

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1282
By: Eltife
Business & Commerce
4/15/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1282 makes several technical corrections to Titles 1 (General Provisions), 4 (Regulation of Interest, Loans, and Financed Transactions), and 5 (Protection of Consumers of Financial Services) of the Finance Code, as well as Chapter 1956 (Metal Recycling Entities) of the Occupations Code and Chapter 32 (Tax Liens and Personal Liability) of the Tax Code. The bill is intended to make clarifications and improvements to regulatory procedures and to relieve regulatory burden or provide compliance alternatives where possible.

S.B. 1282 specifies the situations where the Office of Consumer Credit Commissioner (OCCC) may release examination information to a person examined.

Current law authorizes the OCCC to issue a restitution order under Section 14.251(b), Finance Code, but does not specify the procedure for appealing the order. S.B. 1282 provides due process and requires that restitution orders are subject to the same appeal procedure that currently applies to administrative penalties.

S.B. 1282 clarifies a license holder or registrant's right to notice and an opportunity for a hearing in connection with a license issued by the OCCC. These amendments help ensure conformity with Section 2001.056 (Administrative Procedure Act), Government Code, which allows an agency to dispose of a contested case by default.

S.B. 1282 amends the provisions on interest charges under Chapter 342, Finance Code. Current law allows lenders to charge a three-tiered interest rate, but does not specify how lenders may apply the interest rate to the unpaid principal balance. S.B. 1282 specifies two permissible methods: applying an applicable daily rate to each bracket of the unpaid principal balance, or applying a single equivalent daily rate to the entire principal balance.

S.B. 1282 amends the provisions on itemized charges under Chapter 348, Finance Code, to specify that retail sellers may include itemized charges for accessories and services related to the sale. Current law authorizes these charges to be included in the cash price, but not the itemized charges. This amendment helps ensure conformity with Regulation Z, 12 C.F.R. Sections 226.2(9) and 1026.2(9), which allows these charges to be included in either the cash price or the itemized charges. S.B. 1282 also specifies that retail sellers may include a charge for an authorized vehicle protection product and removes an outdated reference to a theft protection plan.

S.B. 1282 amends Section 351.0022, Finance Code, to prohibit a waiver of Chapter 32, Tax Code. Current law provides prohibitions on waivers only for Chapter 351 of the Finance Code and Section 32.06, Tax Code. S.B. 1282 specifies recordkeeping requirements that apply to property tax lenders. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1282 amends current law relating to the regulation of consumer credit transactions and the regulatory authority of the Office of Consumer Credit Commissioner and amends provisions subject to a criminal penalty.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 14.2015, Finance Code, as follows:

Sec. 14.2015. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) Provides that, except as provided by Subsection (b), information or material obtained or compiled by the consumer credit commissioner (commissioner) in relation to an examination or investigation by the commissioner or the commissioner's representative of a license holder, registrant, applicant, or other person under a provision listed in Section 14.201 (Investigation and Enforcement Authority), rather than under Section 339.001 (Imposition of Surcharge for Use of Credit Card), Subtitle B (Loans and Financed Transactions) or C (Pawnshops), Title 4 (Regulation of Interest, Loans, and Financed Transactions), Subchapter G (Licensing and Regulation of Certain Credit Services Organizations) of Chapter 393 (Credit Services Organizations), or Chapter 394 (Debtor Assistance), is confidential and is prohibited from being disclosed by the commissioner or an officer or employee of the Office of Consumer Credit Commissioner, including:

(1) information obtained from the license holder, registrant, applicant, or other person examined or investigated, rather than a license holder, registrant, applicant, or other person examined or investigated under Section 339.001, Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394;

(2) work performed by the commissioner or the commissioner's representative on information obtained from the license holder, registrant, applicant, or other person for the purposes of an examination or investigation, rather than a license holder, registrant, applicant, or other person for the purposes of an examination or investigation conducted under Section 339.001, Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394;

(3) a report on an examination or investigation of the license holder, registrant, applicant, or other person, rather than a license holder, registrant, applicant, or other person conducted under Section 339.001, Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394; and

(4) any written communications between the license holder, registrant, applicant, or other person, as applicable, and the commissioner or the commissioner's representative relating to or referencing the examination or investigation, rather than an examination or investigation conducted under Section 339.001, Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394.

(b) Authorizes the commissioner or the commissioner's representative to disclose the confidential information or material described by Subsection (a):

(1) Makes no change to this subdivision;

(2) if the information was provided to or provided by the license holder, registrant, applicant, or other person, and the person consents to the release of the information or has published the information contained in the release; or

(3) Makes no change to this subdivision.

