BILL ANALYSIS

Senate Research Center   S.B. 244
81R1032 DWS-F   By: Shapleigh; Davis, Wendy
                                                                            Business & Commerce
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                                                                                         As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas' credit services organization statute provides guidance for credit services organizations (CSO) that offer debt repair or counseling services to Texas. Due to the broad definition in that statute, however, most major payday lenders have registered as CSOs, and in so doing are no longer subject to Texas' small loan law or regulation by the Office of Consumer Credit Commissioner (office). The breadth of current law allows payday lenders to use the CSO model to charge the consumer a fee based on the amount borrowed, then to compute 10 percent interest on the loan based on the extension of credit made by a third party lender who has an established relationship with the payday lender storefront or Internet-based service.

As proposed, S.B. 244 subjects an entity offering deferred presentment transactions or cash advances to Subtitle B (Loans and Financed Transactions), Title 4 (Regulation of Interest, Loans, and Financed Transactions), Finance Code, and to rules regarding deferred transactions, and provides that registration as a CSO does not insulate the entity from adhering to that subtitle or any rules or regulations under it, such as the rates set by the office. This bill prohibits CSOs from extending credit when the CSO has a relationship with the lender, collects fees on behalf of the lender, or receives an economic interest in the loan revenue, among other prohibitions.

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 Section 342.008, Finance Code, as follows:

> Sec. 342.008. ATTEMPT TO EVADE LAW. (a) Creates this subsection from existing text.
>
> > (b) Prohibits a person from making or offering to make a cash advance under a deferred presentment transaction on behalf of, in conjunction with, or as an agent, broker, servicer, or collector for another person unless both persons comply with this subtitle and rules adopted under Section 342.007 (Deferred Presentment Transaction) with respect to deferred presentment transactions. Provides that this subsection applies regardless of whether both persons are subject to regulation under this subtitle or another law of this state. Provides that an agreement made in connection with a deferred presentment transaction is void to the extent the agreement waives the application of this subsection or applies the law of a jurisdiction other than this state to avoid compliance with this subtitle or rules adopted under Section 342.007 in a transaction described by this subsection. Provides that a person who makes or offers to make a cash advance under a deferred presentment transaction on behalf of, in conjunction with, or as an agent, broker, servicer, or collector for another person is considered to contract for interest for the purposes of Chapter 349 (Penalties and Liabilities).

SECTION 2. Amends Subchapter D, Chapter 393, Finance Code, by adding Section 393.308, as follows:

Sec. 393.308. ACTING AS OR ASSOCIATING WITH LENDER. (a) Prohibits a credit services organization from facilitating or assisting in obtaining credit for a consumer if the organization is the lender; the organization or an officer, director, or employee of the organization is in any way related to the lender or an officer, director, or employee of the lender; the lender or the organization is an affiliate of the other, or the lender and the organization are owned or controlled by the same holding company; the organization retains or receives an economic interest in the loan revenue; the organization services or collects the loan on behalf of the lender; or the organization provides compensation to or shares resources with the lender.

(b) Prohibits a credit services organization from using a scheme, device, or contrivance to evade the application of this section.

SECTION 3. Effective date: September 1, 2009.