

By: Flynn, Madden, Eissler, et al.

H.B. No. 846

Substitute the following for H.B. No. 846:

By: Flynn

C.S.H.B. No. 846

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of deferred presentment transactions and
lenders for 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 \$150,000
~~[\$25,000]~~ available for the operation of the business, except as
provided by Subsection (e).

(e) An applicant is not required to have total net assets of
more than \$2.5 million available for the operation of all offices at
which the applicant engages in deferred presentment transactions.

SECTION 2. Section 342.153, Finance Code, is amended by
amending Subsection (a) and adding Subsection (e) to read as

follows:

(a) Except as provided by Subsection (b), ~~or~~ (c), or (e), a license holder shall maintain for each office for which a license is held net assets of at least \$150,000 ~~[\$25,000]~~ that are used or readily available for use in conducting the business of that office.

(e) A license holder is not required to have total net assets of more than \$2.5 million that are used or readily available for use in conducting the business of all offices at which the applicant engages in deferred presentment transactions.

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

SUBCHAPTER M. DEFERRED PRESENTMENT TRANSACTIONS

Sec. 342.601. DEFINITIONS. In this subchapter:

(1) "Consecutive transaction" means a transaction between a borrower and a lender in which the borrower:

(A) pays in cash the finance charge payable under a deferred presentment transaction with the lender and engages in a new deferred presentment transaction with the lender before the end of the same business day; or

(B) refinances all or part of the finance charges and advance of the deferred presentment transaction with a new deferred presentment transaction with the lender before the end of the same business day.

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

1 (3) "Lender" means a lender licensed under this
2 chapter.

3 (4) "Third-party provider" means a person who
4 transacts or negotiates a deferred presentment transaction by
5 providing services in cooperation with and for the benefit of a
6 lender.

7 Sec. 342.602. WRITTEN AGREEMENT REQUIREMENTS. Each
8 deferred presentment transaction shall be documented by a written
9 agreement. The written agreement must:

10 (1) state the name of the borrower, the transaction
11 date, the amount of the instrument, and the total amount of finance
12 charges, expressed both as a dollar amount and as an annual
13 percentage rate;

14 (2) specify the amount of the insufficient funds fee
15 that the lender may charge the borrower under Section 342.617 for a
16 returned instrument;

17 (3) include all disclosures required by Section
18 342.604; and

19 (4) set a date, not later than the 45th day after the
20 transaction date, on which the instrument may be deposited,
21 negotiated, or presented for payment.

22 Sec. 342.603. FILING OF FORM. A lender shall comply with
23 Section 341.502 regarding the form of the loan contract.

24 Sec. 342.604. NOTICE TO CONSUMERS. A lender shall provide
25 the following notice in a prominent place on each deferred
26 presentment transaction agreement in at least 12-point type that is
27 boldfaced, capitalized, underlined, or otherwise conspicuously set

1 out from the surrounding written material:

2 "A deferred presentment transaction is not intended to
3 meet long-term financial needs. This money should be
4 used only to meet short-term cash needs. Renewing or
5 refinancing the transaction rather than paying the
6 debt in full when due will incur additional finance
7 charges."

8 Sec. 342.605. AUTHORIZED FINANCE CHARGE. A deferred
9 presentment transaction may provide for a finance charge not to
10 exceed \$15 for every \$100 advanced. A deferred presentment
11 transaction may also provide for a pro rata finance charge for any
12 incremental amount advanced in excess of a multiple of \$100. The
13 charge is considered fully earned as of the date of the transaction.
14 The lender may assess only charges expressly authorized by this
15 subchapter in connection with a deferred presentment transaction.

16 Sec. 342.606. MAXIMUM CASH ADVANCE--RIGHT TO RESCIND. (a)
17 A lender may not advance to a borrower an amount greater than
18 \$1,000.

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

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

26 Sec. 342.607. MINIMUM AND MAXIMUM TERM. A lender may not
27 engage in a deferred presentment transaction with a term of less

1 than seven or more than 45 days.

