

BILL ANALYSIS

C.S.H.B. 3094
By: Parker
Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that there are technical corrections that need to be made to current law so that the Office of Consumer Credit Commissioner can effectively carry out its duties and oversight of the industries under its purview. C.S.H.B. 3094 seeks to address this issue by amending current statutes to clarify and update the duties and authority of the office.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3094 amends the Finance Code to clarify statutory provisions governing the confidentiality of information or material obtained or compiled by the consumer credit commissioner in relation to an examination or investigation by the commissioner and the commissioner's authority to disclose such information under certain circumstances by updating citations to the statutory authority for such examination or investigation.

C.S.H.B. 3094 subjects an order of restitution ordered by the consumer credit commissioner for certain violations to the notice, procedure, and enforcement provisions applicable to an administrative penalty imposed or recommended by the commissioner for certain violations. The bill requires the commissioner to approve the determination of a violation and impose the recommended penalty on a person's failure to make a timely written request for a hearing. The bill requires the commissioner to set a hearing on the penalty or restitution and give notice of the hearing only on such a timely written request and removes the requirement for the commissioner to set a hearing on the person's failure to give a timely response to the notice of the report on violation and penalty recommendations.

C.S.H.B. 3094 clarifies that a person who contracts for, charges, or receives a rate or amount of interest or time price differential under certain contracts for loans and financed transactions that exceeds the maximum applicable rate or amount authorized by applicable statutory provisions and the maximum applicable rate or amount authorized by statutory provisions relating to optional rate ceilings is subject to a penalty for that violation determined under certain statutory provisions establishing penalties and liabilities.

C.S.H.B. 3094 requires the interest charge for a consumer loan that is not secured by real property, if the interest charge is set at a rate or amount of interest computed using the true daily

earnings method or the scheduled installment earnings method, to be contracted for, charged, or received using the scheduled installment earnings method or the true daily earnings method by applying the applicable daily rate to each part of the unpaid principal balance corresponding to the specified brackets for the actual or scheduled number of days during a payment period or by applying a single equivalent daily rate to the unpaid principal balance for the actual or scheduled number of days during a payment period, where the single equivalent daily rate is determined at the inception of the loan using the scheduled installment earnings method, and would earn an authorized amount of interest if the debt were paid to maturity according to the schedule of payments.

C.S.H.B. 3094 raises the cap on the processing fee charged to a retail buyer on return of a dishonored check given in payment for a retail charge agreement from \$15 to the \$30 maximum processing fee as provided in Business & Commerce Code provisions relating to a processing fee by the holder of a dishonored check, item, paper or electronic payment, or other payment device.

C.S.H.B. 3094 includes the price of accessories and the price of services related to a motor vehicle installment sale among those amounts that are considered itemized charges in a retail installment contract for a motor vehicle if the charges are not included in the cash price. The bill removes a charge for participation in a motor vehicle theft protection plan from charges authorized to be included in a retail installment contract for a motor vehicle and instead authorizes the inclusion of charges for participation in a vehicle protection product authorized under the Vehicle Protection Product Regulatory Act.

C.S.H.B. 3094 clarifies that a property owner is prohibited from waiving or limiting a requirement imposed on a property tax lender either under the Property Tax Lender License Act or under Tax Code provisions relating to tax liens and personal liability, except as specifically permitted by that act or those provisions.

C.S.H.B. 3094 requires a property tax lender to maintain a record of each property tax loan made under the Property Tax Lender License Act as necessary to enable the consumer credit commissioner to determine whether the lender is complying with that act. The bill requires a property tax lender to keep the record until the later of the fourth anniversary of the date of the property tax loan or the second anniversary of the date on which the final entry is made in the record. The bill requires a lender's property tax loan records to be prepared in accordance with accepted accounting practices. The bill requires the commissioner to accept a lender's system of records if the system discloses the information reasonably required to enable the commissioner to determine whether the lender is complying with the act. The bill requires the property tax lender to keep each obligation signed by a property owner at an office in Texas designated by the lender unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

C.S.H.B. 3094 repeals provisions requiring the Finance Commission of Texas to instruct the consumer credit commissioner to establish a program to address alternatives to high-cost lending in Texas, setting out the scope of the program, and requiring the commissioner to provide to the legislature an annual report.

C.S.H.B. 3094 amends the Finance Code and Occupations Code to condition the consumer credit commissioner's suspension or revocation of certain licenses and registrations on prior notice and an opportunity for a hearing without requiring an actual hearing, as applicable. The bill makes the requirement for the commissioner or a hearings officer to prescribe the time and place of a hearing on the revocation of the registration of a facilitator of tax refund anticipation loans or crafted precious metal dealer contingent on the facilitator or dealer making the written request for the hearing not later than the 20th day after the date the registrant receives the notice of a hearing.

