

BILL ANALYSIS

Senate Research Center
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S.B. 1371
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Office of Consumer Credit Commissioner (OCCC) seeks to modernize and achieve consistency of some obsolete provisions of the Texas Finance Code by implementing technical statutory changes:

1. S.B. 1371 seeks to modernize the process for surrendering licenses by amending the current process of delivering the license and written notice of surrender to the OCCC, allowing licensees to surrender licenses electronically.
2. S.B. 1371 also seeks to modernize process for rulemaking that is redundant to the rule-submission requirements of the Texas Administrative Procedure Act. The change to the rulemaking process allows the OCCC to submit rules through an online process, removing the requirement to send paper mailings.
3. S.B. 1371 adds provisions requiring authorized lenders to maintain with the commissioner a written appointment of a resident of Texas for service of all process or legal notice and removes the provisions regarding service on the commissioner if an authorized lender does not comply.
4. S.B. 1371 amends Section 371.255 to specify that the OCCC may take action after notice and an opportunity for a hearing, with no exceptions for pawnshop employees.
5. S.B. 1371 amends Sections 345.351 and 347.451 to be consistent with other provisions where the fee amounts are provided directly in the statute.

S.B. 1371 also seeks to clarify investment standards for special funds. Changes to Section 393.628 would clarify the investment standard with a requirement to follow the "prudent investor" standard, so that funds in the TFEE and Residential Mortgage Loan Originator (RMLO) Recovery Fund may be invested and reinvested in the same manner as other funds.

Finally, S.B. 1371 amends outdated citations to state and federal law to include current and accurate citations.

Key Provisions:

- S.B. 1371 amends the Finance Code to modernize license surrender, rulemaking, statutory agent, hearing requests, and fee authority.
- S.B. 1371 clarifies investment standards for special funds such as the TFEE and the RMLO recovery fund.
- S.B. 1371 amends outdated citations to state and federal law to include current and accurate citations.

As proposed, S.B. 1371 amends current law relating to the regulation of consumer credit transactions and the regulatory authority of the consumer credit commissioner and changes a fee.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to Finance Commission of Texas is modified in SECTION 1 (Section 14.113, Finance Code) and SECTION 34 (Sections 342.551 and 371.006, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Transfers Section 393.628, Finance Code, to Subchapter C, Chapter 14, Finance Code, redesignates it as Section 14.113, Finance Code, and amends it, as follows:

Sec. 14.113. TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) Requires each credit access business or holder of a credit access business license, rather than license holder, as part of the licensing fee and procedures described under Subchapter G (Licensing and Regulation of Certain Credit Services Organizations), Chapter 393, to pay to the consumer credit commissioner (commissioner) an annual assessment to improve consumer credit, financial education, and asset-building opportunities in this state. Makes a nonsubstantive change.

(b) Authorizes money deposited in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company to be spent by the Finance Commission of Texas (finance commission) only for the purposes provided by this section. Authorizes amounts in the account to be invested and reinvested under the prudent person standard described by Section 11b (Expanded Investment Authority for Permanent University Fund), Article VII (Education), Texas Constitution, rather than in the same manner as funds of the Employees Retirement System of Texas (ERS), and requires that the interest from those investments be deposited to the credit of the account.

(b-1) Authorizes the expenses of managing the investments to be paid from the deposit account described by Subsection (b).

(c) Makes no changes to this subsection.

(d) Authorizes the finance commission, in implementing this section, to make grants and to solicit gifts, grants, and donations for this purpose.

(e)-(f) Makes no changes to these subsections.

SECTION 2. Amends Section 14.209(a), Finance Code, as follows:

(a) Authorizes the court in which an action is brought under Section 14.208(c) (relating to providing that an order to cease and desist from a violation is considered final and becomes enforceable if a hearing is not timely requested), rather than Section 14.208(b) (relating to requiring the commissioner to set and give notice of a hearing before a hearings officer if a person against whom an order is made requests a hearing not later than a certain date), in addition to other remedies for the enforcement of a restraining order or injunction, to impound and appoint a receiver for the defendant's property and business, including a document relating to the property or business, as the court considers reasonably necessary to prevent a violation through use of the property and business.

SECTION 3. Amends Section 156.554(b) Finance Code, to make a conforming change.

SECTION 4. Amends Section 180.002(5), Finance Code, to make a conforming change.

