

BILL ANALYSIS

C.S.H.B. 1442
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Office of Consumer Credit Commissioner (OCCC) has jurisdiction over an assortment of consumer credit industries and is subject to the Texas Sunset Act. C.S.H.B. 1442 seeks to continue the OCCC with statutory modifications.

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 rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 6, 42, 60, and 78 of this bill.

ANALYSIS

C.S.H.B. 1442 amends the Finance Code to postpone from September 1, 2019, to September 1, 2031, the date on which the Office of Consumer Credit Commissioner (OCCC) is abolished unless continued in existence as provided by the Texas Sunset Act.

C.S.H.B. 1442 requires the Finance Commission of Texas by rule to develop a policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures, sets out provisions related to that requirement, and revises provisions relating to the duties of OCCC with respect to consumer information and complaints. The bill authorizes the consumer credit commissioner to appoint advisory committees to assist OCCC and the commissioner in performing their duties; requires the commissioner to specify each committee's purpose, powers, and duties; and requires each committee to report to OCCC or the commissioner, in the manner specified by the commissioner, concerning the committee's activities and the results of its work.

C.S.H.B. 1442 replaces the requirement for the finance commission to instruct the commissioner to establish a program to address alternatives to high-cost lending in Texas with a direct requirement for the commissioner to do so. The bill removes requirements for the program relating to studying and reporting on lending and depository services and lending to agricultural and small business, developing certain models to assist borrowers, and tracking certain lenders and providing certain demographic information. The program must require intra-agency posting of nonentry level positions under the commissioner's intra-agency career ladder program to be concurrent with any public posting.

C.S.H.B. 1442 revises and updates, as applicable, provisions relating to the investigative and enforcement authority of OCCC, including provisions applicable to the commissioner's authority to request information on a reasonable suspicion of a violation. The bill expands provisions regarding the payment of restitution to apply also to certain metal recycling entities. The bill

revises and updates provisions regarding the appeal of an enforcement order issued by the commissioner and clarifies that the Administrative Procedure Act, with regard to such an appeal, governs a requested hearing and the right to judicial review in district court. The bill requires the commissioner to approve a determination that a violation occurred and impose the recommended penalty if a person fails to make a timely written request for a hearing. The bill entitles a tax refund anticipation loan facilitator to notice of a proposed registration revocation and requires the commissioner or a hearings officer to prescribe the time and place of a hearing on the facilitator's written request for the hearing not later than the 20th day after the notice is received.

C.S.H.B. 1442 subjects the sale of crafted precious metal to the investigative and enforcement authority of OCCC, makes confidential and protects from disclosure the information and material gathered in an OCCC investigation of such sales, and authorizes the commissioner to order crafted precious metal dealers who violate or cause a violation of applicable law or a rule adopted under the applicable law to pay restitution to an identifiable person. The bill, with respect to all confidential information or material protected from disclosure, authorizes the commissioner or the commissioner's representative to disclose the information and material for the purpose of providing a summary of investigation information to the person who filed a complaint. The bill conditions the commissioner's or representative's authority to disclose such confidential information or material with the consent from an applicable person on the information or material having been previously provided to or by the person.

C.S.H.B. 1442 revises and updates certain Finance Code and Occupations Code provisions relating to the terms of certain licenses and registrations issued with respect to certain loans and financed transactions, pawnshops, credit services organizations, debtor assistance services, metal recycling entities, and crafted precious metal dealers. The bill requires the finance commission to prescribe by rule the terms for applicable licenses and registrations that do not exceed two years, including making the annual residential mortgage loan originator license subject to a term set by commission rule. The bill requires the finance commission, in adopting those rules, to set terms for applicable licenses in compliance with the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 and with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. The bill sets out additional revised and updated provisions regarding those licenses and registrations, including:

- provisions relating to setting license and registration fees;
- provisions requiring the proration of fees under certain circumstances;
- provisions updating fee payment deadlines and bond conditions to reflect the bill's revised terms for applicable licenses and registrations; and
- provisions authorizing the commissioner to refuse to renew an applicable license or registration of a person or entity that fails to comply with an enforcement order issued by the commissioner.

The bill requires the finance commission by rule to establish a deadline for the submission of the information and fee required for the initial issuance and renewal of registrations for tax refund anticipation loan facilitators and for crafted precious metal dealers.

C.S.H.B. 1442 makes participation by a pawnbroker in the pawnshop employee license program optional and conditions licensing for an individual who begins employment at a pawnshop on the employing pawnbroker participating in the program. A pawnbroker participates in the program by notifying the commissioner in writing on a form prescribed by the commissioner and the bill sets out the times at which a pawnbroker may submit that notification. The bill provides for the process by which a pawnbroker ends participation in the program. The bill sets the deadline by which a pawnshop employee license holder is required to pay a license fee and sets the date the license expires under certain conditions. The bill requires the finance commission, not later than November 1, 2019, to adopt rules to implement the program. The bill requires OCCC, not later than December 1, 2019, to be prepared to accept applications for licenses under the program. The bill makes the amount of the pawnshop employee license application fee and the pawnshop

employee license fee subject to the amount set by the finance commission by rule.

C.S.H.B. 1442 provides for the expiration on December 31, 2019, of pawnshop employee licenses issued before the bill's effective date, and makes the holder of a pawnshop license responsible for all acts of the license holder's officers, directors, employees, and agents acting on behalf of the pawnshop. The bill removes the requirement that an applicant, to be eligible for a pawnshop license, be of good moral character.

C.S.H.B. 1442 authorizes a dealer to submit a list describing all of a person's crafted precious metal to be accepted by the dealer to satisfy the requirement for the dealer to report applicable transactions to the commissioner if the list contains certain specified information with regard to the transaction.

C.S.H.B. 1442 establishes that the bill's changes do not affect the validity of a disciplinary action or other proceeding that was initiated before the bill's effective date and that is pending before a court or other governmental entity on that date.

C.S.H.B. 1442 repeals the following provisions of the Finance Code:

- Section 14.208(d)
- Section 371.052(b)
- Sections 371.304(b), (c), and (d)

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1442 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the following:

- the repeal of provisions establishing a pawnshop employee license; and
- a provision regarding a person's requisite state of mind for purposes of assessing an administrative penalty for certain violations.

The substitute includes the following:

- a provision clarifying a requirement for the commissioner to establish a program to address alternatives to high-cost lending in Texas;
- provisions revising the study and reporting required under that program;
- a provision relating to certain intra-agency job postings;
- a provision clarifying the conditions under which confidential information or material may be disclosed;
- provisions making pawnshop employee licensing optional;
- provisions subjecting the amount of a pawnshop employee license application and license fee to the amount set by finance commission rule;
- a provision authorizing the commissioner to refuse to renew the pawnshop employee license of a person who fails to comply with an order issued by the commissioner to comply with the Texas Pawnshop Act;
- provisions revising procedures for hearings relating to certain violations and the right to

judicial review; and

- a provision authorizing a crafted precious metal dealer to submit a list provided by sellers that fulfills certain specified requirements for purposes of reporting regulated transactions to the commissioner.