

By: Carona

S.B. No. 988

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain consumer lenders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 341.001(6), Finance Code, is amended to read as follows:

(6) "Deferred presentment transaction" has the meaning assigned by Section 342.601 ~~[means a transaction in which:~~

~~[(A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;~~

~~[(B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and~~

~~[(C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date].~~

SECTION 2. Section 342.104, Finance Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The commissioner shall approve the application and issue to the applicant a license to make loans under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

1 (B) warrant the belief that the business will be
2 operated lawfully and fairly, within the purposes of this chapter;
3 and

4 (2) the applicant has net assets of at least \$25,000
5 available for the operation of the business, except as provided by
6 Subsection (e).

7 (e) An applicant for a license for an office at which the
8 applicant will engage in deferred presentment transactions and who
9 engages or will engage in deferred presentment transactions at more
10 than one office is not required to have total net assets of more
11 than \$2.5 million available for the operation of all of those
12 offices.

13 SECTION 3. Section 342.153, Finance Code, is amended by
14 amending Subsection (a) and adding Subsection (e) to read as
15 follows:

16 (a) Except as provided by Subsection (b), ~~[or]~~ (c), or (e),
17 a license holder shall maintain for each office for which a license
18 is held net assets of at least \$25,000 that are used or readily
19 available for use in conducting the business of that office.

20 (e) A license holder is not required to have total net
21 assets of more than \$2.5 million that are used or readily available
22 for use in conducting the business of all offices at which the
23 applicant engages in deferred presentment transactions.

24 SECTION 4. Subchapter M, Chapter 342, Finance Code, is
25 amended to read as follows:

26 SUBCHAPTER M. DEFERRED PRESENTMENT TRANSACTIONS

27 Sec. 342.601. DEFINITIONS. In this subchapter:

(1) "Deferred presentment transaction" means a transaction in which:

(A) a lender pays a cash advance to a borrower in return for a postdated check and agrees to hold the check for negotiation, deposit, or presentment at least until the date written on the check; or

(B) a lender pays a cash advance to a borrower in return for an Automated Clearing House (ACH) authorization to debit a borrower's checking account on a subsequent date.

(2) "Instrument" means a personal check or authorization to transfer or withdraw funds from an account of a borrower made payable to a person subject to this subchapter.

(3) "Lender" means a person who holds a license under this chapter.

Sec. 342.602. WRITTEN AGREEMENT REQUIREMENTS. (a) Each deferred presentment transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower. The written agreement must:

(1) state:

(A) the name and address of the borrower;

(B) the transaction date;

(C) the amount of the instrument; and

(D) the total amount of finance charges, expressed both as a dollar amount and as an annual percentage rate pursuant to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), 12 C.F.R. Part 226 (Regulation Z) adopted under that Act, and

1 the Federal Reserve Board Official Commentary;

2 (2) set a date, not earlier than the seventh or later
3 than the 45th day after the transaction date, on which the
4 instrument may be deposited, negotiated, or presented for payment,
5 or the date of the ACH debit authorization, as applicable;

6 (3) include the name, local street address, and
7 telephone number of the lender;

8 (4) include a clear description of the borrower's
9 payment obligations under the deferred presentment transaction;
10 and

11 (5) include the following statement, in at least
12 12-point type that is boldfaced, capitalized, and underlined:

13 "YOU CANNOT BE PROSECUTED IN CRIMINAL COURT TO COLLECT
14 ON THIS TRANSACTION, UNLESS YOU COMMITTED FRAUD
15 AGAINST THE LENDER."

16 (b) The written agreement may not contain any of the
17 following provisions:

18 (1) a hold harmless clause;

19 (2) a confession of judgment clause;

20 (3) a mandatory arbitration clause that does not
21 comply with the standards set forth in the statement of principles
22 of the National Consumer Dispute Advisory Committee of the American
23 Arbitration Association in effect on September 1, 2007;

24 (4) any provision in which the borrower agrees not to
25 assert a claim or defense arising out of the contract;

26 (5) any assignment or order for payment of wages or
27 other compensation for services;

1 (6) any waiver by the borrower of any provision of this
2 subchapter; or

3 (7) the sale of insurance of any kind in connection
4 with the making or collecting of a deferred presentment
5 transaction.

6 Sec. 342.603. ADDITIONAL NOTICE TO CONSUMERS. The written
7 agreement must include or be accompanied by a separate document
8 that contains the following notice in at least 12-point type that is
9 boldfaced, capitalized, and underlined:

10 "A DEFERRED PRESENTMENT TRANSACTION IS NOT INTENDED TO
11 MEET LONG-TERM FINANCIAL NEEDS. THIS MONEY SHOULD BE
12 USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE
13 RIGHT TO RESCIND THIS TRANSACTION, AT NO COST, BEFORE
14 THE CLOSE OF BUSINESS ON THE NEXT BUSINESS DAY
15 IMMEDIATELY FOLLOWING THE TRANSACTION DATE SHOWN ON
16 YOUR AGREEMENT. TO RESCIND, YOU MUST RETURN ALL OF THE
17 CASH PROCEEDS TO THE LENDER. IN RETURN, THE LENDER
18 WILL CANCEL ALL THE FEES FOR THIS TRANSACTION."

