

- SUBJECT:** Continuing the Office of Consumer Credit Commissioner
- COMMITTEE:** Pensions, Investments, and Financial Services — committee substitute recommended
- VOTE:** 10 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Stephenson
- 0 nays
- 1 absent — Wu
- WITNESSES:** For — Deborah Polan, Texas Consumer Credit Coalition (*Registered, but did not testify*); Rob Norcross, Consumer Service Alliance of Texas; Michael Johnson, Cottonwood Financial; Alex Vaughn, Enova International Inc.; Stephen Scurlock, Independent Bankers Association of Texas; Bradford Shields, Security Finance; Robert Howden, Texas Consumer Finance Association; Mario A. Martinez, Texas Consumer Lenders; John Fleming, Texas Mortgage Bankers Association)
- Against — Shirley Gonzales, Bill's Pawn; Andrea Farr, Texas Association of Pawnbrokers (*Registered, but did not testify*); Bradley Blaylock, Bernadete Lingo, and Scott Simpsons, Best Little Pawn Shop; Joel Hefley, Devine Pawn and Gun; Jackie Bonds, McKinney Jewelry & Loan; James Gonzales, Mark Ratliff, Money Mart Pawn; Sean Makovsky, Money Mart Pawn and Jewelry; Amber Bates, Pawn Tech, Inc.; Fred Bogar, Quik Pawn; Keri Fouse, Cathy Gish, David Springett, Roberta Suarez, Patrick Wade, Pat Vosburg, and Joy Vosburg, Texas Association of Pawnbrokers)
- On — Leslie Pettijohn, Office of Consumer Credit Commissioner; Carissa Nash, Sunset Advisory Commission; Larry Temple (*Registered, but did not testify*); Matthew Nance and Michael Rigby, Office of Consumer Credit Commissioner)
- BACKGROUND:** The Office of Consumer Credit Commissioner (OCCC) regulates financial services other than banks and educates consumers and creditors to foster a

fair, lawful, and healthy credit environment.

Functions. OCCC regulates, licenses, and registers consumer credit providers, including motor vehicle finance providers, pawnshops, credit access businesses, and lenders that charge in excess of 10 percent interest.

Complaints and enforcement. OCCC examines licensees for compliance with state and federal laws and is responsible for investigating and resolving complaints against licensees and ordering consumer restitution or taking other disciplinary action. In fiscal 2017, OCCC performed 4,820 risk-based examinations of its licensees. It received 2,130 complaints and took enforcement action in 48 cases. The majority of complaints related to motor vehicle sales finance providers, while the rest related mostly to credit access businesses, regulated lenders, and pawn shops.

The agency took a total of 389 enforcement actions in response to complaints or findings during examinations. The agency issued 229 cease and desist orders and 147 administrative penalties, mostly against motor vehicle sales finance providers and credit access businesses. Finance Code sec. 14.251(b) authorizes OCCC to order entities to pay restitution to consumers when entities overcharge for fees or services. In 2017, OCCC ordered or directed licensees and registrants to pay consumers about \$21.8 million.

OCCC also administers the Texas Financial Education Endowment grant program to improve consumer credit, financial education, and asset building opportunities. The program is funded by an annual fee of up to \$200 on each credit access business.

Staffing. At the end of fiscal 2017, OCCC employed 83 staff. About 48 of the staff travel throughout the state examining motor vehicle sales finance providers, regulated lenders, credit access businesses, and other regulated entities.

Funding. OCCC is a self-directed, semi-independent agency. As such, it does not receive a legislative appropriation and funds itself through fees on the regulated industries. In fiscal 2017, OCCC collected \$9.7 million in

revenue for agency operations, mainly from licensing and registration fees, and spent about \$9 million on operations. OCCC maintained a fund balance of \$12.4 million at the end of fiscal 2017.

Abolishment. OCCC last underwent Sunset review during the 2000-2001 review cycle by the 77th Legislature. OCCC would be discontinued on September 1, 2019, if not continued in statute.

DIGEST: CSHB 1442 would continue the Office of Consumer Credit Commissioner (OCCC) until September 1, 2031.