SECTION 5. Amends Section 303.015(c), Finance Code, as follows:

(c) Requires that a variable rate agreement for credit extended primarily for personal, family, or household use include the disclosures identified for variable rate contracts required by regulations issued by the Federal Reserve Board and the Consumer Financial Protection Bureau under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended, except that if that Act does not apply because of the amount of the transaction, a disclosure is required to be included meeting certain criteria. Sets forth the language required to be included on the disclosure.

SECTION 6. Amends Section 303.402(a), Finance Code, as follows:

(a) Provides that a person who contracts for, charges, or receives under a contract subject to certain chapters, 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 or Chapter 303 (Optional Rate Ceilings) is subject to a penalty for that violation determined under Chapter 349 (Penalties and Liabilities).

SECTION 7. Amends Section 308.002(c) and (e), Finance Code, as follows:

(c) Requires an administrative agency or a court, in interpreting Section 308.002 (False, Misleading, or Deceptive Advertising), to be guided by the applicable advertising provisions of:

(1) Part C of the Truth in Lending Act (15 U.S.C. Section 1661 et seq.), rather than Part C of 15 U.S.C. Chapter 41, Subchapter I (15 U.S.C. Section 1601 et seq.);

(2) Regulation Z (12 C.F.R. Parts 226 and 1026) adopted by the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, rather than 12 C.F.R. Part 226 adopted by the Board of Governors of the Federal Reserve System; and

(3) the Official Staff Commentary and other interpretations of that statute and regulation by the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, and the staff of those agencies, rather than by the Board of Governors of the Federal Reserve System and its staff.

(e) Provides that a creditor who complies with the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Regulation Z (12 C.F.R. Parts 226 and 1026), rather than with the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Federal Reserve Regulation Z (12 C.F.R. Part 226), in advertising a credit transaction is considered to have fully complied with this section.

SECTION 8. Amends Section 341.301(a), Finance Code, as follows:

(a) Requires an advertiser, in each advertisement that purports to offer credit regulated by Subtitle B (Loans and Financed Transactions), Subtitle C (Pawnshops), or Chapter 394 (Debtor Assistance), to disclose the legal or registered name of the advertiser and:

(1) makes no changes to this subdivision; or

(2) if the advertisement is broadcast by radio or television, to:

(A) makes no changes to this paragraph; and

(B) comply with the applicable disclosure requirements of Regulation Z (12 C.F.R. Parts 226 and 1026), rather than comply with 12 C.F.R. Section 226.1 et seq. (Regulation Z).

SECTION 9. Amends Section 341.401(b), Finance Code, as follows:

(b) Requires a court or administrative agency, in interpreting Section 341.401 (Discrimination Prohibited), to be guided by the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.) and regulations under and interpretations of that Act by the Federal Reserve Board and the Consumer Financial Protection Bureau to the extent that Act and those regulations and interpretations can be made applicable to conduct prohibited by this section.

SECTION 10. Amends Section 341.402(b), Finance Code, as follows:

(b) Provides that the liability of a person under Section 341.402 (Penalties for Prohibited Discrimination) is instead of and not in addition to that person's liability under the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), rather than under Title VII of the Consumer Credit Protection Act (15 U.S.C. Section 1691 et seq.).

SECTION 11. Amends Section 341.502(a-1), Finance Code, as follows:

(a-1) Requires that a copy of a summary of those terms and other pertinent information, if the terms of the agreement for a loan under Subsection (a) were negotiated in Spanish, be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 1026.18, rather than under 12 C.F.R. Section 226.18.

SECTION 12. Amends Section 341.602(f), Finance Code, as follows:

(f) Requires the commissioner to remit to the Comptroller of Public Accounts of the State of Texas amounts received under Section 341.603(a) (relating to requiring an applicant for certain mortgage loans to pay a fee in an amount determined by the commissioner in addition to paying the original application fee or renewal fee) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Authorizes amounts in the fund to be invested and reinvested under the prudent person standard described by Section 11b, Article VII, Texas Constitution, rather than be invested in the same manner as funds of ERS, and requires that the interest from those investments be deposited to the credit of the fund. Prohibits an investment from being made under this subsection if the investment will impair the necessary liquidity required to satisfy payment of claims under Subchapter G (State-Licensed Residential Mortgage Loan Originator Recovery Fund), rather than satisfy payment of judgments awarded under than subchapter.