2 Sec. 342.608. MAXIMUM OUTSTANDING TRANSACTIONS NOTICE. A
3 lender shall provide the following notice in a prominent place on
4 each deferred presentment transaction agreement in at least
5 12-point type that is boldfaced, capitalized, underlined, or
6 otherwise conspicuously set out from the surrounding written
7 material:

8 "State law prohibits lenders from making deferred
9 presentment transactions exceeding \$1,000 outstanding
10 to a debtor at any one time. Exceeding this amount may
11 create financial hardships for you and your family.
12 You have the right to rescind this deferred
13 presentment transaction not later than 5 p.m. the next
14 business day following this transaction."

15 Sec. 342.609. CONSECUTIVE TRANSACTIONS. A lender may not
16 enter into more than two consecutive transactions following an
17 initial deferred presentment transaction. Each consecutive
18 transaction requires a 10 percent reduction in the principal amount
19 of the debt.

20 Sec. 342.610. MULTIPLE DEFERRED PRESENTMENT TRANSACTIONS.

21 (a) On receiving an application for a deferred presentment
22 transaction, the lender shall determine if the applicant has any
23 outstanding deferred presentment transactions by:

24 (1) requiring the applicant to sign an affidavit
25 stating whether the applicant has any deferred presentment
26 transactions outstanding with the lender or another deferred
27 presentment lender and the status of each loan; and

1 (2) verifying the accuracy of the affidavit through
2 commercially reasonable means.

3 (b) If a lender determines that an applicant has one or more
4 outstanding deferred presentment transactions in which the amounts
5 advanced equal or exceed \$1,000, the lender may not enter into the
6 deferred presentment transaction being applied for.

7 (c) A lender's method of verifying the accuracy of an
8 applicant's affidavit complies with Subsection (a) if the
9 verification method includes a manual investigation or an
10 electronic query of the lender's own records, including records
11 maintained at the location where the loan is being applied for and
12 records maintained at other locations that are owned and operated
13 by the lender or the lender's affiliates.

14 Sec. 342.611. COMPLETION OF DEFERRED PRESENTMENT
15 TRANSACTION. A deferred presentment transaction is completed when:

16 (1) the lender presents the instrument for payment or
17 initiates an Automated Clearing House (ACH) debit to the borrower's
18 bank account to collect on the instrument; or

19 (2) the borrower redeems the instrument by paying the
20 full amount of the instrument to the lender.

21 Sec. 342.612. REQUIRED INFORMATION ON SUBSEQUENT
22 TRANSACTIONS. (a) At the time a borrower enters into a second
23 consecutive deferred presentment transaction with a lender, the
24 lender shall furnish to the borrower:

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

27 (2) any materials furnished to the lender by the

1 commissioner if the commissioner furnishes the lender with
2 educational materials on consumer credit counseling for the purpose
3 of making the materials available to borrowers.

4 (b) If a borrower enters into a second consecutive deferred
5 presentment transaction with a lender, the lender shall provide the
6 borrower an option to repay the loan under a written repayment plan.
7 The borrower must request the repayment plan in writing before the
8 date the borrower must repay the loan. The terms of the repayment
9 plan must be conspicuously disclosed to the borrower at the time of
10 the second consecutive transaction and shall require the borrower
11 to:

12 (1) repay the loan in a minimum of four equal
13 installments, with one installment due on each of the next
14 succeeding dates on which the borrower receives regular wages,
15 compensation, or other income;

16 (2) pay a processing fee for administration of the
17 payment plan of 10 percent of the amount of the advance for each
18 deferred presentment transaction, not to exceed \$20; and

19 (3) agree to not enter into an additional deferred
20 presentment transaction during the repayment plan term.

21 Sec. 342.613. FORM OF ADVANCE. A lender may pay the advance
22 from a deferred presentment transaction to the borrower in the form
23 of a business instrument, a money order, or cash, or in another
24 available form chosen by the borrower. The lender or the lender's
25 third-party provider may not charge an additional finance charge or
26 fee for cashing the lender's business instrument.

27 Sec. 342.614. ENDORSEMENT OF INSTRUMENT. A lender may not

1 negotiate or present an instrument for payment unless the
2 instrument is endorsed with the actual business name of the lender.

