BILL ANALYSIS

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S.B. 617
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Predatory lending has become one of the most critical policy issues facing the financial services industry, particularly in mortgage lending. Nearly every federal financial services regulatory agency has publicly denounced predatory lending and called for more effective regulation to address it. States are implementing a number of initiatives to identify and eliminate predatory financial practices within their borders. The efforts to eliminate predatory lending include educating consumers, conducting targeted examinations, and enforcing tighter regulation on alternative lenders and subprime lenders.

While finding a clear definition of predatory lending is difficult due to the complexity of determining the appropriate level of fees for a given level of risk, predatory lending is characterized by excessively high interest rates or fees, and abusive or unnecessary provisions that take advantage of the borrower. Predatory lenders often target their services to particularly vulnerable customers. They look for people who are not adept in financial matters and lack the financial sophistication to scrutinize loans. Such lenders often prey on households that have limited incomes but significant equity in their homes. The elderly are a primary target for predatory lenders.

As proposed, S.B. 617 strengthens Texas law to protect vulnerable borrowers from harmful predatory lending practices. The bill seeks to curb the worst predatory lending practices, including subterfuge, false or misleading statements, lender acceleration of indebtedness, and balloon payment requirements. S.B. 617 prohibits intentional efforts to avoid the law by structuring a loan transaction in certain ways. Additionally, the bill prohibits lenders from making misleading statements or representations in connection with a home loan, and defines what is considered to be a misleading statement or representation.

S.B. 617 also prohibits lenders from including in a home loan provisions that allow lenders to accelerate the indebtedness at their sole discretion. Further, the bill prohibits balloon payments related to a high cost home loan if the payment becomes due less than 15 years after the date of the loan. Finally, S.B. 617 excuses lenders from violation of its provisions, provided the lenders acted in good faith and take certain steps to correct their actions.

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 A, Chapter 343, Finance Code, by adding Sections 343.004 and 343.005, as follows:

> Sec. 343.004. PROHIBITED SUBTERFUGE. Prohibits a person from intentionally attempting to avoid the application of this chapter by dividing a loan transaction into separate parts for that purpose, by structuring a loan transaction as an open-end credit plan for that purpose, or by any other subterfuge.
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> Sec. 343.005. DECEPTIVE TRADE PRACTICE. Provides that a violation of this chapter is a deceptive trade practice under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code.

SECTION 2. Amends Subchapter B, Chapter 343, Finance Code, by adding Sections 343.105 and 343.106, as follows:

Sec. 343.105. FALSE, MISLEADING, OR DECEPTIVE STATEMENT OR REPRESENTATION. Prohibits a lender from making or causing to be made, directly or indirectly, a false, deceptive, or misleading statement or representation in connection with a home loan. Provides that a statement or representation is deceptive or misleading if it has the capacity or tendency to deceive or mislead a borrower or potential borrower, considering certain factors.

Sec. 343.106. ACCELERATION PROHIBITED. Prohibits a lender from including in a home loan a provision that permits the lender, in the lender's sole discretion, to accelerate the indebtedness.

SECTION 3. Amends Section 343.202, Finance Code, to provide an exception to this section (prohibiting a balloon payment provision) if the balloon payment becomes due not less than 15 years, rather than 60 months, after the date of the loan.

SECTION 4. Amends Subchapter C, Chapter 343, Finance Code, by adding Section 343.207, as follows:

Sec. 343.207. GOOD FAITH VIOLATION. (a) Provides that a lender of a high-cost home loan who acts in good faith but does not comply with this subchapter does not violate this subchapter if the lender establishes that, before the deadline provided by Subsection (b) or (c), the lender notifies the borrower of the failure to comply, makes appropriate restitution, and adjusts the terms of the loan, at the borrower's option, to make the loan function in a certain manner.

(b) Requires the lender, except as provided by Subsection (c), to take the action required by Subsection (a) not later than the 30th day after the date the loan is closed and before the institution of an action relating to the failure to comply.

(c) Requires the lender, if the failure to comply is not intentional and results from a bona fide error, notwithstanding the maintenance by the lender of procedures reasonably designed to avoid such an error, to take the action required by Subsection (a) not later than the 90th day after the date of the discovery of the failure to comply and before the institution of an action relating to the failure to comply or receipt by the lender of a written notice of the failure to comply.

(d) Sets forth the parameters of a bona fide error.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2005.