

1-1 By: Anchia (Senate Sponsor - Eltife) H.B. No. 3453
1-2 (In the Senate - Received from the House May 16, 2011;
1-3 May 16, 2011, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 20, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3453 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulatory authority of the consumer credit
1-11 commissioner and to fees and interest charged in connection with
1-12 consumer credit transactions.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 14.2015, Finance Code, is amended to
1-15 read as follows:

1-16 Sec. 14.2015. CONFIDENTIALITY OF CERTAIN INFORMATION. (a)
1-17 Except as provided by Subsection (b), information or material
1-18 obtained or compiled by the commissioner in relation to an
1-19 examination or investigation by the commissioner or the
1-20 commissioner's representative of a license holder, ~~[or]~~
1-21 registrant, applicant, or other person under Subtitle B or C, Title
1-22 4, or Chapter 394 is confidential and may not be disclosed by the
1-23 commissioner or an officer or employee of the Office of Consumer
1-24 Credit Commissioner, including:

1-25 (1) information obtained from a license holder, ~~[or]~~
1-26 registrant, applicant, or other person examined or investigated
1-27 under Subtitle B or C, Title 4, or Chapter 394;

1-28 (2) work performed by the commissioner or the
1-29 commissioner's representative on information obtained from a
1-30 license holder, ~~[or]~~ registrant, applicant, or other person for the
1-31 purposes of an examination or investigation conducted under
1-32 Subtitle B or C, Title 4, or Chapter 394;

1-33 (3) a report on an examination or investigation of a
1-34 license holder, ~~[or]~~ registrant, applicant, or other person
1-35 conducted under Subtitle B or C, Title 4, or Chapter 394; and

1-36 (4) any written communications between the license
1-37 holder, ~~[or]~~ registrant, applicant, or other person, as applicable,
1-38 and the commissioner or the commissioner's representative relating
1-39 to or referencing an examination or investigation conducted under
1-40 Subtitle B or C, Title 4, or Chapter 394.

1-41 (b) The commissioner or the commissioner's representative
1-42 may disclose the confidential information or material described by
1-43 Subsection (a):

1-44 (1) to a department, agency, or instrumentality of
1-45 this state or the United States if the commissioner considers
1-46 disclosure to be necessary or proper to the enforcement of the laws
1-47 of this state or the United States and in the best interest of the
1-48 public;

1-49 (2) if the license holder, ~~[or]~~ registrant, applicant,
1-50 or other person consents to the release of the information or has
1-51 published the information contained in the release; or

1-52 (3) if the commissioner determines that release of the
1-53 information is required for an administrative hearing.

1-54 SECTION 2. Subchapter E, Chapter 14, Finance Code, is
1-55 amended by adding Section 14.2016 to read as follows:

1-56 Sec. 14.2016. INFORMATION SHARING WITH DEPARTMENTS AND
1-57 AGENCIES. To ensure consistent enforcement of law and minimization
1-58 of regulatory burdens, the commissioner may share information,
1-59 including criminal history or confidential information, relating
1-60 to a license holder, registrant, applicant, or other person
1-61 investigated or examined under the commissioner's authority with a
1-62 department, agency, or instrumentality of this state, another
1-63 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. Information otherwise confidential remains confidential after the information is shared under this section.

SECTION 3. Section 303.009(d), Finance Code, is amended to read as follows:

(d) 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 without a merchant discount, the ceiling is 21 percent a year.

SECTION 4. Section 303.203(a), Finance Code, is amended to read as follows:

(a) A lender may, at the time or after a loan is made, offer to sell to the borrower and finance in a ~~the~~ loan contract subject to this subtitle a charge for an automobile club membership.

SECTION 5. Section 342.502(d), Finance Code, is amended to read as follows:

(d) On a loan subject to this chapter a lender may assess and collect a fee that does not exceed the amount prescribed by Section 3.506, Business & Commerce Code ~~[Chapter 617, Acts of the 68th Legislature, Regular Session, 1983 (Article 9022, Vernon's Texas Civil Statutes)]~~, 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. The heading to Subchapter D, Chapter 345, Finance Code, is amended to read as follows:

SUBCHAPTER D. ALTERNATE FINANCE CHARGE ~~[MARKET COMPETITIVE RATE]~~
CEILING

SECTION 7. Section 345.155, Finance Code, is amended to read as follows:

Sec. 345.155. TIME PRICE DIFFERENTIAL COMPUTATION AND AMOUNT. (a) A time price differential authorized under Subchapter C ~~[this subchapter]~~ shall be computed using the average daily balance method.

