

By: Johnson

S.B. No. 1371

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of consumer credit transactions and the
3 regulatory authority of the consumer credit commissioner; changing
4 a fee.

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

6 SECTION 1. Section 393.628, Finance Code, is transferred to
7 Subchapter C, Chapter 14, Finance Code, redesignated as Section
8 14.113, Finance Code, and amended to read as follows:

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

18 (b) The commissioner shall remit to the comptroller amounts
19 received under Subsection (a) for deposit in an interest-bearing
20 deposit account in the Texas Treasury Safekeeping Trust Company.
21 Money in the account may be spent by the finance commission only for
22 the purposes provided by this section. Amounts in the account may
23 be invested and reinvested under the prudent person standard
24 described by Section 11b, Article VII, Texas Constitution [~~in the~~]

1 ~~same manner as funds of the Employees Retirement System of Texas]~~,
2 and the interest from those investments shall be deposited to the
3 credit of the account.

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

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

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

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

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

17 (4) credit building and credit repair;

18 (5) financial coaching and consumer counseling;

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

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

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

27 (e) The finance commission may partner with other state

1 agencies and entities to implement this section.

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

4 SECTION 2. Section [14.209\(a\)](#), Finance Code, is amended to
5 read as follows:

6 (a) In addition to other remedies for the enforcement of a
7 restraining order or injunction, the court in which an action is
8 brought under Section [14.208\(c\)](#) [~~[14.208\(b\)](#)~~] may impound and appoint
9 a receiver for the defendant's property and business, including a
10 document relating to the property or business, as the court
11 considers reasonably necessary to prevent a violation through use
12 of the property and business.

13 SECTION 3. Section [156.554\(b\)](#), Finance Code, is amended to
14 read as follows:

15 (b) The commissioner:

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

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

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

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

27 (3) may make disbursements from the fund to provide

1 support for statewide financial education, activities, and
2 programs specifically related to mortgage loans for consumers,
3 including activities and programs described by Section 14.113(c)
4 [~~393.628(c)~~].

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

7 (5) "Dwelling" has the meaning assigned by Section
8 103(w) [~~103(v)~~] of the Truth in Lending Act (15 U.S.C. Section
9 1602(w) [~~1602(v)~~]).

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

12 (c) A variable rate agreement for credit extended primarily
13 for personal, family, or household use must include the disclosures
14 identified for variable rate contracts required by regulations
15 issued by the Federal Reserve Board and the Consumer Financial
16 Protection Bureau under the Truth in Lending Act (15 U.S.C. Section
17 1601 et seq.), as amended, except that if that Act does not apply
18 because of the amount of the transaction, the following disclosure
19 must be included in a size equal to at least 10-point type that is
20 boldface, capitalized, underlined, or otherwise set out from
21 surrounding material so as to be conspicuous:

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

25 SECTION 6. Section 303.402(a), Finance Code, is amended to
26 read as follows:

27 (a) A person who contracts for, charges, or receives under a

1 contract subject to Chapter 342, 345, 346, 347, 348, or 353,
2 including a contract for an open-end account, a rate or amount of
3 interest or time price differential that exceeds the maximum
4 applicable rate or amount authorized by the applicable chapter or
5 this chapter is subject to a penalty for that violation determined
6 under Chapter 349.

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

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

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

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

17 (3) the Official Staff Commentary and other
18 interpretations of that statute and regulation by the Board of
19 Governors of the Federal Reserve System, the Consumer Financial
20 Protection Bureau, and the staff of those agencies [~~its staff~~].

21 (e) A creditor who complies with the Truth in Lending Act
22 (15 U.S.C. Section 1601 et seq.) and [~~Federal Reserve~~] Regulation Z
23 (12 C.F.R. Parts [~~Part~~] 226 and 1026) in advertising a credit
24 transaction is considered to have fully complied with this section.

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

27 (a) In each advertisement that purports to offer credit

1 regulated by this subtitle, Subtitle C, or Chapter 394, the
2 advertiser shall disclose the legal or registered name of the
3 advertiser and:

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

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

8 (B) is broadcast by radio or television; or

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

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

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

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

18 (b) In interpreting this section, a court or administrative
19 agency shall be guided by the Equal Credit Opportunity Act (15
20 U.S.C. Section 1691 et seq.) and regulations under and
21 interpretations of that Act by the Federal Reserve Board and the
22 Consumer Financial Protection Bureau to the extent that Act and
23 those regulations and interpretations can be made applicable to
24 conduct prohibited by this section.

25 SECTION 10. Section 341.402(b), Finance Code, is amended to
26 read as follows:

27 (b) The liability of a person under this section is instead

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

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

10 (a-1) If the terms of the agreement for a loan under
11 Subsection (a) were negotiated in Spanish, a copy of a summary of
12 those terms and other pertinent information shall be provided to
13 the debtor in Spanish in a form identical to disclosures required
14 for a closed-end transaction under 12 C.F.R. Section 1026.18
15 [~~226.18~~].

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

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

1 claims [~~judgments awarded~~] under this subchapter.

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

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

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

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

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

12 (a) An authorized lender shall maintain on file with the
13 commissioner the name and address of [~~a written appointment of a~~
14 ~~resident of this state as~~] the lender's registered agent for
15 service [~~of all judicial or other process or legal notice, unless~~
16 ~~the lender has appointed an agent under another statute of this~~
17 ~~state~~].

