

## **BILL ANALYSIS**

Senate Research Center

S.B. 1251  
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Business & Commerce  
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Enrolled

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

In Texas, traditional installment lenders who provide consumer loans can charge an effective interest rate higher than the usury limit under Subchapters E (Interest Charges on Non-Real Property Loans) and F (Alternate Charges for Certain Loans), Chapter 342 (Consumer Loans), Finance Code. Unlike payday and auto title lenders who offer loans that must adhere to very few regulatory requirements; however, traditional installment lenders must comply with statutory limits that affect the size, term, interest rate, and fees charged pursuant to every loan. As a result of these limits, traditional installment loans tend to be much more affordable for consumers than any comparable payday or auto title loan product.

Both Subchapters E and F authorize lenders to impose a nonrefundable flat charge in addition to the amounts the lenders charge based on the amount and term of the loan. The flat charge a Subchapter E lender can assess is referred to as an "administrative fee," and the flat charge a Subchapter F lender can assess is referred to as an "acquisition charge." Currently lenders can use the rates in Subchapter E for any consumer loan, but the rates in Subchapter F are restricted to loans of \$1,300 or less.

The Subchapter E administrative fee is currently capped at \$25 for a loan of more than \$1,000, and the Subchapter F acquisition charge is currently capped at \$10 for a loan of more than \$100. These amounts have not been altered by the legislature since 1997 and 1981, respectively, and thus they are incompatible with current business costs and make it difficult for the traditional installment lending industry to compete within a skewed marketplace wherein payday and auto title lenders operate with minimal restrictions.

In order to promote competition, S.B. 1251 allows the Texas Finance Commission to prescribe by rule a reasonable amount that a traditional installment lender may assess as an administrative fee or acquisition charge, which may exceed the maximum amount codified in the Finance Code. In addition, S.B. 1251 specifies that administrative fees and acquisition charges are not interest, which is required in order to give the Texas Finance Commission the authority to set maximum amounts.

S.B. 1251 amends current law relating to authorized charges and terms for certain consumer loans.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 (Section 342.201, Finance Code) and SECTION 4 (Section 342.252, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 342.002, Finance Code, by adding Subsection (d) to prohibit interest under the scheduled installment earnings method or true daily earnings method from being compounded.

SECTION 2. Amends the heading to Section 342.201, Finance Code, to read as follows:

Sec. 342.201. MAXIMUM INTEREST CHARGE AND ADMINISTRATIVE FEE.

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

(f) Authorizes a consumer loan contract under this subchapter (Interest Charges on Non-Real Property Loans) to 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. Provides that the administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. Provides that an administrative fee is not interest.

(g) Authorizes the Finance Commission of Texas (finance commission) by rule to 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. Amends Section 342.252, Finance Code, as follows:

Sec. 342.252. New heading: ALTERNATE CHARGES. (a) Creates this subsection from existing text. Authorizes a loan contract, instead of the charges authorized by Section 342.201 (Maximum Interest Charge), to 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 \$3 a month if the cash advance is not more than \$35, \$3.50 a month if the cash advance is more than \$35 but not more than \$70, or \$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) Authorizes the finance commission by rule, for an acquisition charge authorized by this subchapter (Alternate Charges for Certain Loans), to 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) Provides that an acquisition charge under this subchapter is not interest.

SECTION 5. Amends Section 342.255, Finance Code, as follows:

Sec. 342.255. MAXIMUM LOAN TERM. Provides that the maximum scheduled term of a loan made under this chapter is:

(1) for a loan of \$100 or less, the lesser of one month for each multiple of \$10 of cash advance or six months; and

(2) for a loan of more than \$100, one month for each multiple of \$20 of cash advance.

SECTION 6. Amends Section 342.352(a), Finance Code, to provide that this section applies to a loan contract that includes precomputed interest and to which Section 342.351 (Refund of Precomputed Interest: Sum of the Periodic Balances) does not apply; that includes interest contracted for under Section 342.201 or 342.260; or that has a term of more than 60 months.

SECTION 7. Amends Subchapter F, Chapter 342, Finance Code, by adding Section 342.260, as follows:

Sec. 342.260. ALTERNATE INTEREST CHARGE COMPUTATION METHODS. (a) Authorizes a loan contract under this subchapter 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.

(b) Prohibits the principal balance of a loan contract authorized by this section from including the acquisition charge, installment account handling charge, default charges, or deferment charges or the return check fees authorized by Section 3.506 (Processing Fee by Holder of Payment Device), Business & Commerce Code.

(c) Authorizes interest to 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) Requires that a payment on a loan contract authorized by this section 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 (Default Charge; Deferment of Payment);

(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 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2013.