

BILL ANALYSIS

C.S.S.B. 1282
By: Eltife
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. These parties also express concern that there is a need for the law to more adequately address consumer civil justice lending transactions. C.S.S.B. 1282 seeks to address these issues.

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.S.B. 1282 amends the Finance Code to remove the requirement that the Finance Commission of Texas instruct the consumer credit commissioner to establish a program to address alternatives to high-cost lending in Texas and instead requires the consumer credit commissioner to establish such a program. The bill removes the specification that the nature of high-cost lending that is the subject for study and reporting under the program is the problem of high-cost lending, removes the availability, quality, and prices of financial services offered in Texas to agricultural and small businesses as subjects for study and reporting under the program, and removes the requirement that the program evaluate alternatives to high-cost lending and the practices of business entities in Texas that provide financial services to agricultural and small businesses. The bill removes the requirement that the program develop models to provide lower-cost alternatives to assist borrowers who contract for high-cost loans and removes the requirement that the program provide certain information relating to the location of lenders who enter into loan contracts providing for an interest charge authorized under statutory provisions relating to maximum interest charges and an administrative fee on non-real property loans.

C.S.S.B. 1282 clarifies 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.S.B. 1282 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.S.B. 1282 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.S.B. 1282 subjects a consumer civil justice lending transaction to statutory provisions governing consumer loans and defines "consumer civil justice lender" as a person that enters into a consumer civil justice lending transaction with a consumer. The bill specifies that the term does not include an attorney who, at the time money is provided to or on behalf of a consumer in a consumer civil justice lending transaction, has an attorney-client relationship with the consumer concerning the consumer's dispute. The bill defines "consumer civil justice lending transaction" as a non-recourse transaction in which a consumer civil justice lender purchases, and a consumer assigns to the lender, a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim. The bill establishes that the amounts provided by the consumer civil justice lender to the consumer in such a transaction are considered to be amounts extended primarily for personal, family, or household use; prohibits these amounts from being paid to any other person who is not the sole payee of the transaction; and prohibits these amounts from providing for interest in excess of 36 percent a year.

C.S.S.B. 1282 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.S.B. 1282 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.S.B. 1282 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.S.B. 1282 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.S.B. 1282 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.S.B. 1282 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.S.B. 1282 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.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1282 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 11.305(a), Finance Code, is amended to read as follows:

(a) The [~~finance commission shall instruct the~~] consumer credit commissioner shall [~~to~~] establish a program to address alternatives to high-cost lending in this state. The program shall:

(1) study and report on [~~the problem of~~] high-cost lending, including without limitation the availability, quality, and prices of financial services [~~, including lending and depository services,~~] offered in this state to [~~agricultural businesses, small businesses, and~~] individual consumers in this state; and

(2) evaluate alternatives to high-cost lending and the practices of business

entities in this state that provide financial services to ~~[agricultural businesses, small businesses, and]~~ individual consumers in this state[;

~~[(3) develop models to provide lower cost alternatives to assist borrowers who contract for high cost loans; and~~

~~[(4) track the location of lenders who enter into loan contracts providing for an interest charge authorized by Section 342.201, map the location of the lenders by senatorial district and by any other appropriate areas, provide other demographic information relating to the loans and the location of the lenders, and provide information on the changes in the distribution of the lenders from 1997 through the date of the report].~~

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

SECTION 2. Section 14.251, Finance Code, is amended.

SECTION 3. Section 14.256, Finance Code, is amended.

SECTION 4. Section 14.257(a), Finance Code, is amended.

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

SECTION 6. Section 303.015(c), Finance Code, is amended.

SECTION 7. Section 303.402(a), Finance Code, is amended.

SECTION 8. Sections 308.002(c) and (e), Finance Code, are amended.

SECTION 9. Section 341.301(a), Finance Code, is amended.

SECTION 10. Section 341.401(b), Finance Code, is amended.

SECTION 11. Section 341.402(b), Finance Code, is amended.

SECTION 12. Section 341.502(a-1), Finance Code, is amended.

No equivalent provision.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Same as engrossed version.

SECTION 10. Same as engrossed version.

SECTION 11. Same as engrossed version.

SECTION 12. Same as engrossed version.

SECTION 13. Same as engrossed version.