SECTION 13. Amends Section 342.160, Finance Code, as follows:

Sec. 342.160. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under Chapter 342 (Consumer Loans) by complying with the commissioner's written instructions relating to license surrender. Deletes existing text authorizing a license holder to surrender a license issued under this chapter by delivering to the commissioner the license and a written notice of the license's surrender.

SECTION 14. Amends Section 342.556(a), Finance Code, as follows:

(a) Requires an authorized lender to maintain on file with the commissioner the name and address of the lender's registered agent for service. Deletes existing text requiring an authorized lender to maintain on file with the commissioner a written appointment of a resident of this state as the lender's agent for service of all judicial or other process or legal notice, unless the lender has appointed an agent under another statute of this state.

SECTION 15. Amends Section 343.201, Finance Code, as follows:

Sec. 343.201. DEFINITIONS. Makes conforming changes to this section.

SECTION 16. Amends Section 345.106, Finance Code, as follows:

Sec. 345.106. PROCESSING FEES FOR RETURNED CHECK. Authorizes a retail charge agreement to provide that the holder of the agreement is authorized to:

(1) charge the retail buyer, on return of a dishonored check given in payment under the agreement, a reasonable processing fee that does not exceed the amount prescribed by Section 3.506 (Processing Fee by Holder of Payment Device), Business and Commerce Code, rather than a reasonable processing fee that is not more than \$15; and

(2) makes no changes to this subdivision.

SECTION 17. Amends Section 345.351(a), Finance Code, as follows:

(a) Requires a holder who is not an authorized lender under Chapter 342 or a credit union to:

(1) makes no changes to this subdivision; and

(2) pay a fee in an amount determined under Section 14.107 (Fees), rather than pay a fee of \$10, for each location at which a retail installment transaction is originated, serviced, or collected.

SECTION 18. Amends Section 347.451(a), Finance Code, as follows:

(a) Requires a creditor who is not an authorized lender under Chapter 342 or a credit union to:

(1) makes no changes to this subdivision; and

(2) pay a fee in an amount determined under Section 14.107, rather than pay a fee of \$15, for each location at which a credit transaction is originated, serviced, or collected.

SECTION 19. Amends Section 348.009(a), Finance Code, as follows:

(a) Provides that the disclosure requirements of Regulation Z (12 C.F.R. Parts 226 and 1026) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and specifically 12 C.F.R. Sections 226.18(f) and 1026.18(f), rather than the disclosure requirements of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and specifically 12 C.F.R. Section 226.18(f), regarding variable rate disclosures, apply according to their terms to retail installment transactions.

SECTION 20. Amends Section 348.404(d), Finance Code, to make a conforming change.

SECTION 21. Amends Section 348.510, Finance Code, as follows:

Sec. 348.510. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under Chapter 348 (Motor Vehicle Installment Sales) by complying with the commissioner's written instructions relating to license surrender. Deletes existing text authorizing a license holder to surrender a license issued under this chapter by delivering to the commissioner the license and a written notice of the license's surrender.

SECTION 22. Amends Section 351.0022, Finance Code, as follows:

Sec. 351.0022. WAIVER PROHIBITED. Prohibits a property owner, except as specifically permitted by Chapter 351 (Property Tax Lenders) or Chapter 32 (Tax Liens and Personal Liability), Tax Code, from waiving or limiting a requirement imposed on a property tax lender by this chapter or Chapter 32, Tax Code.

SECTION 23. Amends Section 351.160, Finance Code, to make conforming changes.

SECTION 24. Amends Section 352.006(b), Finance Code, as follows:

(b) Requires the commissioner or hearings officer to prescribe the time and place of the hearing if the facilitator makes a written request for a hearing not later than the 30th day after the date on which the order of revocation is served, rather than not later than the 20th day after the date the facilitator receives the notice of the proposed revocation.

SECTION 25. Amends Section 353.510, Finance Code, as follows:

Sec. 353.510. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under Chapter 353 (Commercial Motor Vehicle Installment Sales) by complying with the commissioner's written instructions relating to license surrender. Deletes existing text authorizing a license holder to surrender a license issued under this chapter by delivering to the commissioner the license and a written notice of the license's surrender.

SECTION 26. Amends Section 371.073(a), Finance Code, as follows:

(a) Requires a pawnbroker to maintain on file with the commissioner the name and address of the pawnbroker's registered agent for service of process. Deletes existing text requiring a pawnbroker to maintain on file with the commissioner a written appointment of a resident of this state as the pawnbroker's agent for service of all judicial or other process or legal notice unless the pawnbroker has appointed an agent under another statute of this state.