3 Sec. 342.615. MULTIPLE INSTRUMENTS PROHIBITED. A lender
4 may not accept more than one personal check in exchange for the
5 advance under a deferred presentment transaction.

6 Sec. 342.616. REDEMPTION OF INSTRUMENT. Before the lender
7 negotiates or presents the instrument, the borrower has the right
8 to redeem any instrument held by the lender as a result of a
9 deferred presentment transaction if the borrower pays the full
10 amount of the instrument to the lender.

11 Sec. 342.617. AUTHORIZED DISHONORED INSTRUMENT CHARGE. If
12 an instrument held by a lender as a result of a deferred presentment
13 transaction is returned to the lender from a payor financial
14 institution due to insufficient funds, a closed account, or a
15 stop-payment order, the lender has the right to exercise all civil
16 means authorized by law to collect the face value of the instrument.
17 In addition, the lender may assess and collect an insufficient
18 funds fee not to exceed \$20. The lender may not collect any other
19 fees as a result of default. A lender may charge only one
20 insufficient funds fee for each deferred presentment transaction in
21 which the presented instrument is returned unpaid.

22 Sec. 342.618. POSTING OF CHARGES. A lender offering a
23 deferred presentment transaction shall post at any place of
24 business where a deferred presentment transaction is made a notice
25 of the charges assessed for a deferred presentment transaction,
26 including an insufficient funds fee charged under Section 342.617.

27 Sec. 342.619. NOTICE ON ASSIGNMENT OR SALE OF INSTRUMENTS.

1 Before the sale or assignment of instruments held by a lender as a
2 result of a deferred presentment transaction, the lender shall
3 place a notice on the instrument in at least 12-point type that is
4 boldfaced, capitalized, underlined, or otherwise conspicuously set
5 out from the surrounding written material to read:

6 "This is a deferred presentment transaction
7 instrument."

8 Sec. 342.620. RECORDS. A lender shall maintain records in
9 accordance with Section 342.558.

10 Sec. 342.621. ANNUAL REPORT. (a) A lender shall file an
11 annual report with the commissioner on a form prescribed by the
12 commissioner that states for the preceding calendar year in detail
13 and under appropriate headings:

14 (1) the assets and liabilities of the lender at the
15 beginning and end of the year;

16 (2) the lender's income, expense, gain, and loss, a
17 reconciliation of surplus or net worth with the balance sheets, and
18 the ratios of the profits to the assets reported;

19 (3) the total number of deferred presentment
20 transactions made;

21 (4) the total number of outstanding deferred
22 presentment transactions;

23 (5) the minimum, maximum, and average dollar amount of
24 the instruments whose presentments were deferred;

25 (6) the average number of days the presentment of an
26 instrument was deferred;

27 (7) the total number and dollar amount of:

1 (A) returned checks and debit authorizations;

2 (B) transactions in which the face value of the
3 instrument was recovered by the lender; and

4 (C) instruments charged off on the accounting
5 records of the lender; and

6 (8) a statement that the lender has not used criminal
7 process or caused criminal process to be used to collect payment on
8 a deferred presentment transaction.

9 (b) The commissioner shall set a date by which the reports
10 must be filed.

11 (c) A lender shall file each report under this section under
12 oath.

13 (d) Annually the commissioner shall prepare a consolidated
14 analysis and recapitulation of reports filed under this section and
15 shall provide the consolidated analysis and recapitulation to the
16 legislature and the governor.

17 (e) The consolidated analysis and recapitulation of reports
18 are public information. The reports under this section are
19 confidential and privileged information of the lender and are not
20 subject to disclosure provisions under Chapter 552, Government
21 Code. The commissioner shall ensure that the consolidated analysis
22 and recapitulation of reports contain only aggregate data and not
23 data specific to a lender.

24 Sec. 342.622. AUTHORITY TO CONDUCT DEFERRED PRESENTMENT
25 TRANSACTION BUSINESS. Only an authorized lender may lawfully
26 engage in the deferred presentment transaction business. A
27 licensed lender shall obtain and maintain a separate license for

1 each location where deferred presentment transaction business is
2 conducted. A deferred presentment transaction is a loan subject to
3 this chapter for purposes of the application of Section 342.051.