SECTION 2. Amends Section 14.251, Finance Code, by adding Subsection (c), as follows:

(c) Provides that an order of restitution under Subsection (b) is subject to the notice, procedure, and enforcement provisions of Sections 14.253 through 14.260 (relating to violations on penalties) applicable to an administrative penalty.

SECTION 3. Amends Sections 14.256, Finance Code, as follows:

Sec. 14.256. New heading: ACCEPTANCE OF PENALTY; DEFAULT. Requires the commissioner, if a person accepts the determination and recommended penalty of the commissioner or fails to make a timely written request for a hearing, to by order approve the determination and impose the recommended penalty.

SECTION 4. Amends Sections 14.257(a), Finance Code, as follows:

(a) Requires the commissioner, if a person makes a timely written request for a hearing, rather than requests a hearing or fails to give a timely response to the notice, to set a hearing and give notice of the hearing to the person by certified mail.

SECTION 5. Amends Section 180.002(5), Finance Code, to redefine "dwelling."

SECTION 6. Amends Section 303.015(c), Finance Code, to require that a variable rate agreement for credit extended primarily for personal, family, or household use include the disclosures identified for variable rate contracts required by regulations issued by the Federal Reserve Board and Bureau of Consumer Financial Protection under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended, except that if that Act does not apply because of the amount of the transaction, requires that a disclosure set forth by this subsection be included in a size equal to at least 10-point type that is boldface, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous.

SECTION 7. Amends Section 303.402(a), Finance Code, to provide that a person who contracts for, charges, or receives under a contract subject to certain provisions of this code set forth herein, including a contract for an open-end account, a rate or amount of interest and the maximum applicable rate or amount of time price differential that exceeds the maximum applicable amount authorized by the applicable chapter, or this chapter is subject to a penalty for that violation determined under Chapter 349 (Penalties and Liabilities). Makes a nonsubstantive change.

SECTION 8. Amends Sections 308.002(c) and (e), Finance Code, as follows:

(c) Requires an administrative agency or a court, in interpreting this section, to be guided by the applicable advertising provisions of:

(1) Part C of the Truth in Lending Act, rather than 15 U.S.C. Chapter 41, Subchapter I (15 U.S.C. Section 1661, rather than Section 1601, et seq.);

(2) Regulation Z (12 C.F.R. Parts 226 and 1026), rather than 12 C.F.R. Part 226, adopted by the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection; and

(3) the Official Staff Commentary and other interpretations of that statute and regulation by the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, and the staff of those agencies. Makes a nonsubstantive change.

(e) Provides that a creditor who complies with the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Regulation Z (12 C.F.R. Parts 226 and 1026), rather than

Federal Reserve Regulation Z (12 C.F.R. Part 226) in advertising a credit transaction is considered to have fully complied with this section.

SECTION 9. Amends Section 341.301(a), Finance Code, to delete a reference to Section 226.1 et seq. from Regulation Z, 12 C.F.R.

SECTION 10. Amends Section 341.401(b), Finance Code, to require a court or administrative agency, in interpreting this section, to be guided by the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.) and regulations under and interpretations of that Act by the Federal Reserve Board and the Bureau of Consumer Financial Protection to the extent that Act and those regulations and interpretations can be made applicable to conduct prohibited by this section.

SECTION 11. Amends Section 341.402(b), Finance Code, to provide that the liability of a person under this section is instead of and not in addition to that person's liability under the Equal Credit Opportunity Act, rather than (15 U.S.C. Section 1691 et seq.) Title VII of the Consumer Credit Protection Act (15 U.S.C. Section 1691 et seq.).

SECTION 12. Amends Section 341.502(a-1), Finance Code, to require that, if the terms of the agreement for a loan under Subsection (a) (providing certain requirements for a contract for a loan under Chapter 342) were negotiated in Spanish, a copy of a summary of those terms and other pertinent information be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Sections 226.18 and 1026.18, rather than Section 226.18.

SECTION 13. Amends Section 342.156, Finance Code, to authorize the commissioner, after notice and an opportunity for a hearing, to suspend or revoke a license if the commissioner finds that the license holder committed certain actions as set forth.

SECTION 14. Amends Section 342.201, Finance Code, by adding Subsection (e-1), as follows:

(e-1) Requires that the interest charge under Subsection (e) (providing that the interest rates on certain loans not secured by real property may not exceed certain limits as set forth) be contracted for, charged, or received using the scheduled installment earnings method or the true daily earnings method under one of the following methods:

(1) applying the applicable daily rate to each part of the unpaid principal balance corresponding to the brackets described by Subsection (e) for the actual or scheduled number of days during a payment period; or

(2) applying a single equivalent daily rate to the unpaid principal balance for the actual or scheduled number of days during a payment period, where the single equivalent daily rate is determined at the inception of the loan using the scheduled installment earnings method, and would earn an amount of interest authorized under Subsection (e) if the debt were paid to maturity according to the schedule of payments.

