By:  Johnson S.B. No. 1371

(In the Senate - Filed March 1, 2023; March 16, 2023, read first time and referred to Committee on Business & Commerce; April 19, 2023, reported favorably by the following vote: Yeas 11, Nays 0; April 19, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Schwertner           X

King                 X

Birdwell             X

Campbell             X

Creighton            X

Johnson              X

Kolkhorst            X

Menéndez             X

Middleton            X

Nichols              X

Zaffirini            X

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of consumer credit transactions and the regulatory authority of the consumer credit commissioner; changing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 393.628, Finance Code, is transferred to Subchapter C, Chapter 14, Finance Code, redesignated as Section 14.113, Finance Code, and amended to read as follows:

Sec. 14.113 [~~393.628~~].  TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) As part of the licensing fee and procedures described under Subchapter G, Chapter 393 [~~this subchapter~~], each credit access business or [~~license~~] holder of a credit access business license shall pay to the commissioner an annual assessment to improve consumer credit, financial education, and asset-building opportunities in this state. The annual assessment may not exceed $200 for each license as specified by the finance commission.

(b)  The commissioner shall remit to the comptroller amounts received under Subsection (a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Money in the account may be spent by the finance commission only for the purposes provided by this section. Amounts in the account may be invested and reinvested under the prudent person standard described by Section 11b, Article VII, Texas Constitution [~~in the same manner as funds of the Employees Retirement System of Texas~~], and the interest from those investments shall be deposited to the credit of the account.

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

(c)  The Texas Financial Education Endowment shall be administered by the finance commission to support statewide financial education and consumer credit building activities and programs, including:

(1)  production and dissemination of approved financial education materials at licensed locations;

(2)  advertising, marketing, and public awareness campaigns to improve the credit profiles and credit scores of consumers in this state;

(3)  school and youth-based financial literacy and capability;

(4)  credit building and credit repair;

(5)  financial coaching and consumer counseling;

(6)  bank account enrollment and incentives for personal savings; and

(7)  other consumer financial education and asset-building initiatives as considered appropriate by the finance commission.

(d)  In implementing this section, the finance commission may make grants and may solicit gifts, grants, and donations for this purpose.

(e)  The finance commission may partner with other state agencies and entities to implement this section.

(f)  The finance commission shall adopt rules to administer this section.

SECTION 2.  Section 14.209(a), Finance Code, is amended to read as follows:

(a)  In addition to other remedies for the enforcement of a restraining order or injunction, the court in which an action is brought under Section 14.208(c) [~~14.208(b)~~] may 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.  Section 156.554(b), Finance Code, is amended to read as follows:

(b)  The commissioner:

(1)  may provide grants in an aggregate amount of not more than $100,000 each year to an auxiliary mortgage loan activity company or another nonprofit organization for the purposes of:

(A)  providing to consumers financial education relating to mortgage loans; and

(B)  providing to other nonprofit organizations training in order for those organizations to provide to consumers financial education relating to mortgage loans;

(2)  shall make disbursements from the fund to pay claims made under Section 156.555 that meet the requirements for payment under that section; and

(3)  may make disbursements from the fund to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, including activities and programs described by Section 14.113(c) [~~393.628(c)~~].

SECTION 4.  Section 180.002(5), Finance Code, is amended to read as follows:

(5)  "Dwelling" has the meaning assigned by Section 103(w) [~~103(v)~~] of the Truth in Lending Act (15 U.S.C. Section 1602(w) [~~1602(v)~~]).

SECTION 5.  Section 303.015(c), Finance Code, is amended to read as follows:

(c)  A variable rate agreement for credit extended primarily for personal, family, or household use must 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, the following disclosure must be included in a size equal to at least 10-point type that is boldface, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous:

"NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR."

SECTION 6.  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 or this chapter is subject to a penalty for that violation determined under Chapter 349.

SECTION 7.  Sections 308.002(c) and (e), Finance Code, are amended to read as follows:

(c)  In interpreting this section, an administrative agency or a court shall be guided by the applicable advertising provisions of:

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

(2)  Regulation Z (12 C.F.R. Parts 226 and 1026) [~~12 C.F.R. Part 226~~] adopted by the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau; 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 [~~its staff~~].

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

SECTION 8.  Section 341.301(a), Finance Code, is amended to read as follows:

(a)  In each advertisement that purports to offer credit regulated by this subtitle, Subtitle C, or Chapter 394, the advertiser shall disclose the legal or registered name of the advertiser and:

(1)  shall disclose the street address of the advertiser's place of business unless the advertisement:

(A)  is located on the premises of the advertiser's place of business; or

(B)  is broadcast by radio or television; or

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

(A)  disclose the telephone number of the advertiser; and

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

SECTION 9.  Section 341.401(b), Finance Code, is amended to read as follows:

(b)  In interpreting this section, a court or administrative agency shall 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.  Section 341.402(b), Finance Code, is amended to read as follows:

(b)  The liability of a person under this section is instead of and not in addition to that person's liability under the Equal Credit Opportunity [~~Title VII of the Consumer Credit Protection~~] Act (15 U.S.C. Section 1691 et seq.). If the same act or omission violates Section 341.401 and applicable federal law, the person aggrieved by that conduct may bring a legal action to recover monetary damages either under this section or under that federal law, but not both.

