

BILL ANALYSIS

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C.S.S.B. 1862
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law defines a credit services organization (CSO), and permits such organizations to receive payment for the service of obtaining an extension of consumer credit for a consumer. Texas law governing CSOs was originally adopted in 1987. The intent, according the House Research Organization analysis, was "consumer protection legislation that would address the problem of certain credit-repair services taking advantage of consumers."

Though intended as a consumer protection measure to address problems with credit-repair services, the laws governing CSOs are currently being used by payday, auto title, and other consumer loan businesses to obtain extensions of consumer credit for consumers.

The activities and fees of CSOs are not regulated by the state through licensing or agency oversight, which prevents the ability of the state to collect consumer data or properly investigate and respond to complaints.

C.S.S.B. 1862 amends current law relating to certain extensions of credit to consumers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 (Section 342.606, Finance Code) and SECTION 5 (Section 342.660, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 302, Finance Code, by adding Section 302.003, as follows:

Sec. 302.003. PROHIBITION ON THIRD-PARTY FEES TO ARRANGE OR GUARANTEE CERTAIN EXTENSIONS OF CONSUMER CREDIT. (a) Prohibits a fee paid or to be paid to a third party to assist a consumer in the transacting, arranging, guaranteeing, or negotiating of an extension of credit from being contracted for, charged, or received by a creditor or third party in connection with the extension of credit if:

(1) the extension of credit is secured by a non-purchase money security interest in personal property or is unsecured; and

(2) the proceeds of the extension of credit are used for personal, family, or household purposes.

(b) Provides that the amount of a fee contracted for, charged, or received in violation of Subsection (a) is considered interest for usury purposes under state law.

SECTION 2. Amends Section 342.604, Finance Code, by adding Subsection (c) to require a creditor who extends consumer credit to a member of the United States military or a dependent of a member of the United States military to comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

SECTION 3. Amends Subchapter M, Chapter 342, Finance Code, by adding Sections 342.606 and 342.607, as follows:

Sec. 342.606. REQUIREMENTS FOR DEFERRED PRESENTMENT TRANSACTIONS. (a) Provides that the provisions of Subchapter F (Alternate Charges for Certain Loans) apply to a deferred presentment transaction made under this subchapter.

(b) Prohibits the combined interest and fees for a deferred presentment transaction made under this subchapter with a maximum cash advance computed under Subchapter C (Revised Ceilings and Brackets), Chapter 341 (General Provisions), using a reference base amount that is not more than \$200, as an alternative to the rate provided by Sections 342.252 (Alternate Interest Charge), 342.253 (Maximum Interest Charge for Loan with Single Repayment), and 342.259 (Loans with Larger Advances), from exceeding 15 percent of the amount advanced.

(c) Prohibits a lender from entering into a deferred presentment transaction in which the amount of cash advanced exceeds 35 percent of the borrower's gross monthly income.

(d) Provides that on the prepayment of a deferred presentment transaction, the finance charge authorized under this section is considered to be earned at the time the transaction is made and is not subject to refund.

(e) Requires a lender to accept partial payment of the outstanding principal balance at any time during regular business hours.

(f) Prohibits a lender from, for a fee, renewing, rolling over, or otherwise consolidating a deferred presentment transaction. Defines "roll over" for purposes of this subsection.

(g) Defines "consecutive loan" in this subsection. Requires a lender, if a borrower enters into a third consecutive loan, to automatically convert the loan at no additional cost under a written repayment plan as authorized by this subsection under which the borrower must be allowed to repay the loan in not less than four substantially equal installments. Provides that a lender is not required to enter into a repayment plan with a borrower more frequently than once every 12 months. Requires the borrower to agree not to enter into an additional deferred presentment transaction during the repayment plan term.

(h) Prohibits a lender from imposing a default charge in connection with a deferred presentment transaction.

