

By: Marchant

H.B. No. 3505

A BILL TO BE ENTITLED

AN ACT

relating to deferred presentment transactions.

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

SECTION 1. Section 342.104, Finance Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The commissioner shall approve the application and issue to the applicant a license to make loans under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the applicant has net assets of at least \$25,000 available for the operation of the business, except as provided by Subsection (e).

(e) An applicant for a license for an office at which the applicant will engage in deferred presentment transactions and who engages or will engage in deferred presentment transactions at more than one office is not required to have total net assets of more than \$250,000 available for operation of all of those offices.

SECTION 2. Section 342.153, Finance Code, is amended by

1 amending Subsection (a) and adding Subsection (e) to read as  
2 follows:

3 (a) Except as provided by Subsection (b), ~~[or]~~ (c), or (e),  
4 a license holder shall maintain for each office for which a license  
5 is held net assets of at least \$25,000 that are used or readily  
6 available for use in conducting the business of that office.

7 (e) A license holder who engages in deferred presentment  
8 transactions at more than one office is not required to maintain  
9 total net assets of more than \$250,000 that are used or readily  
10 available for use in conducting the business of all of those  
11 offices.

12 SECTION 3. Chapter 342, Finance Code, is amended by adding  
13 Subchapter M to read as follows:

14 SUBCHAPTER M. DEFERRED PRESENTMENT TRANSACTIONS

15 Sec. 342.601. DEFINITIONS. In this subchapter:

16 (1) "Instrument" means a personal check or  
17 authorization to transfer or withdraw funds from an account of a  
18 borrower made payable to a person subject to this subchapter.

19 (2) "Lender" means an authorized lender.

20 (3) "Renewal" means a transaction in which a borrower  
21 pays in cash the finance charge payable under a deferred  
22 presentment transaction and refinances all or part of the advance  
23 of the deferred presentment transaction with a new deferred  
24 presentment transaction.

25 (4) "Third-party provider" means a person who  
26 transacts or negotiates a deferred presentment transaction by  
27 providing services in cooperation with and for the benefit of a

1 lender.

2 Sec. 342.602. WRITTEN AGREEMENT REQUIREMENTS. Each  
3 deferred presentment transaction and renewal shall be documented by  
4 a written agreement. The written agreement must:

5 (1) state the name of the borrower, the transaction  
6 date, the amount of the instrument, and the total amount of finance  
7 charges, expressed both as a dollar amount and as an annual  
8 percentage rate;

9 (2) include all disclosures required by Section  
10 342.603; and

11 (3) set a date, not later than the 45th day after the  
12 transaction date, on which the instrument may be deposited,  
13 negotiated, or presented for payment.

14 Sec. 342.603. NOTICE TO CONSUMERS. A lender shall provide  
15 the following notice in a prominent place on each deferred  
16 presentment transaction agreement in at least 10-point type that is  
17 bold-faced, capitalized, underlined, or otherwise conspicuously  
18 set out from the surrounding written material:

19 "A deferred presentment transaction is not intended to meet  
20 long-term financial needs. This money should be used only to  
21 meet short-term cash needs. Renewing the transaction rather  
22 than paying the debt in full when due will incur additional  
23 finance charges."

24 Sec. 342.604. AUTHORIZED FINANCE CHARGE. A lender may  
25 charge for each deferred presentment transaction a finance charge  
26 not to exceed \$18 for every \$100 advanced. A lender may also charge  
27 a pro rata finance charge for any incremental amount advanced in

1 excess of a multiple of \$100. The charge is considered fully earned  
2 as of the date of the transaction. The lender may charge only  
3 charges expressly authorized by this subchapter in connection with  
4 a deferred presentment transaction.

5 Sec. 342.605. MAXIMUM CASH ADVANCE-RIGHT TO RESCIND. (a)

6 A lender may not advance to a borrower an amount greater than \$500.

7 (b) A borrower has the right to rescind the deferred  
8 presentment transaction not later than 5 p.m. on the next business  
9 day after the transaction date.

10 (c) This chapter does not prohibit a lender from being a  
11 party, with the same borrower at the same time, to a deferred  
12 presentment transaction and a loan authorized by this chapter other  
13 than a deferred presentment transaction.