SECTION 11.  Section 341.502(a-1), Finance Code, is amended to read as follows:

(a-1)  If the terms of the agreement for a loan under Subsection (a) were negotiated in Spanish, a copy of a summary of those terms and other pertinent information shall 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 [~~226.18~~].

SECTION 12.  Section 341.602(f), Finance Code, is amended to read as follows:

(f)  The commissioner shall remit to the comptroller amounts received under Section 341.603(a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Amounts in the fund may be invested and reinvested under the prudent person standard described by Section 11b, Article VII, Texas Constitution [~~in the same manner as funds of the Employees Retirement System of Texas~~], and the interest from those investments shall be deposited to the credit of the fund. An investment may not be made under this subsection if the investment will impair the necessary liquidity required to satisfy payment of claims [~~judgments awarded~~] under this subchapter.

SECTION 13.  Section 342.160, Finance Code, is amended to read as follows:

Sec. 342.160.  SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender [~~delivering to the commissioner:~~

[~~(1) the license; and~~

[~~(2) a written notice of the license's surrender~~].

SECTION 14.  Section 342.556(a), Finance Code, is amended to read as follows:

(a)  An authorized lender shall maintain on file with the commissioner the name and address of [~~a written appointment of a resident of this state as~~] the lender's registered 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.  Section 343.201, Finance Code, is amended to read as follows:

Sec. 343.201.  DEFINITIONS. In this subchapter:

(1)  "High-cost home loan" means a loan that:

(A)  is made to one or more individuals for personal, family, or household purposes;

(B)  is secured in whole or part by:

(i)  a manufactured home, as defined by Section 347.002, used or to be used as the borrower's principal residence; or

(ii)  real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence;

(C)  has a principal amount equal to or less than one-half of the maximum conventional loan amount for first mortgages as established and adjusted by the Federal National Mortgage Association;

(D)  is not:

(i)  a reverse mortgage; or

(ii)  an open-end account, as defined by Section 301.002; and

(E)  is a credit transaction described by 12 C.F.R. Section 1026.32 [~~226.32~~], as amended, except that the term includes a residential mortgage transaction, as defined by 12 C.F.R. Section 1026.2 [~~226.2~~], as amended, if the total loan amount is $20,000 or more and:

(i)  the annual percentage rate exceeds the rate indicated in 12 C.F.R. Section 1026.32(a)(1)(i) [~~226.32(a)(1)(i)~~], as amended; or

(ii)  the total points and fees payable by the consumer at or before loan closing will exceed the amount indicated in 12 C.F.R. Section 1026.32(a)(1)(ii) [~~226.32(a)(1)(ii)~~], as amended.

(2)  "Points and fees" has the meaning assigned by 12 C.F.R. Section 1026.32(b) [~~226.32(b)~~], as amended.

SECTION 16.  Section 345.106, Finance Code, is amended to read as follows:

Sec. 345.106.  PROCESSING FEE FOR RETURNED CHECK. A retail charge agreement may provide that the holder of the agreement may:

(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, Business & Commerce Code [~~is not more than $15~~]; and

(2)  add the fee to the unpaid balance under the agreement.

SECTION 17.  Section 345.351(a), Finance Code, is amended to read as follows:

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

(1)  register with the Office of Consumer Credit Commissioner; and

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

SECTION 18.  Section 347.451(a), Finance Code, is amended to read as follows:

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

(1)  register with the Office of Consumer Credit Commissioner; and

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

SECTION 19.  Section 348.009(a), Finance Code, is amended to read as follows:

(a)  The disclosure requirements of Regulation Z (12 C.F.R. Parts 226 and 1026) [~~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. Sections [~~Section~~] 226.18(f) and 1026.18(f), regarding variable rate disclosures, apply according to their terms to retail installment transactions.

SECTION 20.  Section 348.404(d), Finance Code, is amended to read as follows:

(d)  A retail seller may include money advanced under Subsection (b) in the retail installment contract only if it is included as an itemized charge and may disclose money advanced under Subsection (b) in any manner permitted by Regulation Z (12 C.F.R. Parts 226 and 1026) [~~12 C.F.R. Part 226 (Regulation Z)~~] adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.). Section 349.003 does not apply to this subsection. This subsection does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this subsection.

SECTION 21.  Section 348.510, Finance Code, is amended to read as follows:

Sec. 348.510.  SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender [~~delivering to the commissioner:~~

[~~(1) the license; and~~

[~~(2) a written notice of the license's surrender~~].

SECTION 22.  Section 351.0022, Finance Code, is amended to read as follows:

Sec. 351.0022.  WAIVER PROHIBITED. Except as specifically permitted by this chapter or Chapter 32, Tax Code, a property owner may not waive or limit a requirement imposed on a property tax lender by this chapter or Chapter 32, Tax Code.