C.S.H.B. 3094 amends the Finance Code and Tax Code to update references to certain federal

agencies, federal regulations, and federal statutes in statutory provisions relating to certain consumer credit transactions to conform those provisions to changes in federal law.

C.S.H.B. 3094 repeals Sections 11.305(a), (b), and (c), Finance Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3094 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 14.2015, Finance Code, is amended.

No equivalent provision.

SECTION 2. Section 14.253, Finance Code, is amended to read as follows:
Sec. 14.253. REPORT ON VIOLATION.
If the commissioner determines that a violation occurred, the commissioner may issue a report that states:
(1) the facts on which the determination is based; and
(2) the commissioner's recommendation on imposition of a penalty, restitution, or both, including a recommendation on the amount of the penalty or restitution.

SECTION 3. Section 14.254(b), Finance Code, is amended to read as follows:
(b) The notice must:
(1) include a brief summary of the alleged violation;
(2) include a statement of the amount of the recommended penalty or restitution; and
(3) inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty or restitution, or both.

SECTION 4. Sections 14.255 and 14.256,

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 14.251, Finance Code, is amended by adding Subsection (c) to read as follows:
(c) An order of restitution under Subsection (b) is subject to the notice, procedure, and enforcement provisions of Sections 14.253 through 14.260 applicable to an administrative penalty.

No equivalent provision.

No equivalent provision.

No equivalent provision.

Finance Code, are amended to read as follows:

Sec. 14.255. RESPONSE OF PERSON RECEIVING NOTICE. Not later than the 20th day after the date on which a person receives notice under Section 14.254, the person may:

- (1) accept in writing the determination and recommended penalty or restitution of the commissioner; or
- (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty or restitution, or both.

Sec. 14.256. ACCEPTANCE OF PENALTY OR RESTITUTION; DEFAULT. If a person accepts the determination and recommended penalty or restitution of the commissioner or fails to make a timely written request for a hearing, the commissioner by order shall approve the determination and impose the recommended penalty, restitution, or both.

SECTION 5. The heading to Section 14.257, Finance Code, is amended to read as follows:

Sec. 14.257. HEARING ON PENALTY OR RESTITUTION; ORDER.

SECTION 6. Sections 14.257(a), (b), and (c), Finance Code, are amended to read as follows:

(a) If a person makes a timely written request for [~~requests~~] a hearing [~~or fails to give a timely response to the notice~~], the commissioner shall set a hearing and give notice of the hearing to the person by certified mail.

(b) The hearing shall be held by a hearings officer who shall make findings of fact and conclusions of law and promptly issue a proposal for a decision about the occurrence of the violation and the amount of the [a] proposed penalty or restitution.

(c) According to the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find:

- (1) that a violation has occurred and impose a penalty, restitution, or both; or
- (2) a violation has not occurred.

SECTION 3. Section 14.256, Finance Code, is amended to read as follows:

Sec. 14.256. ACCEPTANCE OF PENALTY; DEFAULT. If a person accepts the determination and recommended penalty of the commissioner or fails to make a timely written request for a hearing, the commissioner by order shall approve the determination and impose the recommended penalty.

No equivalent provision.

SECTION 4. Section 14.257(a), Finance Code, is amended to read as follows:

(a) If a person makes a timely written request for [~~requests~~] a hearing [~~or fails to give a timely response to the notice~~], the commissioner shall set a hearing and give notice of the hearing to the person by certified mail.

SECTION 7. The heading to Section 14.258, Finance Code, is amended to read as follows:

Sec. 14.258. STAY OF PENALTY OR RESTITUTION; SUIT BY ATTORNEY GENERAL.

SECTION 8. Sections 14.258(a), (b), (c), and (d), Finance Code, are amended to read as follows:

(a) The enforcement of the penalty or restitution may be stayed during the time the order is under judicial review if the person pays the penalty or restitution to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty or restitution. A person who cannot afford to pay the penalty or restitution or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules.

(b) The attorney general may sue to collect the penalty or to enforce an order of restitution.

(c) A court that sustains the occurrence of a violation may uphold or reduce the amount of the administrative penalty or restitution and order the person to pay that amount.

(d) A court that does not sustain the occurrence of a violation shall order that no penalty or restitution is owed.

SECTION 9. Section 180.002(5), Finance Code, is amended.

SECTION 10. Section 303.015(c), Finance Code, is amended.