4 Sec. 342.623. APPLICATION OF SUBCHAPTER TO THIRD-PARTY
5 PROVIDER. If a deferred presentment transaction is offered at the
6 place of business of a third-party provider:

7 (1) the third-party provider shall provide to the
8 commissioner a sample copy of the form of a written deferred
9 presentment transaction agreement if the third-party provider
10 participates in the preparation, execution, delivery, or custody of
11 the agreement, and each time the form is modified the third-party
12 provider shall provide to the commissioner a copy of the modified
13 form;

14 (2) the notice under Section 342.618 shall be posted
15 in the third-party provider's place of business;

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

22 (4) the third-party provider shall comply with the
23 licensing, recordkeeping, and recording provisions of this
24 chapter.

25 Sec. 342.624. EXAMINATION AND INVESTIGATION. (a) A
26 licensed lender may be examined and investigated in accordance with
27 Sections 342.552 and 342.553.

1 (b) The commissioner or the commissioner's representative
2 may, at the times the commissioner considers necessary, examine and
3 investigate a third-party provider's place of business to determine
4 the provider's compliance with this subchapter. The third-party
5 provider shall give the commissioner or the commissioner's
6 representative free access to its place of business for that
7 purpose. During an examination, the commissioner or the
8 commissioner's representative may administer oaths and examine any
9 person under oath on any subject pertinent to a matter that the
10 commissioner is authorized to consider, investigate, or secure
11 information about under this subchapter. A third-party provider
12 shall pay to the commissioner an amount assessed by the
13 commissioner to cover the direct and indirect cost of an
14 examination of the provider under this section.

15 Sec. 342.625. APPLICABILITY TO CERTAIN LENDERS AND
16 TRANSACTIONS. (a) Except as preempted by federal law, all other
17 applicable provisions of this subchapter apply to a deferred
18 presentment transaction and a lender.

19 (b) This subchapter does not apply to a credit services
20 organization operating in compliance with Chapter 393 or the
21 services of a credit services organization in connection with a
22 loan having an interest rate of 10 percent a year or less.

23 Sec. 342.626. APPLICABILITY OF PROVISIONS OF CHAPTER 341
24 AND THIS CHAPTER. Chapter 341 and the other provisions of this
25 chapter apply to a lender unless those provisions are inconsistent
26 with this subchapter.

27 Sec. 342.627. CRIMINAL CULPABILITY. A borrower is not

1 subject to a criminal penalty for entering into a deferred
2 presentment transaction agreement or in the event the instrument is
3 dishonored, unless the borrower violated:

4 (1) Section 32.32, Penal Code; or

5 (2) Section 32.41, Penal Code, and is presumed to have
6 knowledge of insufficient funds under Section 32.41(b)(1), Penal
7 Code.

8 Sec. 342.628. DECEPTIVE TRADE PRACTICE. A deferred
9 presentment transaction made by a person other than a lender is a
10 deceptive trade practice actionable under Subchapter E, Chapter 17,
11 Business & Commerce Code.

12 Sec. 342.629. PROHIBITED PRACTICES. (a) A lender may not
13 contact a borrower's employer about a deferred presentment debt or
14 communicate facts about a borrower's indebtedness to an employer.

15 (b) A lender may not threaten criminal prosecution of a
16 borrower as a means of collecting an amount due under a deferred
17 presentment transaction agreement.

18 Sec. 342.630. MILITARY BORROWER. (a) A lender may not
19 engage in collection activity against a borrower who is:

20 (1) a member of the armed forces of the United States
21 who is deployed to combat or a combat support posting, for the
22 duration of the posting; or

23 (2) a reserve or national guard member who has been
24 called to active duty.

25 (b) A lender may not garnish the wages of a borrower who is a
26 member of the armed forces of the United States.

27 Sec. 342.631. REPAYMENT AGREEMENT. A lender shall honor a

1 repayment agreement entered into with a borrower, including a
2 repayment agreement negotiated through a military counselor or a
3 third-party credit counselor.

4 SECTION 4. This Act takes effect September 1, 2005.