(i) Authorizes the Finance Commission of Texas (finance commission) by rule to require a lender to provide to a borrower materials approved by the consumer credit commissioner (commissioner) that are designed to:

(1) inform the borrower of the duties, rights, and responsibilities of the parties to a deferred presentment transaction; and

(2) educate a borrower about matters of financial literacy.

(j) Prohibits a lender from charging or receiving, in addition to the interest and charges provided for by this section, any additional amount, whether in the form of broker fees, placement fees, or another fee or charge, except costs and disbursements in connection with any suit to collect a deferred presentment transaction, including reasonable attorney's fees that are incurred by a lender as a result of the suit and to which the lender is entitled by law.

(k) Requires a lender that engages in deferred presentment transactions, as part of the annual report required under Section 342.559 (Annual Report), to submit the following information to the commissioner covering the preceding calendar year:

(1) the amount of cash advanced under each deferred presentment transaction made, serviced, or brokered by the lender;

(2) the total number of deferred presentment transactions made, serviced, or brokered by the lender;

(3) data regarding extended payment plans and alternative payment arrangements offered by the lender;

(4) the gross monthly income reported by an individual to whom a cash advance was made under a deferred presentment transaction, if the lender collects that information from individuals;

(5) the total amount of interest, fees, or charges collected by the lender for making, servicing, or brokering deferred presentment transactions; and

(6) any other information required by the commissioner.

(l) Provides that, for purposes of Subsections (c) and (k)(4), a lender is not responsible of an individual borrower's failure to provide accurate information relating to the borrower's income.

(m) Prohibits a person from threatening or pursuing criminal charges against a borrower related to a check or other debit authorization provided by the borrower as part of a deferred presentment transaction. Requires that this information be disclosed in the contract with the borrower, immediately above the place where the borrower signs the contract, in at least 12-point, bold, an underlined type. Sets forth the required language.

Sec. 342.607. ATTEMPT TO EVADE LAW. Provides that this subchapter applies to a person who offers, makes, or brokers a deferred presentment transaction, who assists a consumer in this state in obtaining a deferred presentment transaction, or who wholly or partly arranges a deferred presentment transaction for a third party, regardless of whether the third party is exempt from licensing under this subtitle or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party through any communication method, including mail, telephone, the Internet, or other electronic means.

SECTION 4. Amends Section 342.501(a), Finance Code, to prohibit an authorized lender from inducing or permitting a person or a husband and wife to be directly or indirectly obligated under more than one loan contract at any time for the purpose or with the effect of obtaining an amount of interest greater than the amount of interest otherwise authorized under this chapter for a loan of that aggregate amount with a maximum interest charge computed under Section 342.201(a) (relating to certain additional charges on a loan contract that is a regular transaction and is not secured by real property), Section 342.201(e) (relating to using the true daily earnings method or the scheduled installment earnings method on a loan contract that is not secured by real property), Section 342.252, Section 342.259, Section 342.606, Section 342.654, or any combination of those sections.

SECTION 5. Amends Chapter 342, Finance Code, by adding Subchapter N, as follows:

SUBCHAPTER N. AUTO TITLE LOANS

Sec. 342.651. DEFINITIONS. (a) Defines "auto title loan" and "lender" in this subchapter.

Sec. 342.652. GENERAL REQUIREMENTS. Requires that an auto title loan be in writing and have a loan term of at least one month.

Sec. 342.653. APPLICABILITY OF OTHER LAW. (a) Provides that the provisions of Subchapters E (Interest Charges on Non-Real Property Loans) and F apply to an auto title loan made under this subchapter.

(b) Requires a lender that extends consumer credit to a member of the United States military or a dependent of a member of the United States military to comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

Sec. 342.654. AUTHORIZED FINANCE CHARGES. (a) Authorizes an auto title loan made under this subchapter, as an alternative to the rate provided by Sections 342.201 (Maximum Interest Charge), 342.252, 342.253 and 342.259, to provide for a finance charge that does not exceed in the aggregate:

(1) 20 percent per month on the portion of the cash advance that does not exceed \$700;

(2) 18 percent per month on the portion of the cash advance that is greater than \$700 but does not exceed \$1,400; and

(3) 15 percent per month on the portion of the cash advance that is greater than \$1,400.

