HOUSE RESEARCH ORGANIZATION bill analysis | 5/27/97 | SB 1781 Ellis (Gutierrez)

SUBJECT: Increasing late-payment fee on retail credit loans from $10 to $20

COMMITTEE: Financial Institutions— favorable, with amendments

VOTE: 8 ayes — Marchant, Gutierrez, Ehrhardt, Elkins, Giddings, Grusendorf, Patterson, Smith

0 nays

1 absent — Solomons

SENATE VOTE: On final passage, April 25 — voice vote (Armbrister, Barrientos, Galloway, Ogden, Shapleigh, Truan, West, Zaffirini registering nay)

WITNESSES: No public hearing.

BACKGROUND: In 1993 the Legislature increased the maximum late fee retailers may charge on credit installment accounts that are more than 21 days delinquent from the lessor of $5 or 5 percent of each installment payment to $10.

DIGEST: SB 1781, as amended, would increase the maximum late fee retailers may charge on credit installment payments that are more than 21 days delinquent from $10 to $20.

The bill would permit the Consumer Credit Commissioner to accept financial contributions from a retail creditor to finance the study on availability of credit required by SB 844, 74th Legislature and to fund consumer education programs and voluntary finance counseling services. It would also require a retail creditor charging late fees of more than $10 to provide financial support to private credit counseling institutions.

If retail creditors that charge more than a $10 late fee moved their credit operations out of state and were no longer subject to Texas laws, then the bill would require the Consumer Credit Commissioner to collect an amount equal to 25 cents for each delinquency charge collected by the retailer one year before the move.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY:

SB 1781would allow retailers in Texas to recoup the costs associated with servicing the accounts of retail credit customers who fail to pay their bills in a timely manner. Without a late fee increase, retailers may have to recoup these business costs by increasing the price of merchandise, which would be unfair to good credit and cash customers.

Texas retailers are at a significant disadvantage when competing against out-of-state retailers who can charge higher delinquency penalties. The normal out-of-state retailer late fee is between $15 and $22. The best way to deal with this inequity would be to allow Texas retailers to charge a delinquency fee at a competitively determined amount, up to $20.

The current low late-charge fee provides no incentive for customers to pay bills on time. Also, because federal law allows out-of-state creditors to charge a larger late fee than Texas, consumers have an incentive to pay out-of-state installment loans earlier than their Texas accounts.

Retail credit customers receive two notices that a bill is due before a late charge is imposed. They have 30 days to pay from the initial notice and another 21 days from the second notice, giving them a total of 51 days to make the payment before the delinquency fee can be imposed. Retail businesses want to keep their customers, and if a customer in good standing had a special circumstance for not paying a bill on time, the late fee would mostly likely be waived.

The bill also would penalize retailers who move their credit departments out of state. The state cannot prevent such moves, and the resulting job loss, but it can create financial disincentives that would make retailers think twice about moving their credit departments.

OPPONENTS SAY:

SB 1781 would increase the late fee by up to 100 percent. In 1995 the Legislature raised the late fee charge to $10, and now the retailers are back again, after only two years, to raise it another 100 percent. The late charge conceivably be higher than the account balance with this change. If this bill were enacted, Texas' late fee charges would be among the highest in the nation.

OTHER OPPONENTS SAY:

SB 1781 would unfairly penalize a consumer for an innocent mistake. For example, if a check arrived one day late, the consumer could be charged as much as $20 in addition to the accrued interest. The time period should be at least extended from 21 days to 35 days as proposed in the Senate version.

NOTES:

The Senate version of the bill would lengthen the delinquency period from 21 to 35 days and require retail creditors to pay 25 cents of the late fee fund finance the study on availability of credit required by SB 844, 74th Legislature and 25 cents of the late fee to finance educational activities and finance counseling services. The Senate version would also require that the maximum fee be lowered from $20 to $10 if a retailer moved its credit department out of state.