

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 242  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Payday lending products have come under recent scrutiny by consumer advocates, federal regulators, and the United States military. Payday loans are short-term loans with annualized interest rates that range from 300 percent to 1,000 percent annual percentage rate. Currently, payday lending operates in 37 states, with a patchwork of state laws and regulations that govern their use. Recent federal actions have spawned significant changes in the payday lending industry. Prior to this year, payday lending in Texas operated through the "rent-a-bank" or "rent-a-charter" model, in which payday outfits partnered with out-of-state banks to make loans to consumers. This scheme enabled Texas payday lenders to avoid state usury limits and rate limits established by the Office of Consumer Credit Commissioner (OCCC). Under this arrangement, Texas payday lenders claimed the status of "brokers" and assigned their partner banks as the "lenders."

Since 2005, however, the Federal Deposit Commission (FDIC), the primary regulatory agency for federally chartered banks, has effectively ended this practice. In response, nearly all payday lenders in Texas registered as Credit Services Organizations, pursuant to Chapter 393, Finance Code. This move enabled payday lenders to avoid even limited regulation by OCCC; this switch also enabled some lenders to turn in their OCCC licenses. More importantly, payday lenders were no longer obligated to submit data to OCCC, and as a result, Texas regulators have no official data regarding an industry that conducts over two million transactions approaching \$1 billion per year.

As proposed, S.B. 242 establishes a data collection system, requiring lenders to become OCCC-certified, and mandates an annual report to the legislature. This bill applies to all entities offering payday loans or "deferred presentment transactions."

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 342.607, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter M, Chapter 342, Finance Code, by adding Sections 342.607-342.609, as follows:

Sec. 342.607. DEFERRED PRESENTMENT TRANSACTION DATA COLLECTION SYSTEM. (a) Requires a person who offers, services, or brokers a deferred presentment transaction, including a credit services organization to which Chapter 393 (Credit Services Organizations) applies and a person registered or licensed to do business in this state who offers deferred presentment transactions on the Internet, to submit data to a database established by a database provider selected by the consumer credit commissioner (commissioner).

(b) Requires the commissioner to contract with a person to establish a database for the compilation of information from persons who offer, service, or broker deferred presentment transactions. Requires the commissioner to ensure that certain requirements are met by the database provided by the person when selecting a database provider.

(c) Requires a person to weekly submit certain data to the database provider under this subchapter.

(d) Requires the commissioner to analyze the data reported under this subchapter and prepare and submit the report to the legislature not later than February 1 of each year.

(e) Provides that information submitted to the database is the property of the office of the commissioner. Provides that information that personally identifies an individual is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(f) Authorizes the Finance Commission of Texas (finance commission) to adopt rules as necessary to implement this section.

Sec. 342.608. CERTIFICATION REQUIRED. (a) Prohibits a person from offering, servicing, or brokering a deferred presentment transaction unless the person is certified by the commissioner. Provides that the requirement of certification under this section is in addition to any license required under this chapter or other law.

(b) Requires a person to be certified by the commissioner to submit an application to the commissioner on a form prescribed by the commissioner, submit an investigation fee of \$2,500 to the commissioner if the person has not previously been certified by the commissioner, submit a certification fee of \$1,000 for the initial or renewal certification, have not less than \$1 million in assets calculated according to generally accepted accounting principles, and submit a bond as required by Section 342.609.

(c) Requires a person to annually renew the person's certification under this section.

(d) Requires the commissioner to use proceeds from the fees imposed under this section for the regulation of persons who offer, service, or broker deferred presentment transactions, including the monitoring and analysis of data submitted to the database under Section 342.607.

Sec. 342.609. BOND REQUIRED. (a) Requires a person who offers, services, or brokers a deferred payment transaction to file with the application for certification a bond that is \$1 million and issued by a surety company qualified to do business as a surety in this state, in addition to any other bond required by this chapter or other law.

(b) Requires that the bond be in favor of this state for the use of this state and the use of another person who has a cause of action under this chapter against the person.

(c) Requires that the bond be conditioned on the person's faithful performance under this chapter and rules adopted under this chapter and the payment of all amounts that become due to the state or another person under this chapter during the calendar year for which the bond is given.

(d) Prohibits the aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter from exceeding the amount of the bond.

SECTION 2. (a) Requires the commissioner to select a database provider under Section 342.607, Finance Code, as added by this Act, not later than January 1, 2010, and to set the date on which a person who offers, services, or brokers a deferred presentment transaction is required to begin submitting data as provided by that section.

(b) Requires a person who offers, services, or brokers a deferred presentment transaction to be certified and file a bond under Sections 342.608 and 342.609, Finance Code, as added by this Act, not later than January 1, 2010. Requires the commissioner to prescribe

an application for certification under Section 342.608, Finance Code, as added by this Act, not later than November 1, 2009.

SECTION 3. Effective date: September 1, 2009.