(b) Provides that on the prepayment of an auto title loan, the finance charge authorized under this section is considered to be earned at the time the loan is made and is not subject to refund.

(c) Prohibits a lender from charging or receiving, in addition to the interest and charges provided for by this section, any additional amount, whether in the form of broker fees, placement fees, or another fee or charge, except fees authorized under Section 342.657(c) and costs and disbursements in connection with any suit to collect an auto title loan, including reasonable attorney's fees that are incurred by a lender as a result of the suit and to which the lender is entitled by law.

Sec. 342.655. ACCEPTANCE OF PARTIAL PAYMENT. Requires a lender to accept partial payment of the principal loan balance of an auto title loan at any time during regular business hours.

Sec. 342.656. RENEWALS. (a) Defines "consecutive loan" and "renewal" in this section.

(b) Requires that the minimum required payment or finance charge, beginning with the first renewal and at each successive renewal after the first renewal, reduce the principal balance by at least 10 percent of the original principal balance of the auto title loan. Authorizes the lender, alternatively, if the borrower fails to pay on the due date, to declare the outstanding principal balance and any finance charge to be immediately due and payable.

(c) Provides that after three renewals or consecutive loans of an auto title loan, if a borrower is unable to pay on the due date the amount owing, then the lender is required to automatically convert the loan at no additional cost under a written repayment plan as authorized by this section. Provides that a lender is not required to enter into a repayment plan with a borrower more frequently than once every 12 months. Requires the borrower to repay the amount owed according to the following terms:

(1) requires that the borrower be allowed to repay the loan in not less than four substantially equal installments; and

(2) prohibits the lender from charging a borrower any additional interest or fee for using the repayment plan.

(d) Prohibits an lender from imposing a default charge in connection with an auto title loan.

Sec. 342.657. POSSESSION OF MOTOR VEHICLE OR CERTIFICATE OF TITLE.

(a) Requires the borrower, in an auto title loan subject to this subchapter, to agree to the lender's keeping possession of the certificate of title.

(b) Requires the borrower to have the exclusive right to redeem the certificate of title by repaying the auto title loan in full and by complying with the auto title loan agreement. Requires the authorized lender, when the certificate of title is redeemed, to release the security interest in the motor vehicle and return the certificate of title to the borrower.

(c) Requires that the auto title loan agreement provide that, on failure by the borrower to redeem the certificate of title at the end of the original term, or at the end of any renewal or renewals of the agreement period, the lender is allowed to take possession of the motor vehicle. Entitles the borrower, if after taking possession of the vehicle under this subsection the lender sells the vehicle for an amount that exceeds the amount owed to the lender by the borrower, to the excess amount. Authorizes a lender to assess and collect reasonable fees to recover the costs of taking possession of and selling a motor vehicle under this section.

(d) Provides that the lender is required to retain physical possession of the certificate of title for the entire term of the auto title loan agreement, but is not required to retain physical possession of the motor vehicle at any time.

(e) Authorizes a lender to only hold unencumbered certificates of title for pledge.

Sec. 342.658. NO CRIMINAL PROSECUTION. Prohibits a person from threatening or pursuing criminal charges against a borrower simply because the borrower defaulted on the loan. Requires that this information be disclosed in the contract with the borrower, immediately above the place where the borrower signs the contract, in at least 12-point, bold, an underlined type. Sets forth the required language.

Sec. 342.659. CONSIDERATION OF BORROWER'S ABILITY TO REPAY. Requires the lender, when making or negotiating an auto title loan, to consider, in determining the size, duration, and schedule of installments of the loan, the financial ability of the borrower to repay the loan, and specifically evaluate whether the borrower will be reasonably able to pay the loan in cash at the time and in the manner provided in the auto title loan agreement.