SECTION 15. Amends Section 343.201, Finance Code, to redefine, in this subchapter, "high-cost home loan" and "points and fees."

SECTION 16. Amends Section 345.106, Finance Code, as follows:

Sec. 345.106. PROCESSING FEE FOR RETURNED CHECK. Authorizes a retail charge agreement to provide that the holder of the agreement may charge the retail buyer, on return of a dishonored check given in payment under the agreement, a reasonable processing fee that does not exceed the amount prescribed by Section 3.506 (Processing Fee by Holder of Payment Device), Business & Commerce Code, rather than a reasonable processing fee that is not more than \$15, and add the fee to the unpaid balance under the agreement.

SECTION 17. Amends Section 347.002(b), Finance Code, as follows:

(b) Provides that to the extent possible, a word or phrase used in this chapter, other than a term defined by this section, has the meaning assigned by the Truth in Lending Act, rather than Part I, Consumer Credit Protection Act, (15 U.S.C. Section 1601 et seq.) and its subsequent amendments, as implemented by Regulation Z (12 C.F.R. Part 1026), rather than 12 C.F.R. 226.1 et seq.

SECTION 18. Amends Section 347.004(a), Finance Code, to make conforming changes.

SECTION 19. Amends Section 347.056, Finance Code, is amended, as follows:

Sec. 347.056. AUTHORITY OF CONSUMER CREDIT COMMISSIONER RELATING TO A CREDIT DOCUMENT. Prohibits the commissioner, except as provided by Section 347.004(a), from requiring the inclusion of any specific language or a disclosure on a credit document that is not expressly required by this chapter, or a regulation of the Office of the Comptroller of the Currency, rather than the Office of Thrift Supervision.

SECTION 20. Amends Section 347.155(b), Finance Code, as follows:

(b) Entitles a consumer, on prepayment, after deduction of an acquisition charge that does not exceed \$50, to a refund credit of the time price differential or interest. Provides that the amount of the credit is computed on an actuarial basis in accordance with regulations of the Office of the Comptroller of the Currency, rather than rather than the Office of Thrift Supervision, adopted under the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Section 1735f-7a et seq., rather than 12 U.S.C. Section 4a et seq.) for the prepayment of a mortgage loan that is secured by a first lien on a residential manufactured home.

SECTION 21. Amends Section 347.356, Finance Code, to change a reference to the Office of Thrift Supervision to the Office of the Comptroller of the Currency.

SECTION 22. Amends Section 347.455(b), Finance Code, to change a reference to 12 C.F.R. Section 226.1 et seq. (Regulation Z) to Regulation Z (12 C.F.R. Part 1026).

SECTION 23. Reenacts Section 348.005, Finance Code, as amended by Chapters 355 (H.B. 2462), 1135 (H.B. 2741), and 1287 (H.B. 2202), Acts of the 83rd Legislature, Regular Session, 2013, and amends it as follows:

Sec. 348.005. ITEMIZED CHARGE. Provides that an amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) the price of accessories;

(1-a) the price of services related to the sale;

(1-b) fees for registration, certificate of title, and license and any additional registration fees charged by a deputy as authorized by rules adopted under Section 520.0071 (Deputies), rather than 520.008, Transportation Code;

(2) and (3) Makes no change to these subdivisions;

(4) charges authorized for insurance, service contracts, warranties, automobile club memberships, or a debt cancellation agreement by this chapter, rather than Subchapter C (Insurance).

SECTION 24. Amends Section 348.009(a), Finance Code, to provide that the disclosure requirements of Regulation Z (12 C.F.R. Parts 226 and 1026), rather than 12 C.F.R. Part 226 (Regulation Z), adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and

specifically 12 C.F.R. Sections 226.18(f) and 1026.18(f), rather than Section 226.18(f), regarding variable rate disclosures, apply according to their terms to retail installment transactions.

SECTION 25. Amends Section 348.208(b), Finance Code, to authorize a retail installment contract to include as a separate charge certain amounts, including an amount for participation in a vehicle protection product authorized under Chapter 2306 (Vehicle Protection Product Warrantors), Occupations Code, rather than participation in a motor vehicle theft protection plan.

SECTION 26. Amends Section 348.404(d), Finance Code, to make conforming changes.

SECTION 27. Amends Section 348.508, Finance Code, to authorize the commissioner, after notice and an opportunity for a hearing to suspend or revoke a license if the commissioner makes certain findings.

SECTION 28. Amends Section 351.0022, Finance Code, as follows:

Sec. 351.0022. WAIVER PROHIBITED. Prohibits a property owner, except as specifically permitted by this chapter or Chapter 32 (Tax Liens and Personal Liability), Tax Code, from waiving or limiting a requirement imposed on a property tax lender by this chapter or Chapter 32, Tax Code.

