

BILL ANALYSIS

Senate Research Center
76R9875 DWS-F

C.S.S.B. 88
By: Carona
Economic Development
4/20/1999
Committee Report (Substituted - Revised)

DIGEST

Currently, Texas law does not provide regulation for sale-leaseback operations. A sale-leaseback transaction involves a customer taking the serial number of a piece of personal property, selling that property to a sale-leaseback operation, and leaving a post-dated check for a cash advance under the guise of leasing the property back to the customer. A business can deposit checks left with them, knowing that the checks will most likely be returned for non-sufficient funds, if the customer is unable to repay. C.S.S.B. 88 would set parameters for sale-leaseback operations without using the threat of criminal prosecution for enforcing civil contracts.

PURPOSE

As proposed, C.S.S.B. 88 sets forth requirements for transactions subject to regulation as loans.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 342A, Finance Code, by adding Section 342.007, as follows:

Sec. 342.007. CERTAIN SALES OF PERSONAL PROPERTY. Provides that a sale or purported sale of personal property used primarily for personal, family, or household use is a loan subject to this subtitle, if certain conditions exist. Provides that the excess amount is interest subject to this subtitle, if the total amount received by the buyer exceeds the price paid for the property by the buyer in a transaction described by Subsection (a). Provides that the purported taking of title to or a security interest or other lien in property by a buyer in connection with a transaction described by Subsection (a) is a deceptive trade practice under Chapter 17E, Business & Commerce Code. Provides that title to the property is not transferred and the security interest or other lien does not attach. Provides that this section does not apply to a sale or purported sale of personal property used for business, commercial, investment, agricultural, or similar purposes.

SECTION 2. Amends Chapter 392D, Finance Code, by adding Section 392.307, as follows:

Sec. 392.307. THREATENING OR PURSUING ACTION TO COLLECT CERTAIN CHECKS. Defines "check." Prohibits a person from filing or threatening to file a charge, complaint, or criminal prosecution under Section 31.03, 31.04, or 32.41, Penal Code, based on nonpayment of a check, if the person from whom collection is sought gave the check in exchange for a cash advance and the person making the advance received compensation exceeding a certain amount, or as the seller in a transaction described by Section 342.007.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Chapter 342A, Finance Code, by adding Section 342.007, to provide that a sale or purported sale of personal property used primarily for personal, family, or household use is a loan subject to this subtitle, if certain conditions exist. Provides that the excess amount is interest subject to this subtitle, if the total amount received by the buyer exceeds the price paid for the property by the buyer in a transaction described by Subsection (a). Provides that the purported taking of title to or a security interest or other lien in property by a buyer in connection with a transaction described by Subsection (a) is a deceptive trade practice under Chapter 17E, Business & Commerce Code. Provides that title to the property is not transferred and the security interest or other lien does not attach. Provides that this section does not apply to a sale or purported sale of personal property used for business, commercial, investment, agricultural, or similar purposes. Redesignates proposed Section 342.008 as Section 342.007.

SECTION 2.

Amends Chapter 392D, Finance Code, by adding Section 392.307, to provide that a person may not file or threaten to file a charge, complaint, or criminal prosecution based on nonpayment of a check, if the person from whom collection is sought gave the check as the seller in a transaction described by Section 342.007, among other conditions.