The bill would update a range of OCCC's licensing and enforcement practices, including:

- authorizing OCCC to provide licenses with a term of up to two years instead of annually;
- creating a new voluntary pawnbroker employee licensing program;
- granting OCCC enforcement authority over crafted precious metal dealers consistent with its authority over other licensees and registrants;
- allowing OCCC to deny renewal applications when applicants do not comply with OCCC disciplinary orders; and
- updating enforcement provisions according to due process provisions of the Administrative Procedure Act.

License terms. The bill would authorize OCCC to set a licensing term for each of its licenses of up to two years.

The Texas Finance Commission would be required to set a licensing or registration period for each of its regulated industries of no more than two years and would be required to comply with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. If a license or registration had a period other than one year, the commissioner would be required to prorate the applicable fee.

To renew their license, license holders would be required to pay their

license fee at least 30 days before their current license expired.

Voluntary pawnshop employee license program. A pawnbroker would be allowed but not required to opt in to the pawnshop employee license program. A pawnbroker would opt in to the program by notifying the commissioner in writing on a form submitted at the time of the pawnbroker's original license application, at the time of a renewal of the pawnbroker's license, or at another time prescribed by the commissioner. A pawnbroker could opt out of the program by providing written notice during any period that the pawnbroker was permitted to opt in.

The bill would establish deadlines for new employees at a pawnshop participating in the employee license program regarding initial licensing, renewal, and the effect of delinquency notices from the commissioner.

The Finance Commission of Texas would be required to adopt rules no later than November 1, 2019, to administer the pawnshop employee license program. The term of a pawnshop employee license could not exceed two years and would be required to comply with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. If a license or registration had a period other than one year, the commissioner would be required to prorate the applicable fee.

OCCC would have to be prepared to accept applications for licenses under the pawnshop employee license program by December 1, 2019. OCCC would set a fee that was reasonable and necessary for carrying out the commissioner's powers and duties for voluntary pawnshop employee licenses.

Licensed pawnbrokers, whether or not they had opted in to the employee licensing program, would be responsible for all acts of their officers, directors, employees, and agents.

Administrative procedure. The commissioner would be authorized to refuse to renew the license or registration of a person who failed to comply with an OCCC enforcement order. Before it suspended or revoked

a license, OCCC would provide notice and opportunity for a hearing. Tax refund anticipation loan facilitators would be entitled to a hearing before the commissioner or a hearings officer regarding revocation of their registration only if the facilitator made a written request for a hearing within 20 days of receiving notice of the proposed revocation of registration.

Failure to make a timely written request for a hearing after receiving a determination and recommended penalty would be sufficient for the commissioner to approve the determination and impose the recommended penalty. The bill would remove the Finance Commission as an avenue for appeal of cease-and-desist orders and denials of debt cancellation agreement forms.

The bill would authorize OCCC to open an investigation upon reasonable cause to believe a violation had occurred, rather than having to wait for a response from the entity under investigation.

The bill would remove the requirement that OCCC prove injury to a consumer before the agency orders restitution.

The bill would allow confidential information or materials obtained for registration or licensing to be used to provide a summary of investigation information to the person who filed the complaint.

Crafted precious metal dealers. The bill would give OCCC standard enforcement authority over crafted precious metal dealers. OCCC would be authorized to order the crafted precious metal dealers to pay restitution to consumers when a regulatory violation has occurred.

The bill would revise the current reporting requirements on crafted precious metal dealers to allow them to submit a list that is filed with the dealer by each person intending to sell or exchange the metal so long as the list contains the information required in the report to the commissioner.

Annual report. The bill would streamline the scope of the annual report the OCCC is required to provide to the Legislature. OCCC still would be required to establish a program to address alternatives to high-cost lending in this state. It no longer would be required to:

- study and report on financial services offered to agricultural businesses and small businesses;
- develop models to provide lower-cost alternatives to assist borrowers who contract for high-cost loans; or
- track and map the location of lenders who enter into certain loan contracts.

Job posting. The intra-agency career ladder program would require intra-agency posting of all non-entry-level positions concurrently with any public posting, instead of the current requirement of at least 10 days before public posting.

