341, Finance Code, by adding Subchapter F, as follows:

SUBCHAPTER F. LICENSING AND REGULATION IN GENERAL

Sec. 341.501. **STAGGERED RENEWAL.** Authorizes the finance commission by rule to adopt a system under which licenses under this subtitle expire on various dates during the year. Requires the Office of Consumer Credit Commissioner, for the year in which the license expiration date is changed, to prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. Provides that on renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 341.502. **FORM OF LOAN CONTRACT.** (a) Requires a contract for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner, whether in English or Spanish, to be written in plain language designed to be easily understood by the average consumer. Requires the contract to be printed in an easily readable font and type size.

(b) Requires the finance commission to adopt rules governing the form of contracts to which this section applies. Requires the rules to include model contracts complying with the rules and this section.

(c) Provides that a person governed by this section is not required to use a model contract. Prohibits a person from using a contract other than a model contract unless the person has submitted the contract to the commissioner. Requires the commissioner to issue an order disapproving the contract if the commissioner determines that the contract does not comply with this section or rules adopted under this section.

(d) Authorizes the person to begin using a contract submitted under Subsection (c) on the date it is submitted for approval. Prohibits a person from using a contract, if the commissioner issues an order disapproving the contract, after the order takes effect.

(e) Prohibits a person from representing that the commissioner's approval or failure to disapprove a contract constitutes an endorsement of the contract by the commissioner, the Office of Consumer Credit Commissioner, or the finance commission.

SECTION 11. Amends Chapter 342A, Finance Code, by adding Sections 342.007 and 342.008, as follows:

Sec. 342.007. **DEFERRED PRESENTMENT TRANSACTION.** Requires the finance commission to adopt rules providing for the regulation of deferred presentment transactions.

Sec. 342.008. **ATTEMPT TO EVADE LAW.** Prohibits a person who is a party to a sale-leaseback transaction or a deferred presentment transaction from evading the application of this subtitle or a rule adopted under this section by use of any device, subterfuge, or pretense.

SECTION 12. Amends Section 342.101(c), Finance Code, to require that on the filing of each license application, the applicant to pay to the commissioner for the license's year of issuance a license fee in an amount determined as provided by Section 14.107. Deletes language regarding license fees.

SECTION 13. Amends Section 342.154, Finance Code, to require a license holder, not later than December 1, to pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107. Deletes language regarding an annual fee.

SECTION 14. Amends Chapter 348, Finance Code, by adding Subchapter F as follows:

SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

Sec. 348.501. LICENSE REQUIRED. (a) Prohibits a person from acting as a holder under this chapter unless the person meets certain requirements.

(b) Prohibits a person from using any device, subterfuge, or pretense to evade the application of this section.

Sec. 348.502. APPLICATION REQUIREMENTS. (a) Provides that the application for a license under this chapter must meet certain requirements.

(b) Requires the applicant, on the filing of a license application, to pay to the commissioner an investigation fee of \$200 and, for the license's year of issuance, a license fee in an amount determined as provided by Section 14.107.

Sec. 348.503. INVESTIGATION OF APPLICATION. Requires the commissioner, on the filing of an application and payment of the required fees, to conduct an investigation to determine whether to issue the license.

Sec. 348.504. APPROVAL OR DENIAL OF APPLICATION. (a) Requires the commissioner to approve the application and issue to the applicant a license under this chapter if the commissioner makes certain findings.

(b) Requires the commissioner, if the commissioner does not find the eligibility requirements of Subsection (a), to notify the applicant.

(c) Provides that if an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) Requires the commissioner to approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. Authorizes the commissioner and the applicant to agree to a later date in writing.

Sec. 348.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION. Requires the commissioner, if the commissioner denies the application, to retain the investigation fee and to return to the applicant the license fee submitted with the application.

Sec. 348.506. ANNUAL LICENSE FEE. Requires a license holder, not later than December 1, to pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

Sec. 348.507. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. Provides that if the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of that day or December 31 of the last year for which an annual fee was paid.