Sec. 342.660. CONSUMER INFORMATION. Authorizes the finance commission by rule to require a lender to provide to a borrower materials approved by the commissioner that are designed to:

(1) inform the borrower of the duties, rights, and responsibilities of the parties to an auto title loan transaction; and

(2) educate a borrower about matters of financial literacy.

Sec. 342.661. INFORMATION REQUIRED FOR ANNUAL REPORT. (a) Requires a lender that engages in auto title loans, as part of the annual report required under Section 342.559, to submit the following to the commissioner covering the preceding calendar year:

- (1) the amount of cash advanced under each auto title loan made, serviced, or brokered by the lender;
- (2) the total number of auto title loans made, serviced, or brokered by the lender;
- (3) data regarding extended payment plans and alternative payment arrangements offered by the lender;
- (4) the gross monthly income reported by an individual to whom a cash advance was made under an auto title loan, if the lender collects that information from individuals;
- (5) the total amount of interest, fees, or charges collected by the lender for making, servicing, or brokering auto title loans;
- (6) the total number of motor vehicles repossessed by the lender; and
- (7) any other information required by the commissioner.

(b) Provides that, for purposes of Subsection (a)(4), a lender is not responsible of an individual borrower's failure to provide accurate information relating to the borrower's income.

Sec. 342.662. **ATTEMPT TO EVADE LAW.** Provides that this subchapter applies to a person who offers, makes, or brokers an auto title loan, who assists a consumer in this state in obtaining an auto title loan, or who wholly or partly arranges an auto title loan for a third party, regardless of whether the third party is exempt from licensing under this subtitle or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party through any communication method, including mail, telephone, the Internet, or other electronic means.

SECTION 6. Amends Section 393.001(3), Finance Code, to redefine "credit services organization."

SECTION 7. Amends Subchapter D, Chapter 393, Finance Code, by adding Section 393.308, as follows:

Sec. 393.308. **OBTAINING EXTENSIONS OF CONSUMER CREDIT PROHIBITED.** Prohibits a credit services organization from obtaining an extension of consumer credit for a consumer or assist a consumer in obtaining an extension of consumer credit.

SECTION 8. (a) Requires the commissioner to prepare and publish a report not later than December 1, 2012, regarding the use of deferred presentment transactions in this state. Requires the commissioner, in preparing the report, to study the need for comprehensive data reporting and the value and feasibility of a real-time statewide database system to provide data for policy development and to enhance a lender's evaluation of a borrower's ability to repay a deferred presentment transaction. Provides that, in reviewing the value and feasibility of a real-time statewide database system, as part of the study, the commissioner should consider the use of a database verification fee collected from the borrower to recover the actual costs of the system. Requires the commissioner to also study the appropriateness of the rate structure provided by Section 342.606, Finance Code, as added by this Act, in regard to the manner in which the deferred presentment transactions are used, and assess whether the protections included in that section are effectively addressing the cycle of ongoing debt that can be caught by high-cost single-payment loans.

(b) Requires the commissioner to prepare and publish a report not later than December 1, 2012, regarding the use of auto title loans in this state. Requires the commissioner, in preparing the report, to study the need for comprehensive data reporting and the value

and feasibility of a real-time statewide database system to provide data for policy development and to enhance a lender's evaluation of a borrower's ability to repay an auto title loan. Provides that, in reviewing the value and feasibility of a real-time statewide database system, as part of the study, the commissioner should consider the use of a database verification fee collected from the borrower to recover the actual costs of the system. Requires the commissioner to also study the appropriateness of the rate structure provided by Section 342.654, Finance Code, as added by this Act, in regard to the manner in which the auto title loans are used, and assess whether the protections included in that section are effectively addressing the cycle of ongoing debt that can be caught by high-cost single-payment loans.

SECTION 9. Effective date: September 1, 2011.