

BILL ANALYSIS

Senate Research Center
81R1030 DWS-F

S.B. 248
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Business & Commerce
5/1/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since July 2005, most major payday lenders have registered as Credit Services Organizations (CSOs) under Chapter 393 (Credit Services Organizations), Finance Code. This industry move came as the Federal Depository Insurance Corporation (FDIC) began to prohibit its member banks from serving as financial partners with companies doing payday lending. As CSOs, these payday outfits are no longer subject to Texas' small loan law or regulation by the Office of Consumer Credit Commissioner (CCC). Although CCC has set rates for deferred presentment transactions that do not exceed 48 percent, payday-CSOs are able to circumvent these rates, although Section 342.008 (Attempt to Evade Law) prohibits attempts to evade the law: "A person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule adopted under this subchapter by use of any device, subterfuge, or pretense."

When faced with high fees, many borrowers take on extra debt which only exacerbates the original financial crisis. Sky-high annual percentage rates (APRs) play a role in perpetuating this cycle of debt that can be avoidable if sufficient regulations and rate limits are in place. Texas payday lenders currently charge rates exceeding 300 percent APR and up to 1,100 percent APR, at least 20 times the cost of high-interest credit cards.

As proposed, S.B. 248 amends current law relating to the interest and fees that may be charged for certain consumer loans and provides a criminal penalty.

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 Subchapter E, Chapter 342, Finance Code, by adding Section 342.200, as follows:

Sec. 342.200. INTEREST CHARGES: GENERAL LIMIT, COMPUTATION, AND PAYMENT. (a) Prohibits a loan contract under this chapter that is not secured by real property, notwithstanding any other provision of this subchapter, Subchapter F (Alternate Charges For Certain Loans), or a rule adopted under this chapter, unless the provision sets a lower limit on an interest charge, from providing for an interest charge for the cash advance that exceeds 36 percent a year, including any fees included in the computation of interest under this chapter or other law.

(b) Requires that a charge for interest be computed and paid as a percentage of the unpaid principal balance and defines "unpaid principal balance."

(c) Prohibits an interest rate charged on an overdue balance from exceeding the maximum rate charged before the balance becomes due.

SECTION 2. Amends Subchapter H, Chapter 342, Finance Code, by adding Section 342.354, as follows:

Sec. 342.354. REFUND OF PRECOMPUTED INTEREST: OTHER LOANS. (a) Provides that this section applies only to a loan contract to which Section 342.351

(Refund of Precomputed Interest: Sum of the Periodic Balances) or 342.352 (Refund of Precomputed Interest on Contract: Scheduled Installment Earnings) does not apply.

(b) Requires the lender, if the contract is prepaid in full, to refund or credit to the borrower unearned interest charges paid by the borrower as computed by the actuarial method or another method that is at least as favorable to the borrower.

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

Sec. 342.606. INTEREST AND FEES FOR DEFERRED PRESENTMENT TRANSACTION. (a) Prohibits a lender from charging or receiving interest or fees in connection with a deferred presentment transaction other than the interest and fees specifically authorized by this section.

(b) Authorizes a deferred presentment transaction to provide for an administrative fee not to exceed \$5 for each transaction. Provides that an administrative fee is not included in the computation of interest.

(c) Authorizes a lender, if there are insufficient funds to pay a check on the date of presentment, to charge a fee not to exceed the greater of \$15 or the amount charged to a lender by the financial institution. Authorizes only one fee to be charged under this section for a single check, regardless of whether the check has been deposited and returned more than once. Provides that a fee under this subsection is the exclusive authorized charge for late payment.

(d) Provides that a person who violates this section commits an offense, which under this subsection is a state jail felony.

SECTION 4. Effective date: September 1, 2009.