

By: Flynn

H.B. No. 846

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

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 \$25,000 that are used or readily available for use in conducting the business of that office.

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

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) "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.

(2) "Lender" means an authorized lender.

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

(4) "Third-party provider" means a person who transacts or negotiates a deferred presentment transaction by 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 \$16.50 for every \$100 advanced. A lender may also
27 charge a pro rata finance charge for any incremental amount

1 advanced in excess of a multiple of \$100. The charge is considered
2 fully earned as of the date of the transaction. The lender may
3 charge only charges expressly authorized by this subchapter in
4 connection with 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
7 \$1,000.

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

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

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

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

24 "State law prohibits lenders from making deferred presentment
25 transactions exceeding \$1,000 outstanding to a debtor at any
26 one time. Exceeding this amount may create financial
27 hardships for you and your family. You have the right to

1 rescind this deferred presentment transaction not later than
2 5 p.m. the next business day following this transaction."

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

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

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

23 (d) At the time of the second renewal of a loan, the lender
24 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 (e) A lender may refinance a deferred presentment
5 transaction without limitation as to the number of refinancings as
6 authorized by Subchapter F.

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

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

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

21 Sec. 342.612. AUTHORIZED DISHONORED INSTRUMENT CHARGE. If
22 an instrument held by a lender as a result of a deferred presentment
23 transaction is returned to the lender from a payor financial
24 institution due to insufficient funds, a closed account, or a
25 stop-payment order, the lender has the right to exercise all civil
26 means authorized by law to collect the face value of the instrument.
27 In addition, the lender may contract for and collect fees

1 authorized by Section 342.502. The lender may not collect any other
2 fees as a result of default.

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

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

14 "This is a deferred presentment transaction instrument."

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

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

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

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

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

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

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

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

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

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

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

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

16 Sec. 342.621. CRIMINAL CULPABILITY. A borrower is not
17 subject to a criminal penalty for entering into a deferred
18 presentment transaction agreement or in the event the instrument is
19 dishonored, unless the borrower violated:

20 (1) Section 32.32, Penal Code; or

21 (2) Section 32.41, Penal Code, and is presumed to have
22 knowledge of insufficient funds under Section 32.41(b)(1), Penal
23 Code.

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

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