

BILL ANALYSIS

Senate Research Center

S.B. 1251
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, traditional installment lenders who provide consumer loans can charge an effective interest rate higher than the usury limit under Subchapters E (Interest Charges on Non-Real Property Loans) and F (Alternate Charges for Certain Loans), Chapter 342 (Consumer Loans), Finance Code. Unlike payday and auto title lenders who offer loans that must adhere to very few regulatory requirements, however, traditional installment lenders must comply with statutory limits that affect the size, term, interest rate, and fees charged pursuant to every loan. As a result of these limits, traditional installment loans tend to be much more affordable for consumers than any comparable payday or auto title loan product.

Both Subchapters E and F authorize lenders to impose a nonrefundable flat charge in addition to the amounts the lenders charge based on the amount and term of the loan. The flat charge a Subchapter E lender can assess is referred to as an "administrative fee," and the flat charge a Subchapter F lender can assess is referred to as an "acquisition charge." Currently lenders can use the rates in Subchapter E for any consumer loan, but the rates in Subchapter F are restricted to loans of \$1,300 or less.

The Subchapter E administrative fee is currently capped at \$25 for a loan of more than \$1,000, and the Subchapter F acquisition charge is currently capped at \$10 for a loan of more than \$100. These amounts have not been altered by the legislature since 1997 and 1981, respectively, and thus they are incompatible with current business costs and make it difficult for the traditional installment lending industry to compete within a skewed marketplace wherein payday and auto title lenders operate with minimal restrictions.

In order to promote competition, S.B. 1251 removes the current statutory caps applicable to traditional installment lenders and allows the Finance Commission of Texas to set a maximum amount that traditional installment lenders may assess as an administrative fee or acquisition charge. In addition, S.B. 1251 specifies that administrative fees and acquisition charges are not interest, which is required in order to give the Finance Commission of Texas the authority to set the maximum amounts.

As proposed, S.B. 1251 amends current law relating to authorized charges for certain consumer loans.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 342.201, Finance Code) and SECTION 2 (Section 342.252, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 342.201, Finance Code, as follows:

(a)-(e) Makes no changes to these subsections.

(f) Authorizes a consumer loan contract under this subchapter (Interest Charges on Non-Real Property Loans) to provide for an administrative fee, rather than authorizes a loan contract under this subchapter for an administrative fee in an amount not to exceed \$25

for a loan of more than \$1,000 or \$20 for a loan of \$1,000 or less. Provides that the administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. Provides that an administrative fee is not interest.

(g) Requires the Finance Commission of Texas (finance commission) to prescribe by rule the maximum amount of an administrative fee.

SECTION 2. Amends Section 342.252, Finance Code, as follows:

Sec. 342.252. ALTERNATE INTEREST CHARGE. (a) Creates this subsection from existing text. Authorizes a loan contract, instead of the charges authorized by Section 342.201 (Maximum Interest Charge), to provide for:

(1) on a cash advance of less than \$30, an acquisition charge, rather than on a cash advance of less than \$30, an acquisition charge that is not more than \$1 for each \$5 of the cash advance;

(2) on a cash advance equal to or more than \$30 but not more than \$100:

(A) an acquisition charge, rather than an acquisition charge that is not more than the amount equal to one-tenth of the amount of the cash advance; and

(B) an installment account handling charge that is not more than \$3 a month if the cash advance is not more than \$35, \$3.50 a month if the cash advance is more than \$35 but not more than \$70, or \$4 a month if the cash advance is more than \$70; or

(3) on a cash advance of more than \$100:

(A) an acquisition charge, rather than an acquisition charge that is not more than \$10; and

(B) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

(b) Requires the finance commission to prescribe by rule the maximum amount of an acquisition charge.

(c) Provides that an acquisition charge under this subchapter is not considered to be interest.

SECTION 3. Amends Section 342.259(a), Finance Code, as follows:

(a) Authorizes a loan made under this subchapter (Alternate Charges for Certain Loans) with a maximum cash advance computed under Subchapter C (Revised Ceilings and Brackets), Chapter 341, instead of the charges authorized by Sections 342.201 and 342.252, using a reference base amount that is more than \$100 but not more than \$200, to provide for:

(1) an acquisition charge, rather than an acquisition charge that is not more than \$10; and

(2) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2013.