(b) If the amount of a time price differential otherwise authorized under Subchapter C ~~[this subchapter]~~ for a billing cycle in which a balance is due is less than 75 cents a month, the holder may charge an amount that does not exceed 75 cents a month.

SECTION 8. Section 345.157(a), Finance Code, is amended to read as follows:

(a) A retail charge agreement ~~[that implements the market competitive rate ceiling]~~ may provide for the payment of:

(1) a delinquency charge on each installment that is in default for a period that is longer than 21 days;

(2) 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

(3) court costs and disbursements.

SECTION 9. Section 346.103(a), Finance Code, is amended to read as follows:

(a) The following fees may be charged to or collected from a customer in connection with an account under this chapter:

(1) an annual fee not to exceed:

(A) \$50 a year on an account with a credit limit of \$5,000 or less;

(B) \$75 a year on an account with a credit limit exceeding \$5,000 but not exceeding \$25,000; and

(C) \$125 a year on an account with a credit limit exceeding \$25,000;

(2) a late charge not to exceed the lesser of \$15 or five percent of the payment due after the payment continues unpaid for 10 days or more after the date the payment is due, including Sundays and holidays;

(3) a cash advance charge not to exceed the greater of \$2 or two percent of the cash advance;

(4) a returned check fee as provided for a loan agreement under Chapter 342 by Section 3.506, Business & Commerce

Code [~~Section 1, Chapter 617, Acts of the 68th Legislature, Regular Session, 1983 (Article 9022, Vernon's Texas Civil Statutes)~~]; and

(5) a fee for exceeding a credit limit not to exceed the greater of \$15 or five percent of the amount by which the credit limit is exceeded.

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

(e-1) 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) The commissioner may 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) The commissioner or the commissioner's representative may 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) a buyer's order executed by the prospective buyer and the retail seller;

(B) a draft of a retail installment contract provided by the retail seller to the prospective buyer; or

(C) 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. Section 351.006, Finance Code, is amended to read as follows:

Sec. 351.006. ENFORCEMENT. (a) In addition to any other applicable enforcement provisions, Subchapters E, F, and G, Chapter 14, apply to a violation of this chapter or Section 32.06 or 32.065, Tax Code, in connection with property tax loans.

(b) Notwithstanding Section 14.251, the commissioner may assess an administrative penalty under Subchapter F, Chapter 14, against a person who violates Section 32.06(b-1), Tax Code, regardless of whether the violation is knowing or wilful.

SECTION 12. 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, is reenacted and amended to read as follows:

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) to the following noncriminal justice agencies or entities only:

(1) the State Board for Educator Certification;

(2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;

(3) the Texas Medical Board;

(4) the Texas School for the Blind and Visually Impaired;

(5) the Board of Law Examiners;

(6) the State Bar of Texas;
 (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
 (8) the Texas School for the Deaf;
 (9) the Department of Family and Protective Services;
 (10) the Texas Youth Commission;
 (11) the Department of Assistive and Rehabilitative Services;
 (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
 (13) the Texas Private Security Board;
 (14) a municipal or volunteer fire department;
 (15) the Texas Board of Nursing;
 (16) a safe house providing shelter to children in harmful situations;
 (17) a public or nonprofit hospital or hospital district;
 (18) the Texas Juvenile Probation Commission;
 (19) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;
 (20) the Texas State Board of Public Accountancy;
 (21) the Texas Department of Licensing and Regulation;
 (22) the Health and Human Services Commission;
 (23) the Department of Aging and Disability Services;
 (24) the Texas Education Agency; ~~and~~
 (25) the Guardianship Certification Board; ~~and~~
 (26) a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code;
 (27) ~~[(25)]~~ the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:
 (A) the Department of Information Resources; or
 (B) a contractor or subcontractor of the Department of Information Resources;
 (28) ~~[(25)]~~ the Court Reporters Certification Board;
 and
 (29) ~~[(25)]~~ the Texas Department of Insurance.

SECTION 13. Section 53.0211(a), Occupations Code, is amended to read as follows:

(a) This section does not apply to an applicant for a license that would allow the applicant to provide:

(1) law enforcement services;
 (2) public health, education, or safety services; or
 (3) financial services in an industry regulated by the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.

SECTION 14. Section 345.153, Finance Code, is repealed.

SECTION 15. The change in law made by this Act to Section 53.0211(a), Occupations Code, applies only to an application for a license filed on or after the effective date of this Act. An application for a license filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 16. 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 enacted codes.

SECTION 17. This Act takes effect September 1, 2011.

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