

BILL ANALYSIS

Senate Research Center

S.B. 1112
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DIGEST AND PURPOSE

Current Texas law does not include certain measures aimed at eliminating predatory lending practices. As proposed, S.B. 1112 makes a number of changes to the Finance Code in order to curb certain practices that may be considered predatory, including placing prohibitions on certain excessive fees, arbitration clauses that place a large burden on borrowers, home loans that exceed the rate threshold, high-cost home loans that are made without regard to the borrower's creditworthiness, and the refinancing of a high-cost loan with another high-cost loan. In addition, S.B. 1112 grants the state the authority: to determine which lenders are subprime lenders, to allow local authorities to help prosecute violators, and to require all loans made in the state to comply with certain state laws, regardless of where the lender is located.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Finance Commission in SECTION 9 (Section 343.112, Finance Code) and SECTION 13 (Section 343.211, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 11, Finance Code, by adding Section 11.308, as follows:

Sec. 11.308. DETERMINATION OF SUBPRIME LENDER; SUBPRIME LENDING REPORTS. (a) Requires the Texas Finance Commission (TFC) to annually determine the criteria for classification as subprime lender. Authorizes TFC to determine the classification as a subprime lender by referencing federal regulatory agency data.

(b) Requires TFC to determine the manner in which TFC must report information relating to the classification of subprime lenders.

SECTION 2. Amends Section 342.005, Finance Code, by amending the title and adding Subsection (b), as follows:

Sec. 342.005. New heading: APPLICABILITY OF CHAPTER AND OTHER LAW.
(a) Creates this subsection from existing text.

(b) Prohibits a lender from making a loan that is subject to this chapter, other than a secondary mortgage loan, to a resident of this state unless the loan complies with this chapter and all other state law applicable to the loan, regardless of whether the lender is located in this state. Provides that an agreement made in connection with the loan is void to the extent the agreement waives the application of this subsection or applies the law of a jurisdiction other than this state to the loan, notwithstanding certain other law.

SECTION 3. Amends Subchapter A, Chapter 342, Finance Code, by adding Section 342.010, as follows:

Sec. 342.010. ASSISTING DEFERRED PRESENTMENT TRANSACTION. (a)

Prohibits a person from assisting in the creation of a deferred presentment transaction between a lender and consumer at a rate or amount of interest not authorized by this chapter, regardless of whether the lender is subject to this chapter.

(b) Provides that an agreement made in connection with a deferred presentment transaction to which Subsection (a) applies is void to the extent the agreement waives the application of this section or applies the law of a jurisdiction other than this state to determine the permissible rate or amount of interest applicable to the transaction, notwithstanding certain other law.

(c) Provides that a person who assists in the creation of a deferred presentment transaction is considered to contract for interest for the purposes of Chapter 349.

SECTION 4. Amends Subchapter L, Chapter 342, Finance Code, by adding Section 342.561, as follows:

Sec. 342.561. ENFORCEMENT BY DISTRICT OR COUNTY ATTORNEY. (a) Requires a district or county attorney to assist the consumer credit commissioner (commissioner) in the institution and prosecution of an action under this chapter or under Chapter 14 relating to a violation of this chapter.

(b) Authorizes a district or county attorney, after obtaining written approval from the commissioner, to institute and prosecute an action for declaratory judgment or injunctive relief under this chapter. Authorizes the commissioner to assist in the action upon request of the district or county attorney.

(c) Authorizes the court in the action to order the defendant to pay the county in which the action was instituted an amount necessary to cover the costs of participation by the district county or attorney under certain circumstances.

SECTION 5. Amends Section 343.001(2), Finance Code, by amending the definition of “home loan.”

SECTION 6. Amends Subchapter A, Chapter 343, Finance Code, by adding Sections 343.004 and 343.005, as follows:

Sec. 343.004. PROHIBITED SUBTERFUGE. Prohibits a person from intentionally attempting to avoid the application of this chapter by dividing a loan transaction into separate parts for that purpose or by any other subterfuge.