SECTION 27. Amends Section 371.157, Finance Code, as follows:

Sec. 371.157. PAWN TICKET. Requires a pawnbroker, at the time a pawn transaction is entered, to deliver to the pledgor a pawn ticket or other memorandum that clearly shows certain information, including the "Annual Percentage Rate," computed according to Regulation Z (12 C.F.R. Part 1026) adopted by the Consumer Financial Protection Bureau, rather than according to regulations issued by the Federal Reserve Board, under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended.

SECTION 28. Amends Section 371.255, Finance Code, as follows:

Sec. 371.255. REVOCATION OR SUSPENSION OF PAWNSHOP EMPLOYEE LICENSE. Authorizes the commissioner, after notice and opportunity for a hearing, to revoke or suspend a pawnshop employee license if the commissioner finds that certain criteria are met.

SECTION 29. Amends Section 371.257(a), Finance Code, as follows:

(a) Authorizes the holder of a pawnshop license or a pawnshop employee license to surrender the license by complying with the commissioner's written instructions relating to license surrender, rather than by delivering it to the commissioner with written notice of surrender.

SECTION 30. Amends Section 393.617, Finance Code, as follows:

Sec. 393.617. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under Chapter 393 (Credit Services Organizations) by complying with the commissioner's written instructions relating to license surrender. Deletes existing text authorizing a license holder to surrender a license issued under this chapter by delivering to the commissioner the license and a written notice of the license's surrender.

SECTION 31. Amends Section 394.2101(a), Finance Code, by deleting existing text requiring that the dollar amounts be rounded to the nearest \$100, except that the amounts of the fees and other charges specified in Section 394.210 (Permitted Fees) are required to be rounded to the nearest dollar.

SECTION 32. Amends Section 394.212(a), Finance Code, as follows:

(a) Prohibits a consumer debt management services provider from:

(1)-(4) makes no changes to these subdivisions;

(5) engaging in business with a for-profit business entity described by Section 394.204(c)(7) (relating to requiring that an application for an initial registration be in a form prescribed by the commissioner and accompanied by a detailed description of the ownership interest of certain persons in a for-profit affiliate or subsidiary of the applicant), rather than with an entity described by Section 394.204(c)(3) (relating to requiring that an application for an initial registration be in a form prescribed by the commissioner and accompanied by certain information), 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 a for-profit business entity described by Section 394.204(c)(7), rather than with an organization described by Section 394.204(c)(3); or

(6)-(10) makes no changes to these subdivisions.

SECTION 33. Amends Sections 32.06(d-1) and (f-3), Tax Code, as follows:

(d-1) Provides that a right of rescission described by the Truth in Lending Act (15 U.S.C. Section 1635) and Regulation Z (12 C.F.R. Section 1026.23), rather than described by 12 C.F.R. Section 226.23, applies to a transfer under Section 32.06 (Property Tax Loans; Transfer of Tax Lien) of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

(f-3) Requires the transferee of a tax lien, notwithstanding any contractual agreement with the property owner, to provide the payoff information required by this section to the greatest extent permitted by the Gramm-Leach-Bliley Act (15 U.S.C. Section 6802) and Regulation P (12 C.F.R. Part 1016), rather than by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216.

SECTION 34. Repealer: Section 342.551(c) (relating to requiring that a rule adopted by the finance commission be entered in a permanent book that is public record and is required to be kept in the office of the commissioner), Finance Code.

Repealer: Section 342.556(b) (relating to authorizing service of all judicial or other process or legal notice to be made on the commissioner if an authorized lender does not comply with certain requirements), Finance Code.

Repealers: Sections 371.006(b) (relating to requiring that a rule adopted by the finance commission be entered in a permanent book that is public record and is required to be kept in the office of the commissioner) and (c) (relating to requiring that a copy of a rule be mailed to each license holder, and prohibiting the rule from taking effect before the 21st day after a certain day), Finance Code.

Repealer: Section 371.006(d) (relating to requiring the commissioner to furnish any person a certified copy of a rule adopted by the finance commission on application by the person and on payment of any associated cost), Finance Code.

Repealer: Section 371.073(b) (relating to authorizing service of all judicial or other process or legal notice to be made on the commissioner if a pawnbroker does not comply with certain requirements)

SECTION 35. Effective date: September 1, 2023.