SECTION 11. Section 303.402(a), Finance Code, is amended to read as follows:

(a) A person who contracts for, charges, or receives under a contract subject to Chapter 342, 345, 346, 347, 348, or 353, including a contract for an open-end account, interest [a rate] or [amount of] time price differential that exceeds the maximum applicable [rate or] amount authorized by the applicable chapter or this chapter is subject to a penalty for that violation determined under Chapter 349.

No equivalent provision.

No equivalent provision.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Section 303.402(a), Finance Code, is amended to read as follows:

(a) A person who contracts for, charges, or receives under a contract subject to Chapter 342, 345, 346, 347, 348, or 353, including a contract for an open-end account, a rate or amount of interest or time price differential that exceeds the maximum applicable rate or amount authorized by the applicable chapter and the maximum applicable rate or amount authorized by [or] this chapter is subject to a penalty for that violation determined under Chapter 349.

SECTION 12. Sections 308.002(c) and (e), Finance Code, are amended.

SECTION 13. Section 341.301(a), Finance Code, is amended.

SECTION 14. Section 341.401(b), Finance Code, is amended.

SECTION 15. Section 341.402(b), Finance Code, is amended.

SECTION 16. Section 341.502(a-1), Finance Code, is amended.

SECTION 17. Section 342.156, Finance Code, is amended.

SECTION 18. Section 342.201, Finance Code, is amended.

SECTION 19. Section 343.201, Finance Code, is amended.

SECTION 20. Section 345.106, Finance Code, is amended.

SECTION 21. Section 347.002(b), Finance Code, is amended.

SECTION 22. Section 347.004(a), Finance Code, is amended.

No equivalent provision.

SECTION 23. Section 347.155(b), Finance Code, is amended to read as follows:

(b) On prepayment, after deduction of an acquisition charge that does not exceed \$50, the consumer is entitled to a refund credit of the time price differential or interest. The

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. Section 347.056, Finance Code, is amended to read as follows:

Sec. 347.056. AUTHORITY OF CONSUMER CREDIT COMMISSIONER RELATING TO A CREDIT DOCUMENT. Except as provided by Section 347.004(a), the [The] commissioner may not require the inclusion of any specific language or a disclosure on a credit document that is not expressly required by:

- (1) this chapter; or
- (2) a regulation of the Office of the Comptroller of the Currency [Thrift Supervision].

SECTION 20. Section 347.155(b), Finance Code, is amended to read as follows:

(b) On prepayment, after deduction of an acquisition charge that does not exceed \$50, the consumer is entitled to a refund credit of the time price differential or interest. The

amount of the credit is computed on an actuarial basis in accordance with regulations of the Office of Thrift Supervision or the Office of the Comptroller of the Currency adopted under the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Section 4a et seq.) for the prepayment of a mortgage loan that is secured by a first lien on a residential manufactured home.

No equivalent provision.

No equivalent provision.

SECTION 24. Section 348.005, Finance Code, as amended.

SECTION 25. Section 348.009(a), Finance Code, is amended.

amount of the credit is computed on an actuarial basis in accordance with regulations of the Office of the Comptroller of the Currency [~~Thrift Supervision~~] adopted under the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Section 1735f-7a [4a] et seq.) for the prepayment of a mortgage loan that is secured by a first lien on a residential manufactured home.

SECTION 21. Section 347.356, Finance Code, is amended to read as follows:

Sec. 347.356. REQUIREMENTS FOR ACTION TO REPOSSESS, FORECLOSE, OR ACCELERATE PAYMENT OF ENTIRE DEBT. An action to repossess a manufactured home, foreclose a lien on a manufactured home, or accelerate payment of the entire unpaid balance of a credit transaction must comply with the regulations of the Office of the Comptroller of the Currency [~~Thrift Supervision~~] relating to the disclosure required for repossession, foreclosure, or acceleration except in extreme circumstances, including abandonment or voluntary surrender of the manufactured home.

SECTION 22. Section 347.455(b), Finance Code, is amended to read as follows:

(b) If the real property is included in the cash price of a credit transaction, the creditor may:

(1) charge a fee that is ordinarily associated with a real property transaction and is not prohibited by law, including a fee that is associated with a real property transaction and excluded from a finance charge under this chapter by the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) and Regulation Z (12 C.F.R. Part 1026) [~~12 C.F.R. Section 226.1 et seq. (Regulation Z)~~] adopted under that Act; and
(2) elect to treat the manufactured home as if it were residential real property for all purposes in connection with the credit transaction by conspicuously disclosing that election to the consumer.

SECTION 23. Same as introduced version.

SECTION 24. Same as introduced version.