Sec. 343.005. DECEPTIVE TRADE PRACTICE. Provides that a violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

SECTION 7. Amends Section 343.101, Finance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Prohibits a lender from replacing or consolidating a low-rate home loan made, originated, subsidized, or guaranteed, rather than directly made, by a government or nonprofit lender, rather than by a government or nonprofit lender before the seventh anniversary of the date of the loan.

(c) Prohibits a lender from making a home loan to a borrower that refinances an existing home loan if the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including certain circumstances. Provides that a home loan refinancing is presumed to violate this subsection if the primary tangible benefit to the borrower is an interest rate lower than the interest rate on debts satisfied or refinanced in connection with the home loan, and it will take more than four years for the borrower to recoup certain costs through savings resulting from the lower interest rate.

SECTION 8. Amends Sections 343.102 and 343.103, Finance Code, as follows:

Sec. 343.102. DISCLOSURE IN CONNECTION WITH CERTAIN HOME LOANS.

(a) Requires the lender to provide the borrower with information listed in Subdivisions (1)-(5) no later than 48 hours before the date of closing, rather than under certain circumstances or three days after the date the application is made.

(4) Adds a statement of the loan fees to be paid by the borrower to the list of information the lender must provide to the borrower.

(5) Redesignated from Subdivision (4).

(b) Requires a disclosure of fees under Subsection (a)(4) to be in a form substantially similar to the documents that will be used for the closing.

(c) Requires the lender to provide the borrower with a written notice of the revised amount if, before closing, the total amount of fees disclosed under Subsection (a)(4) changes by a certain amount. Prohibits the loan from being closed before 48 hours after the date of the notice provided under this subsection.

(d) Authorizes the borrower to modify or waive the waiting period provided by this section, if the borrower determines that the loan is needed to meet a personal financial emergency by providing the lender with a certain statement. Prohibits the statement under this section from being on a form provided by the lender or on the lender's behalf. Deletes language providing that this section expires on September 1, 2003.

Sec. 343.103. PENALTIES FOR FAILURE TO PROVIDE DISCLOSURE. Deletes Subsection (b) which provides that this section expires on September 1, 2003. Makes a conforming change.

SECTION 9. Amends Subchapter B, Chapter 343, Finance Code, by adding Sections 343.105-343.112, as follows:

Sec. 343.105. RECOMMENDATION OF DEFAULT. Prohibits a lender from recommending or encouraging default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or part of the existing loan debt.

Sec. 343.106. LATE FEES. (a) Prohibits a lender from charging a late fee unless the fee meets certain requirements.

(b) Prohibits a late payment fee from being imposed for a default if a late payment fee is deducted from a payment made on the loan and the deduction causes the default on a subsequent payment.

(c) Prohibits a late payment fee from being imposed with respect to any future payment that would have been timely and sufficient but for a previous default, if a late payment fee has been imposed once with respect to a particular late payment.

(d) Prohibits a late payment from being charged unless the lender notifies the borrower not later than the 45th day after the date the payment was due that a late payment fee has been imposed for a particular late payment. Prohibits a late payment fee from being collected from a borrower who informs the lender that nonpayment of an installment is in dispute and presents proof of payment not later than the 45th day after the date of receipt of the lender's notice of the late payment fee.

(e) Requires the lender to post each payment on the date it is received by the lender, servicer, or lender's agent or at the address provided to the borrower by the lender, servicer, or lender's agent for making payments.

Sec. 343.107. ACCELERATION PROHIBITED. (a) Prohibits a lender from including in a home loan a provision that permits the lender, in the lender's sole discretion, to accelerate the indebtedness.

(b) Provides that this section does not prohibit acceleration of a loan in good faith due to the borrower's failure to abide by the material terms of the loan.

Sec. 343.108. LIMITATIONS ON FEES. Prohibits a lender, in connection with a home loan, from charging a borrower an amount for a service or product under certain circumstances.

