

BILL ANALYSIS

C.S.H.B. 846
By: Flynn
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a deferred presentment provider must offer the loan under Chapter 342, Subchapter F, or by serving as an agent for an out-of-state national bank. The majority of lenders offering these unsecured, short-term loans serve as an agent thereby excluding Texas-based banks and businesses.

The law is silent as to how the consumer is protected against unscrupulous lenders who promote their services as catalog rebates, land deals, computer purchases, Internet loans, jewelry deals, and telephone cards often with one and two year terms.

The purpose of the substitute is to combat unscrupulous lenders by creating regulatory controls and consumer protections for deferred presentment transactions.

C.S.H.B. 846 provides for the regulation of deferred presentment transactions and lenders for deferred presentment transactions.

RULEMAKING AUTHORITY

It is the opinion of this committee that this bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

C.S.H.B. 846 amends Chapter 342, Finance Code, as follows:

The substitute requires lenders to have at least \$150,000 in net assets before getting licensed by the Consumer Credit Commissioner. An applicant or license holder is not required to have total net assets of more than \$2.5 million available for the operation of all offices that engage in deferred presentment transactions.

The substitute defines "consecutive transaction," "instrument," "lender," and "third-party provider."

The substitute requires each deferred presentment transaction and renewal to be documented by a written agreement. Requires the written agreement to contain the name of the borrower, transaction date, the amount of the instrument, and a statement of the total amount of finance charges, expressed both as a dollar amount and as an annual percentage rate. Specifies the amount of the NSF fees that can be charged. Requires the written agreement to include all disclosures required by Section 342.604. Requires the written agreement to set a date, not more than 45 days after the loan transaction date, on which the instrument is authorized to be deposited, negotiated, or presented for payment.

The substitute provides that contracts used for deferred presentment transactions must comply with Sec. 341.502, Finance Code, which requires plain language and review of documents by the Commissioner.

The substitute requires a lender to provide a notice in a prominent place on each deferred presentment transaction agreement in at least 12-point type, bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material

The substitute authorizes a lender to charge for each deferred presentment transaction a finance charge not to exceed \$15 for every \$100 advanced. Requires the charge to be deemed fully earned as of the date of the transaction. Authorizes the lender to charge only those fees expressly authorized in this subchapter in connection with a deferred presentment transaction.

The substitute requires a lender to not advance to a borrower a loan amount greater than \$1000. Requires a borrower to have the right to rescind the deferred presentment transaction no later than 5 p.m. on the next business day following the deferred presentment transaction. Allows a lender to be a party with the same borrower at the same time as long as the transaction is not a deferred presentment transaction.

The substitute prohibits a lender from engaging in making a deferred presentment transaction with a term less than 7 days of more than 45 days.

The substitute requires a lender to provide a notice for maximum outstanding transactions in a prominent place on each deferred deposit agreement in at least 12-point type bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material.

The substitute prohibits a deferred presentment transaction from being renewed more than two consecutive times. Requires the borrower to pay an amount equal to 10% of the principal amount.

The substitute requires the lender to determine if the applicant has any outstanding transactions by requiring the applicant to sign an affidavit stating whether the applicant has any other transactions. Lender must verify the accuracy of the affidavit through commercially reasonable means. Lender must review their own records to verify that the applicant does not have outstanding transactions that would exceed the \$1000 limit.

The substitute provides that a transaction is completed when the lender presents the instrument for payment or initiates an Automated Clearing House (ACH) debit to the borrower's bank account to collect on the instrument or when the borrower redeems the instrument by paying the full amount of the instrument to the holder. Requires the lender, at the time of the second consecutive transaction to provide reference information on one or more consumer credit counseling agencies and to provide educational materials on consumer credit counseling furnished to the lender by the commissioner. On the second consecutive transaction, the lender shall provide an option to enter into a repayment plan conspicuously disclosing the terms. To exercise the repayment plan option, the borrower shall request in writing prior to the transaction due date. The repayment plan consists of four equal payments with a processing fee of 10% not to exceed twenty dollars. The borrower shall agree not to enter into any other transaction during the repayment plan term.

The substitute authorizes a lender to pay the proceeds from a deferred presentment transaction to the borrower in the form of a business instrument, a money order, cash, or other available form as the borrower may choose. Requires that the borrower not be charged an additional finance charge or fee for cashing the lender's business instrument.

The substitute prohibits a lender from negotiating or presenting an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

The substitute prohibits lenders from accepting more than one personal check as the basis for the transaction.

The substitute requires the borrower, prior to the lender's negotiating or presenting the instrument, to have the right to redeem any instrument held by the lender as a result of a deferred presentment loan if the borrower pays the full amount of the instrument to the lender.

The substitute provides that if an instrument held by a lender as a result of a deferred presentment loan is returned to the lender from a payor's financial institution due to insufficient funds, a closed account, or a stop-payment order, the lender has the right to exercise all civil means authorized by law to collect the face value of the instrument. Limits the assessment of an insufficient funds fee to \$20. Prohibits lenders from collecting any other insufficient fees as a result of an instrument that is returned unpaid.

The substitute requires a lender offering a deferred presentment transaction to post at any place of business where deferred presentment transactions are made a notice of the charges imposed for the deferred presentment transaction including the insufficient fee charged pursuant to section 342.617.

