

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since July 2005, most major payday lenders have registered as credit services organizations (CSOs) under Chapter 393 (Credit Services Organizations), Finance Code. This industry move occurred because the Federal Depository Insurance Corporation began to prohibit its member banks from serving as financial partners with companies involved in payday lending. As CSOs, these payday lenders are no longer subject to Texas' small loan law or regulation by the Office of Consumer Credit Commissioner. Under the CSO model, the CSO, or payday lender, charges the consumer a fee based upon the amount borrowed and then computes 10 percent interest on the loan based upon extension of credit made by a third party lender who has an established relationship with the payday-CSO storefront or Web-based service. When faced with high fees, many borrowers incur additional debt that exacerbates the original financial crisis the person is facing. Furthermore, high annual percentage rates (APR) play a role in perpetuating this cycle of debt. Texas payday lenders currently charge rates exceeding the APR of high-interest credit cards. Current state law also needs to align with recently enacted federal law that limits military lending to 36 percent so that military servicemembers and civilians are treated equally when this federal law goes into effect October of 2007.

As proposed, S.B. 858 limits annualized interest charges for deferred presentment transactions to 36 percent APR. This bill also prohibits credit services organizations and other entities from offering payday loan fees and interest that exceed 36 percent.

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 E, Chapter 342, Finance Code, by adding Section 342.200, as follows:

Sec. 342.200. INTEREST CHARGES; REBATES. (a) Prohibits, notwithstanding any other provision of this subchapter, Subchapter F (Alternate Charges for Certain Loans), or a rule adopted under this chapter, a loan contract under this chapter (Consumer Loans) that is not secured by real property from providing for an interest charge for the cash advance that exceeds 36 percent a year, including any fees included in the computation of interest under this chapter or other law.

(b) Requires a charge for interest to be computed and paid as a percentage of the unpaid principal balance. Defines "unpaid principal balance."

(c) Prohibits an interest rate charged on an overdue balance from exceeding the maximum rate charged before the balance becomes due.

SECTION 2. Amends Subchapter H, Chapter 342, Finance Code, by adding Section 342.354, as follows:

Sec. 342.354. REFUND OF PRECOMPUTED INTEREST; OTHER LOANS. (a) Provides that this section applies only to a loan contract to which Section 342.351

(Refund of Precomputed Interest: Sum of the Periodic Balances) or 342.352 (Refund of Precomputed Interest: Scheduled Installment Earnings) does not apply.

(b) Requires the lender, if the loan contract is prepaid in full, to refund or credit to the borrower unearned interest charges paid by the borrower, as computed by the actuarial method or another method that is at least as favorable to the borrower.

SECTION 3. Amends Subchapter M, Chapter 342, Finance Code, by adding Section 342.606, as follows:

Sec. 342.606. INTEREST AND FEES FOR DEFERRED PRESENTMENT TRANSACTION. (a) Prohibits a lender from charging or receiving interest or fees in connection with a deferred presentment transaction other than the interest and fees specifically authorized by this section.

(b) Authorizes a deferred presentment transaction to provide for an administrative fee, but prohibits such a fee from exceeding \$5 for each transaction. Provides that an administrative fee is not included in the computation of interest.

(c) Authorizes a lender, if there are insufficient funds to pay a check on the date of presentment, to charge a fee not to exceed the greater of \$15 or the amount charged to the lender by the financial institution. Authorizes only one fee to be charged under this section for a single check, regardless of whether the check has been deposited and returned more than once. Provides that a fee under this subsection is the exclusive authorized charge for late payment.

(d) Provides that a person who violates this section commits a state jail felony.

SECTION 4. Effective date: September 1, 2007.