Sec. 343.109. FALSE, MISLEADING, OR DECEPTIVE STATEMENT OR REPRESENTATION. Prohibits a lender from making or causing to be made a false, deceptive, or misleading statement or representation in connection with a home loan. Sets forth the circumstances under which a statement or representation is to be considered deceptive or misleading.

Sec. 343.110. DOCUMENT WITH BLANKS. Provides that a home loan document in which blanks are left to be filled in after the document is signed by borrower is void.

Sec. 343.111. LANGUAGE OF DISCLOSURES. Requires the lender to provide an additional copy of certain information translated into the language in which the discussions between the lender and the borrower on a home loan are conducted, if the discussions are conducted primarily in a language other than English.

Sec. 343.112. ARBITRATION. Prohibits a home loan from including an arbitration clause that requires a borrower to travel a certain distance or imposes fees or expenses considered excessive as determined by rules adopted by TFC based on certain recommendations.

SECTION 10. Amends Section 343.201(1), Finance Code, by amending Subdivision (1) to redefine "high-cost home loan" as a loan that is a certain credit transaction, if the total loan amount is \$20,000 or more and the interest rate for the loan exceeds the applicable rate threshold provided by Section 343.2011, rather than if the total loan amount is \$20,000 or more and the annual percentage rate exceeds a certain rate.

SECTION 11. Amends Subchapter C, Chapter 343, Finance Code, by adding Section 343.2011, as follows:

Sec. 343.2011. RATE THRESHOLD. (a) Provides that the rate threshold is exceeded for the purposes of Section 343.201(1)(E)(i) under certain circumstances set forth in Subdivisions (1) and (2).

(b) Sets forth the methods for computing the trigger rate.

(c) Provides that the interest rate used to calculate the rate threshold refers to a certain annual percentage rate calculated according to certain federal regulations.

SECTION 12. Amends Section 343.202, Finance Code, by prohibiting a high-cost home loan from containing a provision for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments, unless the balloon payment becomes due not less than 15 years, rather than 60 months, after the date of the loan.

SECTION 13. Amends Subchapter C, Chapter 343, Finance Code, by adding Sections 343.206-343.211, as follows:

Sec. 343.206. LENDING WITHOUT COUNSELING PROHIBITED. Prohibits a lender from making a high-cost home loan without first receiving certification from a counselor approved by one of certain agencies that the borrower has received counseling on the advisability of the loan transaction.

Sec. 343.207. REFINANCING WITH HIGH-COST HOME LOAN PROHIBITED. Prohibits a high-cost home loan from being refinanced with another high-cost home loan.

Sec. 343.208. MAKING HIGH-COST HOME LOAN WITHOUT REGARD TO CREDITWORTHINESS. Prohibits a lender from making a high-cost home loan to a borrower if, under the lender's usual lending practices, the lender would make a home loan that is not a high-cost home loan to another borrower of comparable creditworthiness.

Sec. 343.209. INCREASED INTEREST RATE PROHIBITED. (a) Prohibits a lender from including in a high-cost home loan a provision that increases the interest rate after default.

(b) Provides that this section does not apply to an interest rate change in a variable rate loan otherwise consistent with the loan documents, if the change is not triggered by the event of default or the acceleration of the indebtedness.

Sec. 343.210. MODIFICATION OR DEFERRAL FEES PROHIBITED. Prohibits a lender from charging a borrower to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

Sec. 343.211. ARBITRATION. Prohibits a high-cost home loan from including an arbitration clause that is oppressive or unfair as determined by rules adopted by TFC based on certain recommendations.

SECTION 14. (a) Makes application of this Act prospective, except as provided by Subsection (b) of this section.

(b) Provides that Sections 343.112(2) and 343.211, Finance Code, as added by this Act, apply only to a loan closed on or after January 1, 2004.

(c) Requires the Finance Commission of Texas to adopt rules to implement Sections 343.112(2) and 343.211, Finance Code, as added by this Act.

SECTION 15. Effective date: September 1, 2003.