

BILL ANALYSIS

C.S.H.B. 2315
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Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law authorizes a regulated lender to impose a nonrefundable flat charge in addition to interest charges imposed by the lender based on the amount and term of a loan. This flat charge is referred to as the administrative fee for non-real property loans and as the acquisition charge for certain other loans. Interested parties report that the administrative fee has not been increased in more than 10 years and the acquisition charge has not been increased in more than 20 years. C.S.H.B. 2315 seeks to introduce more flexibility and promote competition by allowing the Finance Commission of Texas to set the maximum amount of the administrative fee and acquisition charge by rule and by making other related changes.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 3 and 4 of this bill.

ANALYSIS

C.S.H.B. 2315 amends the Finance Code to authorize the Finance Commission of Texas by rule to prescribe a reasonable maximum amount of an administrative fee for a non-real property loan contract that is greater than the maximum amount authorized for the amount of the loan. The bill clarifies that an administrative fee is not interest.

C.S.H.B. 2315 authorizes the finance commission by rule to prescribe a reasonable maximum amount for an acquisition charge on a cash advance that is greater than the maximum amount authorized under statutory provisions prescribing such charges based on the amount of the cash advance. The bill clarifies that an acquisition charge under statutory provisions prescribing alternate charges for certain consumer loans is not interest.

C.S.H.B. 2315 authorizes a loan contract for a cash advance to provide for an interest charge computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan. The bill prohibits the compounding of interest under the scheduled installment earnings method or true daily earnings method. The bill prohibits the principal balance of such a loan contract from including the acquisition charge, installment account handling charge, default charges, deferment charges, or return check fees. The bill specifies that interest may accrue on the principal balance from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

C.S.H.B. 2315 requires a payment on a loan contract that provides for an alternate interest charge computation method as authorized by the bill to be applied to the borrower's account in the following order or, at the lender's option, under another method of applying a payment that is more favorable to the borrower: the straight line allocation of the acquisition charge using the original scheduled term of the loan based on the proportional scheduled payment that was paid or scheduled to be paid; default charges; return check fees; any other charges authorized under

statutory provisions regulating cash advance loans; accrued interest authorized under these provisions relating to an alternate interest charge computation method; and principal. The bill applies statutory provisions providing for a refund of precomputed interest on certain consumer loan contracts to interest contracted for under the bill's provisions.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2315 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

No equivalent provision.

SECTION 1. Section 342.201, Finance Code, is amended to read as follows:
Sec. 342.201. **MAXIMUM INTEREST CHARGE.** (a) A loan contract under this chapter that is a regular transaction and is not secured by real property may provide for an interest charge on the cash advance that does not exceed the amount of add-on interest equal to the amount computed for the full term of the contract at an add-on interest amount equal to:
(1) \$18 for each \$100 per year on the part of the cash advance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of \$300; and
(2) \$8 for each \$100 per year on the part of the cash advance that is more than the amount computed for Subdivision (1) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of \$2,500.
(b) For the purpose of Subsection (a):
(1) when the loan is made an interest

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 342.002, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) Interest under the scheduled installment earnings method or true daily earnings method may not be compounded.

SECTION 2. The heading to Section 342.201, Finance Code, is amended to read as follows:
Sec. 342.201. **MAXIMUM INTEREST CHARGE AND ADMINISTRATIVE FEE.**

SECTION 3. Section 342.201, Finance Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

charge may be computed for the full term of the loan contract;

(2) if the period before the first installment due date includes a part of a month that is longer than 15 days, that portion of a month may be considered a full month; and

(3) if a loan contract provides for precomputed interest, the amount of the loan is the total of:

(A) the cash advance; and

(B) the amount of precomputed interest.

(c) A loan contract under this chapter that is an irregular transaction and is not secured by real property may provide for an interest charge, using any method or formula, that does not exceed the amount that, having due regard for the schedule of installment payments, would produce the same effective return as allowed under this section if the loan were payable in equal successive monthly installments beginning one month from the date of the contract.

(d) A loan contract under this chapter that is not secured by real property may provide for a rate or amount of interest computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the alternative interest rate as computed under Subchapter A, Chapter 303. Interest may accrue on the principal balance and amounts added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

(e) A loan contract under this chapter that is not secured by real property may provide for a rate or amount of interest computed using the true daily earnings method or the scheduled installment earnings method that does not exceed:

(1) 30 percent a year on that part of the cash advance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of \$500;

(2) 24 percent a year on that part of the cash advance that is more than the amount computed for Subdivision (1) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of \$1,050; and

(3) 18 percent a year on that part of the cash advance that is more than the amount computed for Subdivision (2) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of \$2,500.

(f) A loan contract under this subchapter may provide for an administrative fee ~~[\$25 for a loan of more than \$1,000 or \$20 for a loan of \$1,000 or less].~~ The administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. An administrative fee is not interest. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period, except that if the loan has an interest charge authorized by Subsection (e) the lender may not contract for or receive the administrative fee more than once in any 365-day period. One dollar of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(g) The finance commission shall prescribe by rule the maximum amount of an administrative fee.

SECTION 2. Section 342.252, Finance Code, is amended to read as follows:
Sec. 342.252. ALTERNATE INTEREST CHARGE.

