

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 3453  
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Business & Commerce  
5/19/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Office of Consumer Credit Commissioner (OCCC) is authorized to conduct examinations and investigations of property tax lenders. Such audits can uncover sensitive business and financial information that should remain confidential. Currently, the information yielded from an examination is deemed confidential and may not be disclosed outside of certain exceptions. OCCC investigations also address sensitive information that warrants an equal amount of protection.

OCCC is also authorized to review the amount of a documentary fee relating to a motor vehicle retail installment contract, and sensitive financial information used to support the fee is included in that review.

C.S.H.B. 3453 ensures that the confidentiality provisions apply not only to licensees but also unlicensed persons subject to investigations and that certain information relating to a motor vehicle seller's documentary fee is confidential.

C.S.H.B. 3453 also makes several technical corrections to Title 4 of the Finance Code, deleting obsolete references, correcting statutory citations, and clarifying language.

C.S.H.B. 3453 amends current law relating to the regulatory authority of the consumer credit commissioner and to fees and interest charged in connection with consumer credit transactions.

### **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 14.2015, Finance Code, as follows:

Sec. 14.2015. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) Provides that, except as provided by Subsection (b), information or material obtained or compiled by the consumer credit commissioner (commissioner) in relation to an examination or investigation by the commissioner or the commissioner's representative of a license holder, registrant, applicant, or other person, rather than a license holder or registrant, under Subtitle B (Savings and Loan Associations) or C (Savings Banks), Title 4 (Regulation of Interest, Loans, and Financed Transactions) or Chapter 394 (Debtor Assistance) is confidential and may not be disclosed by the commissioner or an officer or employee of the Office of Consumer Credit Commissioner, including:

(1) information obtained from a license holder, registrant, applicant, or other person, rather than from a license holder or registrant, examined or investigated under Subtitle B or C, Title 4, or Chapter 394, rather than information obtained from a license holder or registrant under Subtitle B or C, Title 4, or Chapter 394;

(2) work performed by the commissioner or the commissioner's representative on information obtained from a license holder, registrant, applicant, or other person, rather than from a license holder or registrant, for the purposes of an examination or investigation conducted under Subtitle B or C, Title 4, or Chapter 394;

(3) a report on an examination or investigation of a license holder, registrant, applicant, or other person, rather than a license holder or registrant, conducted under Subtitle B or C, Title 4, or Chapter 394; and

(4) any written communications between the license holder, registrant, applicant, or other person, rather than between license holder or registrant, as applicable, and the commissioner or the commissioner's representative relating to or referencing an examination or investigation conducted under Subtitle B or C, Title 4, or Chapter 394.

(b) Authorizes the commissioner or the commissioner's representative to disclose the confidential information or material described by Subsection (a):

(1) to a department, agency, or instrumentality of this state or the United States if the commissioner considers disclosure to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public;

(2) if the license holder, registrant, applicant, or other person, rather than if the license holder or registrant, consents to the release of the information or has published the information contained in the release; or

(3) if the commissioner determines that release of the information is required for an administrative hearing.

SECTION 2. Amends Subchapter E, Chapter 14, Finance Code, by adding Section 14.2016, as follows:

Sec. 14.2016. INFORMATION SHARING WITH DEPARTMENTS AND AGENCIES. Authorizes the commissioner, to ensure consistent enforcement of law and minimization of regulatory burdens, to share information, including criminal history or confidential information, relating to a license holder, registrant, applicant, or other person investigated or examined under the commissioner's authority with a department, agency, or instrumentality of this state, another state, or the United States if the commissioner considers the disclosure of the information to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public. Provides that information otherwise confidential remains confidential after the information is shared under this section.

SECTION 3. Amends Section 303.009(d), Finance Code, to provide that for an open-end account credit agreement that provides for credit card transactions on which a merchant discount is not imposed or received by the creditor or a retail charge agreement under Chapter 345 (Retail Installment Sales) without a merchant discount, the ceiling is 21 percent a year.

SECTION 4. Amends Section 303.203(a), Finance Code, to authorize a lender, at the time or after a loan is made, to offer to sell to the borrower and finance in a loan contract subject to this subtitle a charge for an automobile club membership.

SECTION 5. Amends Section 342.502(d), Finance Code, to authorize a lender, on a loan subject to this chapter, to assess and collect a fee that does not exceed the amount prescribed by Section 3.506 (Processing Fee by Holder of Payment Device), Business & Commerce Code, rather than Chapter 617, Acts of the 68th Legislature, Regular Session, 1983 (Article 9022, V.T.C.S.), for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft offered in full or partial payment of a loan.