SECTION 29. Amends Subchapter A, Chapter 351, Finance Code, by adding Section 351.0081, as follows:

Sec. 351.0081. LENDER'S RECORDS; DOCUMENT RETENTION REQUIREMENTS. (a) Requires a property tax lender to maintain a record of each property tax loan made under this chapter as necessary to enable the commissioner to determine whether the lender is complying with this chapter.

(b) Requires a property tax lender to keep the record until the later of the fourth anniversary of the date of the property tax loan, or the second anniversary of the date on which the final entry is made in the record.

(c) Requires that a record described by Subsection (a) be prepared in accordance with accepted accounting practices.

(d) Requires the commissioner to accept a lender's system of records if the system discloses the information reasonably required under Subsection (a).

(e) Requires a property tax lender to keep each obligation signed by a property owner at an office in this state designated by the lender unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

SECTION 30. Amends Section 351.156, Finance Code, to authorize the commissioner, after notice and an opportunity for a hearing, to suspend or revoke a license if the commissioner makes certain findings.

SECTION 31. Amends Section 352.006(b), Finance Code, as follows:

(b) Entitles a facilitator, if the commissioner proposes to revoke a registration, to notice and an opportunity for a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. Requires the commissioner or hearings officer to prescribe the time and place of the hearing if the facilitator makes a written request for a hearing not later than the 20th day after the date the facilitator receives the notice of hearing.

SECTION 32. Amends Section 353.508, Finance Code, to authorize the commissioner, after notice and an opportunity for a hearing, to suspend or revoke a license if the commissioner makes certain findings.

SECTION 33. Amends Section 371.157, Finance Code, as follows:

Sec. 371.157. PAWN TICKET. Requires a pawnbroker, at the time a pawn transaction is entered, to deliver to the pledgor a pawn ticket or other memorandum that clearly shows:

(1)-(7) Makes no change to these subdivisions;

(8) the "Annual Percentage Rate," computed according to Regulation Z (12 C.F.R. Part 1026) adopted by the Bureau of Consumer Financial Protection under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended, rather than the "Annual Percentage Rate," computed according to regulations issued by the Federal Reserve Board under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended;

(9) and (10) Makes no change to these subdivisions.

SECTION 34. Amends Section 371.251(a), Finance Code, to authorize the commissioner, after notice and an opportunity for a hearing, to suspend or revoke a pawnshop license if the commissioner makes certain findings.

SECTION 35. Amends Section 371.255, Finance Code, to authorize the commissioner, after notice and an opportunity for a hearing, to suspend or revoke a pawnshop employee license if the commissioner makes certain findings.

SECTION 36. Amends Section 393.614(a), Finance Code, to authorize the commissioner, after notice and an opportunity for a hearing, to revoke or suspend a license if the commissioner makes certain findings.

SECTION 37. Amends Section 394.204(k), Finance Code, to authorize the commissioner, in addition to the power to refuse an initial application as specified in this section, to suspend or revoke a provider's registration after notice and an opportunity for a hearing if the commissioner finds that any of the conditions set forth are met.

SECTION 38. Amends Section 394.212(a), Finance Code, as follows:

(a) Prohibit a provider from engaging in business with a for-profit business entity described by Section 394.204(c)(7), rather than 394.204(c)(3), without prior consent of the commissioner, except that unless denied, consent is considered granted 30 days after the date the provider notifies the commissioner of the intent to engage in business with the for-profit business entity described by 394.204(c)(7), rather than an organization described by Section 394.204(c)(3). Makes no further changes to this subsection.

SECTION 39. Amends Section 1956.0614(b), Occupations Code, as follows:

(b) Entitles a dealer, if the commissioner proposes to revoke a registration, to notice and an opportunity for a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. Requires the commissioner or hearings officer to prescribe the time and place of the hearing if the dealer makes a written request for a hearing not later than the 20th day after the date the dealer receives the notice of the hearing.

SECTION 40. Amends Sections 32.06(d-1) and (f-3), Tax Code, as follows:

(d-1) Provides that a right of rescission described by the Truth in Lending Act (15 U.S.C. Section 1635) and Regulation Z (12 C.F.R. Section 1026.23), rather than 12 C.F.R. Section 226.23, applies to a transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

(f-3) Requires the transferee of a tax lien, notwithstanding any contractual agreement with the property owner, to provide the payoff information required by this section to the greatest extent permitted by the Gramm-Leach-Bliley Act (15 U.S.C. Section 6802) and Regulation P (12 C.F.R. Section 1016), rather than 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. Makes no further changes to this subsection.

SECTION 41. Provides that to the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 42. Effective date: September 1, 2015.