

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 471
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Business & Commerce
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Committee Report (Substituted)

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. C.S.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,” “renewal,” and “third-party provider.”

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 certain information.

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 that meets certain criteria.

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. Authorizes a lender to also charge a pro rata finance charge for any incremental amount advanced in excess of a multiple of \$100. Provides that the charge is considered 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 CASH ADVANCE-RIGHT TO RESCIND. Prohibits a lender from advancing to a borrower an amount greater than \$500. Provides that a borrower has the right to rescind the deferred deposit loan no later than 5 p.m. on the next business day after the loan transaction date. Provides that this chapter does not prohibit a lender from being a party, with the same borrower at the same time, to a deferred deposit loan and a loan authorized by this chapter other than a deferred deposit loan.

Sec. 342.606. MINIMUM AND MAXIMUM TERM. Prohibits a lender from engaging in a

deferred deposit loan with a term of less than seven or 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 loan agreement in at least 10-point type that contains certain information.

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. Authorizes a lender to also charge a pro rata finance charge for any incremental amount advanced in excess of a multiple of \$100. 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, the next business day 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 is not considered a renewal of the previous transaction. Authorizes a lender to refinance a deferred deposit loan without limitation as to the number of refinancings as authorized by Subchapter F.

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. Prohibits the lender or the lender's third-party provider from charging 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. Provides that before the lender negotiates or presents the instrument, the borrower has 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 CHARGE. Provides that, 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, the lender has 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 fees authorized by Section 342.502. Prohibits the lender from collecting any other fees as a result of default. Prohibits a returned instrument charge from being collected 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, before 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 obtain and maintain a separate license for each location where deferred deposit loan business is conducted. Provides that a deferred deposit loan is a loan subject to this chapter for purposes of the application of Section 342.051.

Sec. 342.617. APPLICATION OF SUBCHAPTER TO THIRD-PARTY PROVIDER. Provides that if deferred deposit loans are offered at the place of business of a third-party provider certain criteria is required to be met.

Sec. 342.618. EXAMINATION AND INVESTIGATION. Authorizes a licensed lender to be examined and investigated in accordance with Section 342.552. Authorizes the consumer credit commissioner (commissioner) or the commissioner's representative, at the times the commissioner considers necessary, to examine and investigate a third-party provider's place of business to determine the provider's compliance with this subchapter. Requires the third-party provider to give the commissioner or the commissioner's representative free access to its place of business for that purpose. Authorizes the commissioner or the commissioner's representative, during an examination, to administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized to consider, investigate, or secure information about under this subchapter. Requires a third-party provider to pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of an examination of the provider under this section.

Sec. 342.619. APPLICABILITY TO LENDER. Provides that except as preempted by federal law, all other applicable provisions of this subchapter apply to a deferred deposit loan and a lender.

Sec. 342.620. APPLICABILITY OF PROVISIONS OF CHAPTER 341 AND THIS CHAPTER. Provides that 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. Provides that a borrower to not subject to any criminal penalty for entering into a deferred deposit loan agreement or in the event the instrument is dishonored, unless the borrower violated Section 32.32 (False Statement to Obtain Property or Credit), Penal Code.

Sec. 342.622. DECEPTIVE TRADE PRACTICE. Provides that a deferred deposit loan made by a person other than a lender is a deceptive trade practice actionable under Chapter 17E (Deceptive Trade Practices and Consumer Protection), Business and Commerce Code.

SECTION 2. Effective date: September 1, 2001.

Makes application of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Amends As Filed S.B. 471, Chapter 342, Finance Code, as follows:

- Adds "lender" and "third-party provider" as new proposed definitions. Deletes the definition of "loan amount" contained in the As Filed version.
- Makes nonsubstantive changes in Section 342.602 regarding requirements for the written agreement.

- Adds new proposed language in Section 342.603 regarding the format of the notice supplied to consumers.
- Adds new proposed language in Section 342.604 authorizing a lender to charge a pro rata finance charge.
- Changes the heading to Section 342.605 and adds new proposed language regarding lender. Makes nonsubstantive changes.
- Changes the heading to Section 342.606 and adds new proposed language regarding the minimum term of a deferred loan.
- Makes conforming changes in Section 342.607.
- Adds new proposed language in Section 342.608 regarding lender actions. Makes a nonsubstantive change.
- Adds new language in Section 342.609 referencing the lender or lender's third-party provider.
- Adds new proposed language in Section 342.611 to make a nonsubstantive change.
- Adds new proposed language in Section 342.612 referencing fees authorized by Section 342.502. Makes nonsubstantive changes.
- Makes conforming and nonsubstantive changes in Sections 342.614 and 342.616.
- Replaces and adds new proposed language in Section 342.617 regarding application of the subchapter to a third-party provider.
- Replaces and adds new proposed language in Section 342.618 regarding the examination and investigation of a lender.
- Adds new language to existing Section 342.619 regarding provisions applicable to a lender.
- Makes a nonsubstantive change in Section 342.620.
- Adds new proposed language in Section 342.621 clarifying criminal culpability.
- Adds new proposed Section 342.622 regarding deceptive trade practice.