Sec. 348.508. LICENSE SUSPENSION OR REVOCATION. Authorizes the commissioner, after notice and a hearing, to suspend or revoke a license if the commissioner finds certain requirements.

Sec. 348.509. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. Authorizes the commissioner to reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Sec. 348.510. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under this chapter by delivering to the commissioner the license and a written notice of the license's surrender.

Sec. 348.511. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) Provides that the suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

(b) Provides that a surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 348.512. TRANSFER OR ASSIGNMENT OF LICENSE. Authorizes a license to be transferred or assigned only with the approval of the commissioner.

Sec. 348.513. ADOPTION OF RULES. (a) Authorizes the finance commission to adopt rules to enforce this chapter.

(b) Requires the commissioner to recommend proposed rules to the finance commission.

Sec. 348.514. EXAMINATION; ACCESS TO RECORDS. (a) Requires the commissioner, at the times the commissioner considers necessary, to examine each place of business of each license holder and investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) Requires the license holder to give the commissioner or the commissioner's representative free access to the license holder's office, place of business, files, safes, and vaults and allow the commissioner or the commissioner's representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) Authorizes the commissioner, during an examination, to administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) Provides that information obtained under this section is confidential.

(e) Provides that a license holder's violation of Subsection (b) is a ground for the suspension or revocation of the license.

(f) Authorizes an examination of a license holder's place of business to be made only after advance notice and during normal business hours.

Sec. 348.515. GENERAL INVESTIGATION. Authorizes the commissioner, to discover a violation of this chapter or to obtain information required under this chapter, to investigate the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter,

regardless of whether the person claims to not be subject to this chapter.

Sec. 348.516. PAYMENT OF EXAMINATION COSTS AND ADMINISTRATION EXPENSES. Requires a license holder to pay to the commissioner an amount determined as provided by Section 14.107 and assessed by the commissioner to cover the direct and indirect costs of an examination and a proportionate share of general administrative expenses.

Sec. 348.517. LICENSE HOLDER'S RECORDS. (a) Requires a license holder to maintain a record of each retail installment transaction made under this chapter as is necessary to enable the commissioner to determine whether the license holder is complying with this chapter.

(b) Requires a license holder to keep the record until the later of certain dates.

(c) Requires a record described by Subsection (a) to be prepared in accordance with accepted accounting practices.

(d) Requires the commissioner to accept a license holder's system of records if the system discloses the information reasonably required under Subsection (a).

(e) Requires a license holder to keep each obligation signed by a retail buyer at an office in this state designated by the license holder unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

Sec. 348.518. SHARING OF INFORMATION. Authorizes, the commissioner and the Texas Department of Transportation to share information, including criminal history information, relating to a person licensed under this chapter. Provides that information otherwise confidential remains confidential after it is shared under this section.

SECTION 15. Amends Section 371.055, Finance Code, to require an applicant to submit with the application an annual fee in an amount determined as provided by Section 14.107, rather than a fee of \$100.

SECTION 16. Amends Section 371.064(a), Finance Code, to require that, not later than December 1, a pawnbroker to pay to the commissioner for each license held an annual fee in an amount determined as provided by Section 14.107, rather than \$125, for the year beginning the next January 1.

SECTION 17. Amends Section 411.095(a), Government Code, to provide that the consumer credit commissioner is entitled to obtain from the department criminal history record information that relates to a person who is an applicant for or holder of a license under Chapter 348 or 371, Finance Code.

SECTION 18. Repealer: Section 371.065 (Reduction in Annual License Fee), Finance Code.

SECTION 19. Repealer: Sections 348.401(Registration of Holder) and 348.402 (Penalty for Failure to Register), Finance Code.

SECTION 20. Effective date: September 1, 2001, except that Section 19 of this Act takes effect September 1, 2002, and the requirement that a person hold a license under Chapter 348F, Finance Code, as added by this Act, applies only on and after September 1, 2002.