

By: Frazier

H.B. No. 4359

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of accounts receivable purchase transaction actions

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Business and Commerce Code, is amended by adding a new Chapter 60 as follows:

CHAPTER 60. ACCOUNTS RECEIVABLE PURCHASE TRANSACTIONS

Sec. 60.001. DEFINITIONS. For the purposes of this chapter, these terms are defined as follows:

(1) "Account receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts or payment intangibles, as defined in Texas Business and Commerce Code, Chapter 9, Section 9.102, at a discount to the accounts' or payment intangibles' expected value.

(2) "Broker" means any person who, for compensation or the expectation of compensation, obtains an account receivable purchase transaction or an offer for an account receivable purchase transaction from a third party that would, if executed, be binding upon that third party and communicates that offer to a business located in Texas. The term "broker" excludes a "provider," and any person whose compensation is not based on or dependent upon the terms of the specific account receivable purchase transaction obtained or offered.

1           (3) "Provider" means a person who consummates more  
2 than five account receivable purchase transactions in Texas during  
3 any calendar year, including a person who, under a written  
4 agreement with a depository institution, offers one or more account  
5 receivable purchase transactions provided by the depository  
6 institution via an online platform that the person administers.

7           Sec. 60.02. EXEMPTIONS. The provisions of this subsection  
8 do not apply to

9           (a) an account receivable purchase transaction offered or  
10 made by a provider:

11           (1) that is a depository institution, a subsidiary of  
12 a depository institution, or a service corporation for a depository  
13 institution that is regulated by a federal banking agency;

14           (2) that is regulated under the federal Farm Credit  
15 Act 12 U.S.C. Sec. 2001 et seq.; and

16           (3) that is licensed as a money transmitter in any  
17 state;

18           (b) a person who consummates five or fewer account  
19 receivable purchase transactions in Texas during any 12-month  
20 period;

21           (c) a person who offers or makes an account receivable  
22 purchase transaction in connection with the sale or lease of a  
23 product or service that:

24           (1) the person manufactures, licenses, or  
25 distributes;

26           (2) the person's parent company or the person's  
27 directly or indirectly owned and controlled subsidiary

1 manufactures, licenses, or distributes.

2 (d) an account receivable purchase transaction of more than  
3 \$500,000.

4 Sec. 60.03. DISCLOSURES. (a) At or before consummating an  
5 account receivable purchase transaction, a provider shall disclose  
6 the terms of the account receivable purchase transaction in  
7 accordance with subsection (c).

8 (b) Only one disclosure must be provided for each account  
9 receivable purchase transaction, and a disclosure is not required  
10 as a result of a modification or forbearance.

11 (c) A provider shall disclose the following terms of the  
12 account receivable purchase transaction:

13 (1) the total amount of funds provided to the  
14 business;

15 (2) the total amount of funds disbursed to the  
16 business, if less than the amount described in Subsection (c)(1);

17 (3) the total amount to be paid to the provider;

18 (4) the total dollar cost, calculated by finding the  
19 difference between:

20 (A) the amount described in Subsection (c)(1);

21 and

22 (B) the amount described in Subsection (c)(3);

23 (5) the manner, frequency, and amount of each payment;

24 or if the amount of each payment may vary, the manner, frequency,  
25 and estimated amount of the initial payment; and

26 (6) a statement of whether there are any costs or  
27 discounts associated with prepayment, including a reference to the

1 paragraph in the account receivable purchase transaction agreement  
2 that creates each cost or discount.

3 (d) The account receivable purchase transaction agreement  
4 shall include a description of the methodology for calculating any  
5 variable payment amount and the circumstances that may cause a  
6 payment amount to vary.

7 Sec. 60.04. ACCOUNT RECEIVABLE PURCHASE TRANSACTION. (a)  
8 An account receivable purchase transaction cannot be made for  
9 personal, family, or household purposes.

10 (b) An account receivable purchase transaction is a form of  
11 an account purchase transaction as established by Section 306.103,  
12 Finance Code. An amount of a discount in, or charged under, an  
13 account receivable purchase transaction is not interest.

14 (c) For the purposes of this chapter, the parties'  
15 characterization of an account receivable purchase transaction as a  
16 purchase is conclusive that the account receivable purchase  
17 transaction is not a transaction for the use, forbearance, or  
18 detention of money.

19 Sec. 60.05. ACCOUNT RECEIVABLE PURCHASE TRANSACTION BROKER  
20 REGISTRATION REQUIREMENTS. (a) Beginning January 1, 2024, it is  
21 unlawful for a broker to engage in business as a broker of account  
22 receivable purchase transactions in Texas or with a Texas business,  
23 unless the person annually registers with the Secretary of State in  
24 accordance with this chapter.

25 (b) the officers or employees of a broker are not required  
26 to register under this chapter if the broker for whom the individual  
27 is an officer or employee is registered.

1       (c) To register or renew a registration under this section,  
2 a broker shall:

3           (1) pay a fee established by the Secretary; and

4           (2) submit a registration statement containing the  
5 information described in Subsection (d).

6       (d) Each registration or renewal statement shall state:

7           (1) the name of the broker and name of the business  
8 under which the service will be transacted;

9           (2) the address of the broker's principal place of  
10 business;

11           (3) if the broker, or an officer, director, employee,  
12 manager, operator, or principal of that broker has a conviction of a  
13 felony involving an act of fraud, dishonesty, breach of trust, or  
14 money laundering.

15       (e) the Secretary may implement rules to implement and  
16 enforce this section.

17       Sec. 60.06. ENFORCEMENT. (a) The Attorney General is  
18 authorized to seek to enjoin violations of this chapter. The court  
19 having jurisdiction may enjoin such violations notwithstanding the  
20 existence of an adequate remedy at law.

21       (b) The Attorney General may also seek, and the court may  
22 order or decree, damages and such other relief allowed by law,  
23 including restitution to the extent available under applicable law.

24 Persons entitled to any relief as authorized by this section shall  
25 be identified by order of the court within 180 days from the date of  
26 the order permanently enjoining the unlawful act or practice.

27       (c) In any action brought by the Attorney General by virtue

1 of the authority granted in this provision, the Attorney General  
2 shall be entitled to seek reasonable attorney fees and costs.

3 (d) This chapter does not create a private right of action.

4 SECTION 2. This act takes effect September 1, 2023.