

## **BILL ANALYSIS**

Senate Research Center

H.B. 700  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Many small businesses turn to commercial sales-based financing/merchant cash advances (MCA) for financing tools to secure capital, particularly for those who may not have ready access to bank loans or credit.

However, although commercial sales-based financing/MCAs resemble traditional loans they lack the same type of regulation and oversight of banks or credit lenders. Unlike conventional loans, commercial sales-based/MCAs provide an upfront cash payment in exchange for a percentage of future sales revenue. They are structured as "sales-based financing" and are currently not disclosed as loans, so they are not subject to regulatory oversight.

H.B. 700 requires a commercial sales-based financing/MCA provider to be transparent and follow fair lending practices.

- It requires commercial sales-based financing/MCAs to disclose all costs associated with the funds as well as the frequency of the payments and all requirements of the extended offer to a recipient of less than \$1 million in funding;
- It requires broker registration of commercial sales-based financing/MCAs with the Office of Consumer Credit Commissioner; and
- It enforces penalties for violations, including fines of up to \$10,000 for each violation.

H.B. 700 amends current law relating to disclosures for certain commercial sales-based financing transactions, the effect of certain commercial sales-based financing contract provisions, and the registration of commercial sales-based financing brokers and authorizes a fee and provides a civil penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 398.005, Finance Code) of this bill.

Rulemaking authority is expressly granted to the Office of Consumer Credit Commissioner in SECTION 1 (Section 398.053, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5, Finance Code, by adding Chapter 398, as follows:

#### **CHAPTER 398. COMMERCIAL SALES-BASED FINANCING SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 398.001. DEFINITIONS. Defines "commercial sales-based financing," "commercial sales-based financing transaction," "commercial sales-based financing broker," "disbursement amount," "finance charge," "person," "provider," "recipient," "sales-based financing," "specific offer," and "total repayment amount."

Sec. 398.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies to a provider who offers, obtains, or provides commercial sales-based financing services over the Internet to or for a recipient of this state, regardless of whether the provider maintains

a physical presence in this state in the same manner and to the same extent to which this chapter applies to a commercial sales-based financing broker.

Sec. 398.003. EXEMPTIONS. Provides that this chapter does not apply to a provider that meets certain criteria.

Sec. 398.004. APPLICATION OF OTHER LAW. Provides that a sales-based financing transaction is not a form of an account purchase transaction for purposes of Section 306.103 (Account Purchase Transaction), regardless of the principal amount of the advance.

Sec. 398.005. ADMINISTRATION OF CHAPTER; RULEMAKING. (a) Requires the Office of Consumer Credit Commissioner (OCC) to administer, implement, and enforce this chapter.

(b) Authorizes OCC, except as provided by Subsection (d), to bring enforcement actions, terminate or suspend registrations, and assess civil penalties.

(c) Requires the Finance Commission of Texas (commission) to adopt rules as necessary to administer, implement, and enforce this chapter, including rules to prohibit certain acts or practices by providers, including acts or practices that:

(1) the commission considers unfair because the act or practice causes or is likely to cause substantial injury to a recipient that the recipient cannot reasonably avoid and the injury outweighs the benefits to recipients or to market competition;

(2) are material acts or practices that will or likely will mislead a recipient who, given the circumstances, has a reasonable interpretation of the act or practice;

(3) materially interfere with a recipient's ability to understand a term or condition of a commercial sales-based financing transaction; or

(4) take unreasonable advantage of a recipient's lack of understanding of the material risks, costs, or conditions of the commercial sales-based financing transaction or a recipient's inability to protect the recipient's interest in selecting or using a commercial sales-based financing product.

(d) Prohibits the commission from adopting a maximum annual percentage rate, finance charge, or fee for commercial sales-based financing transactions.

#### SUBCHAPTER B. REGULATION AND DISCLOSURE REQUIREMENTS

Sec. 398.051. DISCLOSURES. (a) Requires a provider, if the provider extends a specific offer of commercial sales-based financing of less than \$1 million to a recipient in this state, to disclose to the recipient certain information.

(b) Requires the provider, if, as a condition of obtaining commercial sales-based financing, the provider requires the recipient to pay off the outstanding balance of an existing commercial sales-based financing, to disclose to the recipient the amount of the new commercial sales-based financing used to pay off the portion of the outstanding balance of the existing commercial sales-based financing that consists of prepayment charges required to be paid and any unpaid interest expense or finance charges that were not forgiven at the time of renewal of the transaction, and if the disbursement amount will be reduced to pay down any unpaid portion of the outstanding balance, the actual dollar amount by which the disbursement amount will be reduced.

Sec. 398.052. SIGNATURE. Requires the provider to obtain the recipient's signature on the disclosures required by Section 398.051 before finalizing the application for the commercial sales-based financing transaction.

Sec. 398.053. BROKER REGISTRATION. (a) Prohibits a person from engaging in business as a commercial sales-based financing broker for compensation in this state unless, before conducting business, the person registers with OCC. Provides that the registration is effective on receipt by OCC of a completed registration form as provided by Subsection (d) and the required registration fee and remains effective until renewal or termination by OCC.

(b) Requires a broker, on or before January 31 of each year after filing an initial registration, to file a renewal registration form with the required renewal registration fee.

(c) Requires the broker to pay a registration fee on filing an initial registration and a renewal registration fee on filing a renewal registration.

(d) Requires that the registration or renewal registration form include certain information.

(e) Requires OCC by rule to set the registration fee and registration renewal fee in amounts sufficient to cover the registration costs and adopt a form to be used for a registration or renewal registration under this section.

Sec. 398.054. UPDATE OF REGISTRATION STATEMENT. Requires a commercial sales-based financing broker to update information contained in the registration statement not later than the 90th day after the date on which the information changes.

Sec. 398.055. UNENFORCEABILITY OF CERTAIN CONTRACT PROVISIONS. Provides that a commercial sales-based financing contract that contains a confession of judgment provision or any similar provision is void and unenforceable.

#### SUBCHAPTER C. ENFORCEMENT

Sec. 398.101. CIVIL PENALTY. Provides that a person who violates this chapter is subject to a civil penalty of \$10,000 for each violation.

Sec. 398.102. PRIVATE RIGHT OF ACTION NOT AUTHORIZED. Provides that this chapter does not create a private right of action against any person based on compliance or noncompliance with this chapter.

SECTION 2. (a) Requires a person engaging in business as a commercial sales-based financing broker or provider on the effective date of this Act, not later than December 31, 2026, to register under Section 398.053, Finance Code, as added by this Act..

(b) Provides that, not later than September 1, 2026:

(1) the commission is required to adopt initial rules under Section 398.005(c), Finance Code, as added by this Act; and

(2) OCC is required to adopt rules setting the registration and registration renewal fees and adopting a form for the registration of providers and commercial sales-based financing brokers as required under Section 398.053, Finance Code, as added by this Act.

SECTION 3. Effective date: September 1, 2025.