Advisory committee authority. The bill would authorize the commissioner to appoint advisory committees to assist OCCC. The commissioner would be required to specify each committee's purpose, powers, and duties and would have to require each committee to report to the commissioner or office in a manner to be specified by the commissioner concerning the committee's activities and the results of its work.

Standard recommendations. The bill would make standard Sunset changes to complaint processes and require OCCC to make available its complaint investigation and resolution procedure. OCCC and the Finance Commission would be required to develop a policy for negotiated rulemaking and alternative dispute resolution. The requirement for a pawnshop license applicant or pawnshop employee license applicant to "be of good moral character" to be eligible for a license would be removed.

Effective date. This bill would take effect September 1, 2019. Any currently issued pawnshop employee licenses would expire on December

31, 2019. The changes in law made by this bill would not affect the validity of a disciplinary action or other proceeding that was initiated before the effective date and that is pending before a court or other government entity on the effective date.

The repeal of the criminal penalty for pawnshop employees working without a license would apply only to an offense committed on or after the effective date.

SUPPORTERS
SAY:

CSHB 1442 would continue the already well functioning OCCC and update its licensing, enforcement, and other administrative procedures where appropriate in order to strengthen the commissioner's ability to protect consumers and foster a fair credit environment.

License terms. Allowing OCCC to extend licensing terms would improve efficiencies in workload management and ease the regulatory administrative burden on licensees and registrants. This would provide the office with more flexibility without compromising oversight of the industry.

Voluntary pawnshop employee licensure program. Concerns about the filed version of CSHB 1442's provision to end the OCCC's mandatory pawnshop employee licensure program were addressed in the committee substitute, which would make the program voluntary, striking a balance between administrative efficiency and consumer protection. Licensing serves the industry by cleaning up fraudulent activity, and having a single licensure program for the entire state would prevent a burdensome patchwork of local regulations from emerging.

State background checks are performed on an ongoing basis and are more extensive than background searches provided by private companies. State licensing also carries the advantages of increased consumer trust and allows for employees to transfer stores without needing to perform a new background check within a single licensing period.

Administrative procedure. Providing an opportunity to hold a hearing

for those who failed to comply with an OCCC enforcement order, rather than having a requirement to hold a hearing, would align OCCC's statute with provisions in the Administrative Procedures Act, ensuring due process for licensees without wasting agency resources.

Giving OCCC authority to open an investigation upon reasonable cause to believe a violation had occurred would remove an obstacle to timely resolution for both complainants and respondents.

Authorizing the commissioner to refuse to renew the license of a person who failed to comply with an OCCC enforcement order after notice and opportunity for a hearing would give the agency a standard tool to better enforce compliance with the Finance Code.

The bill would remove the unnecessarily high standard that OCCC prove injury to a consumer before the agency orders restitution. This would strike a better balance between due process for licensees and OCCC's mission of making consumers whole when adversely affected by violations.

Allowing the agency to give complainants high-level information about the outcome of their complaint investigation would increase transparency of the complaint process.

Crafted precious metal dealers. The bill would align OCCC's standard enforcement authority over crafted precious metal dealers with its authority to take action against all other unlicensed or unlawful activity related to industries under its jurisdiction, including authority to order crafted precious metal dealers to pay restitution to consumers when a regulatory violation has occurred.

Advisory committee authority. Given the diverse group of stakeholders impacted by OCCC's regulatory scope, the agency's work would benefit from statutory authority to formally establish advisory committees in rule as needed.

Standard recommendations. Changes to complaint processes would remove outdated complaint requirements from statute to ensure OCCC had the flexibility to adopt updated rules and procedures to timely and transparently resolve complaints.

Knowing and willful requirement. It is appropriate to retain the mens rea requirement that a person's violations be "knowing and willful" in order to be held liable. This is an appropriate check on OCCC's enforcement power. The "knowing and willful" requirement also would bring these financial services companies into regulatory parity with financial intermediaries.

OPPONENTS
SAY:

The provision requiring OCCC to prove an entity's "knowing and willful" state of mind before taking regulatory action is outdated and overly restrictive. Removing the "knowing and willful" requirement would align OCCC's authority with standard practice and remove unnecessary barriers limiting the agency's ability to take enforcement action.