14 Sec. 342.606. MINIMUM AND MAXIMUM TERM. A lender may not  
15 engage in a deferred presentment transaction with a term of less  
16 than seven or more than 45 days.

17 Sec. 342.607. MAXIMUM OUTSTANDING TRANSACTIONS NOTICE. A  
18 lender shall provide the following notice in a prominent place on  
19 each deferred presentment transaction agreement in at least  
20 10-point type that is bold-faced, capitalized, underlined, or  
21 otherwise conspicuously set out from the surrounding written  
22 material:

23 "State law prohibits lenders from making deferred presentment  
24 transactions exceeding \$500 outstanding to a debtor at any one  
25 time. Exceeding this amount may create financial hardships  
26 for you and your family. You have the right to rescind this  
27 deferred presentment transaction not later than 5 p.m. the

1 next business day following this transaction."

2 Sec. 342.608. RENEWAL. (a) A deferred presentment  
3 transaction agreement must require that, before renewal, the  
4 borrower must have paid all finance charges accrued to the time of  
5 the renewal. In the case of any subsequent renewal after the first  
6 renewal, the borrower must also pay an amount equal to at least five  
7 percent of the principal amount of the loan being renewed. A  
8 deferred presentment transaction may not be renewed more than five  
9 consecutive times. After the last renewal, the borrower shall pay  
10 the debt in cash or its equivalent. If the borrower does not pay the  
11 debt, the lender may deposit, negotiate, or otherwise present for  
12 payment the borrower's instrument.

13 (b) On renewal, the lender may assess additional finance  
14 charges not to exceed the amount authorized under Section 342.604.  
15 A lender may also charge a pro rata finance charge for any  
16 incremental amount advanced in excess of a multiple of \$100.

17 (c) A transaction is completed when the lender presents the  
18 instrument for payment or initiates an Automated Clearing House  
19 (ACH) debit to the borrower's bank account to collect on the  
20 instrument or when the borrower redeems the instrument by paying  
21 the full amount of the instrument to the holder.

22 (d) At the time of the second renewal of a loan, the lender  
23 shall furnish to the borrower:

24 (1) reference information on one or more consumer  
25 credit counseling agencies or services; and

26 (2) any materials furnished to the lender by the  
27 commissioner if the commissioner furnishes the lender with

1 educational materials on consumer credit counseling for the purpose  
2 of making the materials available to borrowers.

3 (e) A lender may refinance a deferred presentment  
4 transaction without limitation as to the number of refinancings as  
5 authorized by Subchapter F.

6 Sec. 342.609. FORM OF ADVANCE. A lender may pay the  
7 advance from a deferred presentment transaction to the borrower in  
8 the form of a business instrument, a money order, or cash. The  
9 lender or the lender's third-party provider may not charge an  
10 additional finance charge or fee for cashing the lender's business  
11 instrument.

12 Sec. 342.610. ENDORSEMENT OF INSTRUMENT. A lender may not  
13 negotiate or present an instrument for payment unless the  
14 instrument is endorsed with the actual business name of the lender.

15 Sec. 342.611. REDEMPTION OF INSTRUMENT. Before the lender  
16 negotiates or presents the instrument, the borrower has the right  
17 to redeem any instrument held by the lender as a result of a  
18 deferred presentment transaction if the borrower pays the full  
19 amount of the instrument to the lender.

20 Sec. 342.612. AUTHORIZED DISHONORED INSTRUMENT CHARGE. If  
21 an instrument held by a lender as a result of a deferred presentment  
22 transaction is returned to the lender from a payor financial  
23 institution due to insufficient funds, a closed account, or a  
24 stop-payment order, the lender has the right to exercise all civil  
25 means authorized by law to collect the face value of the instrument.  
26 In addition, the lender may contract for and collect fees  
27 authorized by Section 342.502. The lender may not collect any other

1 fees as a result of default.

2 Sec. 342.613. POSTING OF CHARGES. A lender offering a  
3 deferred presentment transaction shall post at any place of  
4 business where a deferred presentment transaction is made a notice  
5 of the charges imposed for a deferred presentment transaction.