SECTION 6. Amends the heading to Subchapter D, Chapter 345, Finance Code, to read as follows:

SUBCHAPTER D. ALTERNATE FINANCE CHARGE CEILING

SECTION 7. Amends Section 345.155, Finance Code, as follows:

Sec. 345.155. TIME PRICE DIFFERENTIAL COMPUTATION AND AMOUNT. (a) Requires that a time price differential authorized under Subchapter C (Retail Charge Agreement), rather than under this subchapter, be computed using the average daily balance method.

(b) Makes a conforming change.

SECTION 8. Amends Section 345.157(a), Finance Code, to authorize a retail charge agreement, rather than a retail charge agreement that implements the market competitive rate ceiling, to provide for the payment of a delinquency charge on each installment that is in default for a period that is longer than 21 days, an attorney's reasonable fee if the agreement is referred for collection to an attorney who is not a salaried employee of the holder, and court costs and disbursements.

SECTION 9. Amends Section 346.103(a), Finance Code, to authorize certain fees to be charged to or collected from a customer in connection with an account under this chapter, including a returned check fee as provided for a loan agreement under Chapter 342 (Consumer Loans) by Section 3.506, Business & Commerce Code, rather than by Section 1, Chapter 617, Acts of the 68th Legislature, Regular Session, 1983 (Article 9022, V.T.C.S.).

SECTION 10. Amends Section 348.006, Finance Code, by adding Subsections (e-1), (e-2), and (e-3), as follows:

(e-1) Provides that except as provided by Subsections (e-2) and (e-3), the following information and documents are confidential and not subject to disclosure:

(1) all information provided by a retail seller to the commissioner under Subsection (e), including the maximum documentary fee a retail seller intends to charge, the written notice of an increased documentary fee, and any financial information submitted with the notice; and

(2) all correspondence between a retail seller and the commissioner or the commissioner's representative relating to the notice of an increased documentary fee under Subsection (e) and a review for reasonableness of the amount of the documentary fee to be charged.

(e-2) Authorizes the commissioner to disclose information or documents that are confidential under Subsection (e-1) if:

(1) the commissioner determines that release of the information or documents is required for an administrative hearing;

(2) the retail seller consents to the release of the information or documents; or

(3) the disclosure is required by a court order.

(e-3) Authorizes the commissioner or the commissioner's representative to disclose whether a retail seller has filed written notice of an increased documentary fee and the proposed amount of the increased fee to:

(1) a holder that provides written proof, signed by the retail seller, that the retail seller has agreed to assign or transfer one or more retail installment contracts to the holder; or

(2) a prospective retail buyer that provides to the commissioner a buyer's order executed by the prospective buyer and the retail seller; a draft of a retail installment contract provided by the retail seller to the prospective buyer; or a written statement by the retail seller acknowledging that the person is a prospective buyer of a motor vehicle from the retail seller.

SECTION 11. Amends Section 351.006, Finance Code, as follows:

Sec. 351.006. ENFORCEMENT. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Authorizes the commissioner, notwithstanding Section 14.251 (Assessment of Penalty; Restitution Order), to assess an administrative penalty under Subchapter F (Administrative Penalty; Restitution Order; Assurance of Voluntary Compliance), Chapter 14 (Consumer Credit Commissioner), against a person who violates Section 32.06(b-1) (relating to a sworn document sent by certified mail by the transferee), Tax Code, regardless of whether the violation is knowing or wilful.

SECTION 12. Reenacts Section 411.081(i), Government Code, as amended by Chapters 183 (H.B. 1830), 780 (S.B. 1056), 816 (S.B. 1599), and 1027 (H.B. 4343), Acts of the 81st Legislature, Regular Session, 2009, and amends it to authorize a criminal agency to disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) to certain noncriminal justice agencies or entities only, including the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.

SECTION 13. Amends Section 53.0211(a), Occupations Code, to provide that this section does not apply to an applicant for a license that would allow the applicant to provide certain services, including financial services in an industry regulated by the commissioner.

SECTION 14. Repealer: Section 345.153 (Publication and Effective Date of Ceiling), Finance Code.

SECTION 15. Makes application of the change in law made by this Act to Section 53.0211(a), Occupations Code, prospective.

SECTION 16. Provides that to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in acted codes.

SECTION 17. Effective date: September 1, 2011.