(a) Instead of the charges authorized by Section 342.201, a loan contract may provide for:

(1) on a cash advance of less than \$30, an acquisition charge ~~[that is not more than \$1 for each \$5 of the cash advance];~~

(2) on a cash advance equal to or more than \$30 but not more than \$100:

(A) an acquisition charge ~~[that is not more than the amount equal to one-tenth of the amount of the cash advance];~~ and

(B) an installment account handling charge that is not more than:

(i) \$3 a month if the cash advance is not more than \$35;

(ii) \$3.50 a month if the cash advance is

(f) A loan contract under this subchapter may provide for an administrative fee ~~in an amount not to exceed \$25 for a loan of more than \$1,000 or \$20 for a loan of \$1,000 or less.~~ The administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. An administrative fee is not interest. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period, except that if the loan has an interest charge authorized by Subsection (e) the lender may not contract for or receive the administrative fee more than once in any 365-day period. One dollar of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(g) The finance commission by rule may prescribe a reasonable maximum amount of an administrative fee for a loan contract under this subchapter that is greater than the maximum amount authorized by this section for the amount of the loan.

SECTION 4. Section 342.252, Finance Code, is amended to read as follows:
Sec. 342.252. ALTERNATE CHARGES ~~[INTEREST CHARGE]~~.

(a) Instead of the charges authorized by Section 342.201, a loan contract may provide for:

(1) on a cash advance of less than \$30, an acquisition charge ~~that is not more than \$1 for each \$5 of the cash advance;~~

(2) on a cash advance equal to or more than \$30 but not more than \$100:

(A) an acquisition charge ~~that is not more than the amount equal to one-tenth of the amount of the cash advance;~~ and

(B) an installment account handling charge that is not more than:

(i) \$3 a month if the cash advance is not more than \$35;

(ii) \$3.50 a month if the cash advance is more

more than \$35 but not more than \$70; or
(iii) \$4 a month if the cash advance is more than \$70; or
(3) on a cash advance of more than \$100:
(A) an acquisition charge ~~[that is not more than \$10]~~; and
(B) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

(b) The finance commission shall prescribe by rule the maximum amount of an acquisition charge.

(c) An acquisition charge under this subchapter is not considered to be interest.

SECTION 3. Section 342.259(a), Finance Code, is amended to read as follows:

(a) Instead of the charges authorized by Sections 342.201 and 342.252, a loan made under this subchapter with a maximum cash advance computed under Subchapter C, Chapter 341, using a reference base amount that is more than \$100 but not more than \$200, may provide for:

(1) an acquisition charge ~~[that is not more than \$10]~~; and
(2) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

No equivalent provision.

No equivalent provision.

than \$35 but not more than \$70; or
(iii) \$4 a month if the cash advance is more than \$70; or
(3) on a cash advance of more than \$100:
(A) an acquisition charge ~~that is not more than \$10~~; and
(B) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

(b) For an acquisition charge authorized by this subchapter, the finance commission by rule may prescribe a reasonable maximum amount for an acquisition charge that is greater than the maximum amount authorized by the applicable section of this subchapter for the amount of the cash advance.

(c) An acquisition charge under this subchapter is not interest.

No equivalent provision.

SECTION 5. Section 342.255, Finance Code, is amended to read as follows:

Sec. 342.255. MAXIMUM LOAN TERM. The maximum scheduled term of a loan made under this subchapter is:

(1) for a loan of \$100 or less, the lesser of:
(A) one month for each multiple of \$10 of cash advance; or
(B) six months; and
(2) for a loan of more than \$100, one month for each multiple of \$20 of cash advance.

SECTION 6. Section 342.352(a), Finance Code, is amended to read as follows:

(a) This section applies to a loan contract:

- (1) that includes precomputed interest and to which Section 342.351 does not apply;
- (2) that includes interest contracted for under Section 342.201 or 342.260; or
- (3) that has a term of more than 60 months.

No equivalent provision.

SECTION 7. Subchapter F, Chapter 342, Finance Code, is amended by adding Section 342.260 to read as follows:

Sec. 342.260. ALTERNATE INTEREST CHARGE COMPUTATION METHODS. (a) A loan contract under this subchapter may provide for an interest charge computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan.

(b) The principal balance of a loan contract authorized by this section may not include the acquisition charge, installment account handling charge, default charges, or deferment charges or the return check fees authorized by Section 3.506, Business & Commerce Code.

(c) Interest may accrue on the principal balance from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

(d) A payment on a loan contract authorized by this section shall be applied to the borrower's account in the following order or, at the lender's option, under another method of applying a payment that is more favorable to the borrower:

(1) the straight line allocation of the acquisition charge using the original scheduled term of the loan based on the proportional scheduled payment that was paid or scheduled to be paid;

(2) default charges authorized by Section 342.257;

(3) return check fees authorized by Section 3.506, Business & Commerce Code;

(4) any other charges authorized by this subchapter;

(5) accrued interest authorized by this section; and

(6) principal.

SECTION 4. The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A

SECTION 8. Same as introduced version.

loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 9. Same as introduced version.