6 Sec. 342.614. NOTICE ON ASSIGNMENT OR SALE OF  
7 INSTRUMENTS. Before the sale or assignment of instruments held by  
8 a lender as a result of a deferred presentment transaction, the  
9 lender shall place a notice on the instrument in at least 10-point  
10 type that is bold-faced, capitalized, underlined, or otherwise  
11 conspicuously set out from the surrounding written material to  
12 read:

13 "This is a deferred presentment transaction instrument."

14 Sec. 342.615. RECORDS AND ANNUAL REPORTS. A lender shall  
15 maintain records and file an annual report in accordance with  
16 Sections 342.558 and 342.559.

17 Sec. 342.616. AUTHORITY TO CONDUCT DEFERRED DEPOSIT LOAN  
18 BUSINESS. Only an authorized lender may lawfully engage in the  
19 deferred presentment transaction business. A licensed lender shall  
20 obtain and maintain a separate license for each location where  
21 deferred presentment transaction business is conducted. A deferred  
22 presentment transaction is a loan subject to this chapter for  
23 purposes of the application of Section 342.051.

24 Sec. 342.617. APPLICATION OF SUBCHAPTER TO THIRD-PARTY  
25 PROVIDER. If a deferred presentment transaction is offered at the  
26 place of business of a third-party provider:

27 (1) the third-party provider shall provide to the

1 commissioner a sample copy of the form of a written deferred  
2 presentment transaction agreement if the third-party provider  
3 participates in the preparation, execution, delivery, or custody of  
4 the agreement, and each time the form is modified the third-party  
5 provider shall provide to the commissioner a copy of the modified  
6 form;

7 (2) the notice under Section 342.613 shall be posted  
8 in the third-party provider's place of business;

9 (3) the third-party provider shall, through a  
10 combination of the language in the written agreement required under  
11 Section 342.602, the notice to be posted under Subdivision (2), or  
12 other signs, notices, or information materials, make available to  
13 transaction applicants the name, address, and telephone number of  
14 the lender making the deferred presentment transaction; and

15 (4) the third-party provider shall comply with the  
16 licensing provisions of this chapter.

17 Sec. 342.618. EXAMINATION AND INVESTIGATION. (a) A  
18 licensed lender may be examined and investigated in accordance with  
19 Section 342.552.

20 (b) The commissioner or the commissioner's representative  
21 may, at the times the commissioner considers necessary, examine and  
22 investigate a third-party provider's place of business to determine  
23 the provider's compliance with this subchapter. The third-party  
24 provider shall give the commissioner or the commissioner's  
25 representative free access to its place of business for that  
26 purpose. During an examination, the commissioner or the  
27 commissioner's representative may administer oaths and examine any



1 person under oath on any subject pertinent to a matter that the  
2 commissioner is authorized to consider, investigate, or secure  
3 information about under this subchapter. A third-party provider  
4 shall pay to the commissioner an amount assessed by the  
5 commissioner to cover the direct and indirect cost of an  
6 examination of the provider under this section.

7 Sec. 342.619. APPLICABILITY TO LENDER. Except as  
8 preempted by federal law, all other applicable provisions of this  
9 subchapter apply to a deferred presentment transaction and a  
10 lender.

11 Sec. 342.620. APPLICABILITY OF PROVISIONS OF CHAPTER 341  
12 AND THIS CHAPTER. Chapter 341 and the other provisions of this  
13 chapter apply to a lender unless those provisions are inconsistent  
14 with this subchapter.

15 Sec. 342.621. CRIMINAL CULPABILITY. A borrower is not  
16 subject to a criminal penalty for entering into a deferred  
17 presentment transaction agreement or in the event the instrument is  
18 dishonored, unless the borrower violated Section 32.32, Penal Code,  
19 or violated Section 32.41, Penal Code, and is presumed to have  
20 knowledge of insufficient funds under Section 32.41(b)(1), Penal  
21 Code.

22 Sec. 342.622. DECEPTIVE TRADE PRACTICE. A deferred  
23 presentment transaction made by a person other than a lender is a  
24 deceptive trade practice actionable under Subchapter E, Chapter 17,  
25 Business & Commerce Code.

26 SECTION 4. This Act takes effect September 1, 2003, and  
27 applies only to acts or omissions occurring on or after that date.