SECTION 23.  Section 351.160, Finance Code, is amended to read as follows:

Sec. 351.160.  SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender [~~delivering to the commissioner:~~

[~~(1) the license; and~~

[~~(2) a written notice of the license's surrender~~].

SECTION 24.  Section 352.006(b), Finance Code, is amended to read as follows:

(b)  If the commissioner proposes to revoke a registration, the facilitator is entitled to notice and an opportunity for a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall 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 [~~20th day after the date the facilitator receives the notice of the proposed revocation~~]. The hearing is governed by Chapter 2001, Government Code.

SECTION 25.  Section 353.510, Finance Code, is amended to read as follows:

Sec. 353.510.  SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender [~~delivering to the commissioner:~~

[~~(1) the license; and~~

[~~(2) a written notice of the license's surrender~~].

SECTION 26.  Section 371.073(a), Finance Code, is amended to read as follows:

(a)  A pawnbroker shall maintain on file with the commissioner the name and address of [~~a written appointment of a resident of this state as~~] the pawnbroker's registered 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.  Section 371.157, Finance Code, is amended to read as follows:

Sec. 371.157.  PAWN TICKET. A pawnbroker, at the time a pawn transaction is entered, shall deliver to the pledgor a pawn ticket or other memorandum that clearly shows:

(1)  the name and address of the pawnshop;

(2)  the pledgor's name, address, and physical description and a driver's license number, military identification number, identification certificate number, or other official number that can identify the pledgor;

(3)  the date of the transaction;

(4)  an identification and description of the pledged goods, including serial numbers if reasonably available;

(5)  the amount of cash advanced or credit extended to the pledgor, designated as "Amount Financed";

(6)  the amount of the pawn service charge, designated as "Finance Charge";

(7)  the total amount, consisting of the amount financed plus the finance charge, that must be paid to redeem the pledged goods on the maturity date, designated as "Total of Payments";

(8)  the "Annual Percentage Rate," computed according to Regulation Z (12 C.F.R. Part 1026) adopted [~~regulations issued~~] by the Consumer Financial Protection Bureau [~~Federal Reserve Board~~] under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended;

(9)  the maturity date of the pawn transaction; and

(10)  a statement that:

(A)  the pledgor is not obligated to redeem the pledged goods; and

(B)  the pledged goods may be forfeited to the pawnbroker on the 31st day after the maturity date.

SECTION 28.  Section 371.255, Finance Code, is amended to read as follows:

Sec. 371.255.  REVOCATION OR SUSPENSION OF PAWNSHOP EMPLOYEE LICENSE. After notice and opportunity for a hearing, the commissioner may revoke or suspend a pawnshop employee license if the commissioner finds that:

(1)  the license holder knowingly or recklessly violated this chapter or a rule adopted or order issued under this chapter;

(2)  a fact or condition exists that, if it had existed or had been known to exist at the time of the original license application, clearly would have justified refusal to issue the license; or

(3)  the business repute and general fitness of the license holder do not warrant belief that the license holder will operate the business lawfully and fairly within the provisions of this chapter.

SECTION 29.  Section 371.257(a), Finance Code, is amended to read as follows:

(a)  The holder of a pawnshop license or a pawnshop employee license may surrender the license by complying with the commissioner's written instructions relating to license surrender [~~delivering it to the commissioner with written notice of surrender~~].

SECTION 30.  Section 393.617, Finance Code, is amended to read as follows:

Sec. 393.617.  SURRENDER OF LICENSE. A license holder may surrender a license issued under this subchapter by complying with the commissioner's written instructions relating to license surrender [~~delivering to the commissioner:~~

[~~(1)  the license; and~~

[~~(2)  a written notice of the license's surrender~~].

SECTION 31.  Section 394.2101(a), Finance Code, is amended to read as follows:

(a)  The commissioner shall compute and publish the dollar amounts of fees or other charges in amounts different from the amounts of fees or other charges specified in Section 394.210 to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or, if that index is not available, another index adopted by finance commission rule. The commissioner shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amounts [~~must be rounded to the nearest $100, except that the amounts of the fees and other charges~~] specified in Section 394.210 must be rounded to the nearest dollar.

SECTION 32.  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 a for-profit business [~~an~~] entity described by Section 394.204(c)(7) [~~394.204(c)(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 a for-profit business entity [~~an organization~~] described by Section 394.204(c)(7) [~~394.204(c)(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 33.  Sections 32.06(d-1) and (f-3), Tax Code, are amended to read as follows:

(d-1)  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) [~~12 C.F.R. Section 226.23~~] applies to a transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

(f-3)  Notwithstanding any contractual agreement with the property owner, the transferee of a tax lien must 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) [~~15 U.S.C. Section 6802 and 12 C.F.R. Part 216~~]. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. However, a transferee is not required to release payoff information pursuant to a notice under Subsection (f-1) unless the notice contains the information prescribed by the Finance Commission of Texas.

SECTION 34.  The following provisions of the Finance Code are repealed:

(1)  Section 342.551(c);

(2)  Section 342.556(b);

(3)  Sections 371.006(b), (c), and (d); and

(4)  Section 371.073(b).

SECTION 35.  This Act takes effect September 1, 2023.

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