SECTION 14. Section 342.001, Finance

Code, is amended by adding Subdivisions (5) and (6) to read as follows:

(5) "Consumer civil justice lender" means a person that enters into a consumer civil justice lending transaction with a consumer. The term does not include an attorney who, at the time money is provided to or on behalf of a consumer in a consumer civil justice lending transaction, has an attorney-client relationship with the consumer concerning the consumer's dispute.

(6) "Consumer civil justice lending transaction" means a non-recourse transaction in which a consumer civil justice lender purchases, and a consumer assigns to the lender, a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim.

No equivalent provision.

SECTION 15. Section 342.005, Finance Code, is amended to read as follows:

Sec. 342.005. APPLICABILITY OF CHAPTER. (a) Except as provided by Sections 302.001(d) and 342.004(c), a loan is subject to this chapter if the loan:

- (1) provides for interest in excess of 10 percent a year;
- (2) is extended primarily for personal, family, or household use;
- (3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and
- (4) either:
 - (A) is not secured by a lien on real property; or
 - (B) is described by Section 342.001(4), 342.301, or 342.456 and is predominantly payable in monthly installments.

(b) A consumer civil justice lending transaction is subject to this chapter. The amounts provided by the consumer civil justice lender to the consumer in a consumer civil justice lending transaction are considered to be amounts extended primarily for personal, family, or household use, may not be paid to any other person who is not the sole payee of the transaction, and may not provide for interest in excess of 36 percent a year.

SECTION 13. Section 342.156, Finance Code, is amended.

SECTION 16. Same as engrossed version.

SECTION 14. Section 342.201, Finance Code, is amended.

SECTION 15. Section 343.201, Finance Code, is amended.

SECTION 16. Section 345.106, Finance Code, is amended.

SECTION 17. Section 347.002(b), Finance Code, is amended.

SECTION 18. Section 347.004(a), Finance Code, is amended.

SECTION 19. Section 347.056, Finance Code, is amended.

SECTION 20. Section 347.155(b), Finance Code, is amended.

SECTION 21. Section 347.356, Finance Code, is amended.

SECTION 22. Section 347.455(b), Finance Code, is amended.

SECTION 23. Section 348.005, Finance Code, as amended.

SECTION 24. Section 348.009(a), Finance Code, is amended.

SECTION 25. Section 348.208(b), Finance Code, is amended.

SECTION 26. Section 348.404(d), Finance Code, is amended.

SECTION 27. Section 348.508, Finance Code, is amended.

SECTION 28. Section 351.0022, Finance Code, is amended.

SECTION 29. Subchapter A, Chapter 351, Finance Code, is amended.

SECTION 30. Section 351.156, Finance Code, is amended.

SECTION 31. Section 352.006(b), Finance Code, is amended.

SECTION 32. Section 353.508, Finance

SECTION 17. Same as engrossed version.

SECTION 18. Same as engrossed version.

SECTION 19. Same as engrossed version.

SECTION 20. Same as engrossed version.

SECTION 21. Same as engrossed version.

SECTION 22. Same as engrossed version.

SECTION 23. Same as engrossed version.

SECTION 24. Same as engrossed version.

SECTION 25. Same as engrossed version.

SECTION 26. Same as engrossed version.

SECTION 27. Same as engrossed version.

SECTION 28. Same as engrossed version.

SECTION 29. Same as engrossed version.

SECTION 30. Same as engrossed version.

SECTION 31. Same as engrossed version.

SECTION 32. Same as engrossed version.

SECTION 33. Same as engrossed version.

SECTION 34. Same as engrossed version.

SECTION 35. Same as engrossed version.

Code, is amended.

SECTION 33. Section 371.157, Finance Code, is amended.

SECTION 34. Section 371.251(a), Finance Code, is amended.

SECTION 35. Section 371.255, Finance Code, is amended.

SECTION 36. Section 393.614(a), Finance Code, is amended.

SECTION 37. Section 394.204(k), Finance Code, is amended.

SECTION 38. Section 394.212(a), Finance Code, is amended.

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. To the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

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

SECTION 36. Same as engrossed version.

SECTION 37. Same as engrossed version.

SECTION 38. Same as engrossed version.

SECTION 39. Same as engrossed version.

SECTION 40. Same as engrossed version.

SECTION 41. Same as engrossed version.

SECTION 42. Same as engrossed version.

SECTION 43. Same as engrossed version.

SECTION 44. Same as engrossed version.

SECTION 45. Same as engrossed version.