The substitute requires the lender, prior to the sale or assignment of instruments held by a lender as a result of a deferred presentment transaction, to place a notice on the instrument in at least 12-point type, bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material containing specific language.

The substitute requires a lender to maintain records and file an annual report in accordance with Sections 342.558, Finance Code.

The substitute requires lenders to report extensive business information to the commissioner that states the lender's assets, liabilities, income, expense, gains and losses, a reconciliation of surplus or net worth, total number of deferred transactions, number of outstanding transactions, minimum, maximum and average dollar amount of transactions, average number of days transactions was deferred, total number and dollar amount of returned checks, and instrument charge offs. The lender shall provide a sworn statement that the lender has not used criminal process to collect payment on transactions. The commissioner shall prepare a consolidated analysis and recapitulation of lender's reports and submit it to the legislature and governor. Lenders are required to report significant proprietary information and are granted confidentiality of the submitted data and shall not be subject to the public disclosure. Consolidated analysis and recapitulation of reports are public information.

The substitute provides that only an authorized lender may lawfully engage in the deferred presentment loan business. Requires a lender to be required to obtain and maintain a separate license for each location where deferred presentment transaction business is conducted. Provides that deferred presentment transactions are deemed to be loans subject to this chapter for purposes of the application of Section 342.051.

The substitute provides that if a third-party provider offers a deferred presentment transaction, the third-party provider shall furnish the commissioner a copy of the written deferred presentment transaction agreement form. Third-party providers shall post notices as required by section 342.618, follow the requirements of section 342.602 and shall comply with licensing, recordkeeping and reporting provisions of this chapter.

The substitute authorizes a licensed lender to be examined and investigated in accordance with Section 342.552 and 342.553, Finance Code. Provides the commissioner or the commissioner's representative ability to investigate a third-party provider's place of business, including the administration of oaths. Requires third party provider to pay the commissioner an amount assessed by the commissioner to cover the costs of examinations.

The substitute provides that all other applicable provisions of this chapter apply to a deferred presentment transaction and a lender, except as preempted by federal law. The subchapter does not apply to credit service organizations in compliance with Chapter 393 or credit service organizations in connection with a loan having an interest rate of 10 percent a year or less.

The substitute provides that the provisions of Chapter 341 and other provisions of this chapter apply to a lender unless those provisions are inconsistent with this subchapter.

The substitute requires a borrower to not be subject to any criminal penalty for entering into a deferred presentment transaction agreement or in the event the instrument is dishonored, unless

the borrower violated Section 32.32 or Section 32.41 (b) (1), Penal Code, and is presumed to have knowledge of insufficient funds under Section 32.41(b)(1), Penal Code.

The substitute provides that a deferred presentment transaction made by a person other than a lender is a deceptive trade practice action under Subchapter E, Chapter 17, Business & Commerce Code.

The substitute prohibits licensed lenders from contacting the borrower's employer about a transaction debt or threaten a borrower with criminal prosecution. Lenders are prohibited from engaging in debt collection against a military, active duty reserve or national guard borrower that has been deployed to combat or combat supporting role, prohibited from garnishing wages.

The substitute requires a lender to honor a repayment agreement entered into with a borrower, including a repayment agreement negotiated through a military counselor or a third-party credit counselor.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 846 modifies the original by adding language that requires lenders to have at least \$150,000 in net assets before getting licensed by the Consumer Credit Commissioner. An applicant is not required to have total net assets of more than \$2.5 million available for the operation of all offices that engage in deferred presentment transactions.

The substitute modifies the original by adding language that provides that contracts used for deferred presentment transactions must comply with Sec. 341.502, Finance Code, which requires plain language and review of documents by the Commissioner.

The substitute modifies the original by changing the requirement that consumer notices placed in prominent locations be in at least 12-point font type instead of 10-point font type.

The substitute modifies the original by adding language that lowers the interest rate cap and strengthens the required notice or disclosure provision.

The substitute modifies the original by adding language that provides for the procedure for determining the completion of a deferred presentment transaction.

The substitute modifies the original by adding language that provides consecutive loans are limited to 2 with 10% pay down on each renewal. The second renewal, lender must offer payment plan of four equal installments with maximum fee of \$20. The consumer cannot enter any new transaction while on payment plan. The substitute also provides for a next business cooling off period after third loan. The substitute provides that the consumer must affirm no other outstanding loans and lender must verify.

The substitute modifies the original by adding language that prohibits a lender from accepting more than one personal check in exchange for the advance.

The substitute modifies the original by adding language that a lender may charge only one insufficient funds fee of \$20 for each deferred presentment transaction in which the presented instrument is returned unpaid.

The substitute modifies the original by adding language that specifies annual loan activity to be included in the required annual report. The substitute modifies the original by adding language that credit service organizations under Chapter 393 or who make loans under 10 percent or less are exempt from regulation.

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The substitute modifies the original by adding language that prohibits lenders from practicing abusive collection practices as well as threatening criminal prosecution of a borrower.

The substitute prohibits lenders from attempting to collect from borrower if deployed by the military and garnishing military wages. Lenders must accept any repayment agreement negotiated by military or third party.