18 SECTION 15. Section 343.201, Finance Code, is amended to
19 read as follows:

20 Sec. 343.201. DEFINITIONS. In this subchapter:

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

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

24 (B) is secured in whole or part by:

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

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

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

8 (D) is not:

9 (i) a reverse mortgage; or

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

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

17 (i) the annual percentage rate exceeds the
18 rate indicated in 12 C.F.R. Section 1026.32(a)(1)(i)
19 [~~226.32(a)(1)(i)~~], as amended; or

20 (ii) the total points and fees payable by
21 the consumer at or before loan closing will exceed the amount
22 indicated in 12 C.F.R. Section 1026.32(a)(1)(ii)
23 [~~226.32(a)(1)(ii)~~], as amended.

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

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

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

3 (1) charge the retail buyer, on return of a dishonored
4 check given in payment under the agreement, a reasonable processing
5 fee that does not exceed the amount prescribed by Section 3.506,
6 Business & Commerce Code [~~is not more than \$15~~]; and

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

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

11 (a) A holder who is not an authorized lender under Chapter
12 342 or a credit union shall:

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

15 (2) pay a fee in an amount determined under Section
16 14.107 [~~of \$10~~] for each location at which a retail installment
17 transaction is originated, serviced, or collected.

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

20 (a) A creditor who is not an authorized lender under Chapter
21 342 or a credit union shall:

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

24 (2) pay a fee in an amount determined under Section
25 14.107 [~~of \$15~~] for each location at which a credit transaction is
26 originated, serviced, or collected.

27 SECTION 19. Section 348.009(a), Finance Code, is amended to

1 read as follows:

2 (a) The disclosure requirements of Regulation Z (12 C.F.R.
3 Parts 226 and 1026) [~~12 C.F.R. Part 226 (Regulation Z)~~] adopted
4 under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and
5 specifically 12 C.F.R. Sections [~~Section~~] 226.18(f) and
6 1026.18(f), regarding variable rate disclosures, apply according
7 to their terms to retail installment transactions.

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

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

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

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

26 [~~(1) the license, and~~

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

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

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

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

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

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

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

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

17 (b) If the commissioner proposes to revoke a registration,
18 the facilitator is entitled to notice and an opportunity for a
19 hearing before the commissioner or a hearings officer, who shall
20 propose a decision to the commissioner. The commissioner or
21 hearings officer shall prescribe the time and place of the hearing
22 if the facilitator makes a written request for a hearing not later
23 than the 30th day after the date on which the order of revocation is
24 served ~~[20th day after the date the facilitator receives the notice~~
25 ~~of the proposed revocation].~~ The hearing is governed by Chapter
26 2001, Government Code.

27 SECTION 25. Section 353.510, Finance Code, is amended to

1 read as follows:

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

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

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

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

10 (a) A pawnbroker shall maintain on file with the
11 commissioner the name and address of ~~[a written appointment of a~~
12 ~~resident of this state as]~~ the pawnbroker's registered agent for
13 service of ~~[all judicial or other]~~ process ~~[or legal notice unless~~
14 ~~the pawnbroker has appointed an agent under another statute of this~~
15 ~~state].~~

16 SECTION 27. Section 371.157, Finance Code, is amended to
17 read as follows:

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

21 (1) the name and address of the pawnshop;

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

26 (3) the date of the transaction;

27 (4) an identification and description of the pledged

1 goods, including serial numbers if reasonably available;

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

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

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

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

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

16 (10) a statement that:

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

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

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

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

27 (1) the license holder knowingly or recklessly

1 violated this chapter or a rule adopted or order issued under this
2 chapter;

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

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

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

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

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

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

24 ~~(1) the license, and~~

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

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

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

14 SECTION 32. Section 394.212(a), Finance Code, is amended to
15 read as follows:

- 16 (a) A provider may not:
- 17 (1) purchase a debt or obligation of a consumer;
 - 18 (2) receive or charge a fee in the form of a promissory
19 note or other negotiable instrument other than a check or a draft;
 - 20 (3) lend money or provide credit to the consumer;
 - 21 (4) obtain a mortgage or other security interest in
22 property owned by a consumer;
 - 23 (5) engage in business with a for-profit business [~~an~~
24 entity described by Section 394.204(c)(7) [~~394.204(c)(3)~~] without
25 prior consent of the commissioner, except that unless denied,
26 consent is considered granted 30 days after the date the provider
27 notifies the commissioner of the intent to engage in business with a

1 for-profit business entity [~~an organization~~] described by Section
2 394.204(c)(7) [~~394.204(c)(3)~~];

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

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

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

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

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

17 SECTION 33. Sections 32.06(d-1) and (f-3), Tax Code, are
18 amended to read as follows:

19 (d-1) A right of rescission described by the Truth in
20 Lending Act (15 U.S.C. Section 1635) and Regulation Z (12 C.F.R.
21 Section 1026.23) [~~12 C.F.R. Section 226.23~~] applies to a transfer
22 under this section of a tax lien on residential property owned and
23 used by the property owner for personal, family, or household
24 purposes.

25 (f-3) Notwithstanding any contractual agreement with the
26 property owner, the transferee of a tax lien must provide the payoff
27 information required by this section to the greatest extent

1 permitted by the Gramm-Leach-Bliley Act (15 U.S.C. Section 6802)
2 and Regulation P (12 C.F.R. Part 1016) [~~15 U.S.C. Section 6802 and~~
3 ~~12 C.F.R. Part 216~~]. The payoff statement must meet the
4 requirements of a payoff statement defined by Section 12.017,
5 Property Code. A transferee may charge a reasonable fee for a
6 payoff statement that is requested after an initial payoff
7 statement is provided. However, a transferee is not required to
8 release payoff information pursuant to a notice under Subsection
9 (f-1) unless the notice contains the information prescribed by the
10 Finance Commission of Texas.

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

- 13 (1) Section 342.551(c);
- 14 (2) Section 342.556(b);
- 15 (3) Sections 371.006(b), (c), and (d); and
- 16 (4) Section 371.073(b).

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