SECTION 26. Section 348.208(b), Finance Code, is amended to read as follows:

(b) A retail installment contract may include as a separate charge an amount for:

- (1) motor vehicle property damage or bodily injury liability insurance;
- (2) mechanical breakdown insurance;
- (3) participation in a ~~[motor]~~ vehicle ~~[theft]~~ protection product ~~warranty~~ authorized under Chapter 2306, Occupations Code ~~[plan]~~;
- (4) insurance to reimburse the retail buyer for the amount computed by subtracting the proceeds of the buyer's basic collision policy on the motor vehicle from the amount owed on the vehicle if the vehicle has been rendered a total loss;
- (5) a warranty or service contract relating to the motor vehicle;
- (6) an identity recovery service contract; or
- (7) a debt cancellation agreement if the agreement is included as a term of a retail installment contract under Section 348.124.

SECTION 27. Section 348.404(d), Finance Code, is amended.

SECTION 28. Section 348.508, Finance Code, is amended.

SECTION 29. Section 351.0022, Finance Code, is amended.

SECTION 30. Subchapter A, Chapter 351, Finance Code, is amended.

SECTION 31. Section 351.156, Finance Code, is amended.

SECTION 32. Section 352.006(b), Finance Code, is amended.

SECTION 33. Section 353.508, Finance Code, is amended.

SECTION 34. Section 371.157, Finance Code, is amended.

SECTION 35. Section 371.251(a), Finance Code, is amended.

SECTION 36. Section 371.255, Finance Code, is amended.

SECTION 25. Section 348.208(b), Finance Code, is amended to read as follows:

(b) A retail installment contract may include as a separate charge an amount for:

- (1) motor vehicle property damage or bodily injury liability insurance;
- (2) mechanical breakdown insurance;
- (3) participation in a ~~[motor]~~ vehicle ~~[theft]~~ protection product authorized under Chapter 2306, Occupations Code ~~[plan]~~;
- (4) insurance to reimburse the retail buyer for the amount computed by subtracting the proceeds of the buyer's basic collision policy on the motor vehicle from the amount owed on the vehicle if the vehicle has been rendered a total loss;
- (5) a warranty or service contract relating to the motor vehicle;
- (6) an identity recovery service contract; or
- (7) a debt cancellation agreement if the agreement is included as a term of a retail installment contract under Section 348.124.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. Same as introduced version.

SECTION 29. Same as introduced version.

SECTION 30. Same as introduced version.

SECTION 31. Same as introduced version.

SECTION 32. Same as introduced version.

SECTION 33. Same as introduced version.

SECTION 34. Same as introduced version.

SECTION 35. Same as introduced version.

SECTION 37. Section 393.614(a), Finance Code, is amended.

SECTION 38. Section 394.204(k), Finance Code, is amended.

No equivalent provision.

SECTION 39. Section 1956.0614(b), Occupations Code, is amended.

SECTION 40. Sections 32.06(d-1) and (f-3), Tax Code, are amended.

SECTION 41. Sections 11.305(a), (b), and (c), Finance Code, are repealed.

SECTION 36. Same as introduced version.

SECTION 37. Same as introduced version.

SECTION 38. Section 394.212(a), Finance Code, is amended to read as follows:

(a) A provider may not:

(1) purchase a debt or obligation of a consumer;

(2) receive or charge a fee in the form of a promissory note or other negotiable instrument other than a check or a draft;

(3) lend money or provide credit to the consumer;

(4) obtain a mortgage or other security interest in property owned by a consumer;

(5) engage in business with an entity described by Section 394.204(c)(7) [~~394.204(e)(3)~~] without prior consent of the commissioner, except that unless denied, consent is considered granted 30 days after the date the provider notifies the commissioner of the intent to engage in business with the for-profit business entity [~~an organization~~] described by Section 394.204(c)(7) [~~394.204(e)(3)~~];

(6) offer, pay, or give a gift, bonus, premium, reward, or other compensation to a person for entering into a debt management services agreement;

(7) represent that the provider is authorized or competent to furnish legal advice or perform legal services unless supervised by an attorney as required by State Bar of Texas rules;

(8) use an unconscionable means to obtain a contract with a consumer;

(9) engage in an unfair, deceptive, or unconscionable act or practice in connection with a service provided to a consumer; or

(10) require or attempt to require payment of an amount that the provider states, discloses, or advertises to be a voluntary contribution from the consumer.

SECTION 39. Same as introduced version.

SECTION 40. Same as introduced version.

SECTION 41. Same as introduced version.

SECTION 42. This Act takes effect
September 1, 2015.

SECTION 42. Same as introduced version.