19 Sec. 342.604. AUTHORIZED FINANCE CHARGE. (a) A lender may
20 charge for each deferred presentment transaction a finance charge
21 not to exceed:

22 (1) \$15 for every \$100 advanced up to and including the
23 amount computed under Subchapter C, Chapter 341, using the
24 reference base amount of \$70; and

25 (2) \$13.50 for every additional \$100 advanced up to
26 and including the amount computed under Subchapter C, Chapter 341,
27 using the reference base amount of \$125.

1 (b) A lender may also charge a pro rata finance charge for
2 any incremental amount advanced in excess of a multiple of \$100.

3 (c) The charge is considered fully earned as of the date of
4 the transaction. The lender may charge only charges expressly
5 authorized by this subchapter in connection with a deferred
6 presentment transaction.

7 Sec. 342.605. MAXIMUM CASH ADVANCE; RIGHT TO RESCIND. (a)
8 A lender may not advance to a borrower an amount greater than the
9 lesser of:

10 (1) the amount computed under Subchapter C, Chapter
11 341, using the reference base amount of \$125; or

12 (2) 25 percent of the borrower's monthly gross income.

13 (b) A borrower has the right to rescind the deferred
14 presentment transaction not later than the close of business on the
15 next business day immediately following the transaction date. To
16 rescind a transaction, a borrower must:

17 (1) inform the lender that the borrower wants to
18 rescind the transaction; and

19 (2) return the cash advance to the lender.

20 Sec. 342.606. MINIMUM AND MAXIMUM TERM. A lender may not
21 engage in a deferred presentment transaction with a term of less
22 than seven or more than 45 days.

23 Sec. 342.607. FORM OF ADVANCE. A lender may pay the advance
24 from a deferred presentment transaction to the borrower in the form
25 of a business instrument, a money order, or cash. The lender may
26 not charge an additional finance charge or fee for cashing the
27 lender's business instrument.

1 Sec. 342.608. ENDORSEMENT OF INSTRUMENT. A lender may not
2 negotiate or present an instrument for payment unless the
3 instrument is endorsed with the actual business name of the lender.

4 Sec. 342.609. PARTIAL PAYMENTS. A borrower may make
5 partial payments in any amount on the outstanding balance at any
6 time before the due date of the transaction. After each payment is
7 made, whether the payment is in part or in full, the lender shall
8 give a signed and dated receipt to the borrower making a payment
9 showing the amount paid and the balance due.

10 Sec. 342.610. REDEMPTION OF INSTRUMENT. Before the lender
11 negotiates or presents the instrument, the borrower has the right
12 to redeem any instrument held by the lender as a result of a
13 deferred presentment transaction if the borrower pays the full
14 amount of the instrument to the lender.

15 Sec. 342.611. AUTHORIZED DISHONORED INSTRUMENT CHARGE. If
16 an instrument held by a lender as a result of a deferred presentment
17 transaction is returned to the lender from a payor financial
18 institution due to insufficient funds, a closed account, or a
19 stop-payment order, the lender has the right to exercise all civil
20 means authorized by law to collect the face value of the instrument.
21 In addition, the lender may contract for and collect fees
22 authorized by Section 342.502. The lender may not collect any other
23 fees as a result of default.

24 Sec. 342.612. POSTING OF CHARGES. A lender offering a
25 deferred presentment transaction shall post at any place of
26 business where a deferred presentment transaction is made a
27 schedule of all interest and fees to be charged on the transaction

with an example of the amount that would be charged on transactions between \$100 and the amount computed under Subchapter C, Chapter 341, using the reference base amount of \$125, payable on the minimum term and the maximum term offered by the lender, including the corresponding annual percentage rate.

Sec. 342.613. CONSUMER INFORMATION. The finance commission by rule may require a lender to provide materials approved by the commissioner that are designed to:

(1) inform a borrower of the duties, rights, and responsibilities of parties to a deferred presentment transaction; and

(2) educate a borrower about matters of financial literacy.

Sec. 342.614. NOTICE ON ASSIGNMENT OR SALE OF INSTRUMENTS. Before the sale or assignment of instruments held by a lender as a result of a deferred presentment transaction, the lender shall place the following notice on the instrument in at least 10-point type that is boldfaced, capitalized, and underlined:

"THIS IS A DEFERRED PRESENTMENT TRANSACTION INSTRUMENT."

Sec. 342.615. DEFERRED PRESENTMENT TRANSACTIONS LIMITED; ADDITIONAL LENDER DUTIES. (a) A lender may have only one deferred presentment transaction outstanding at a time to any borrower.

(b) After a deferred presentment transaction has been paid in full by the borrower or on successful completion of a payment plan, the lender may not, except as permitted under Section 342.617, enter into a new deferred presentment transaction with

1 that borrower until after 8 a.m. on the second business day after
2 the date of the payment or completion of the payment plan.

3 (c) Any deferred presentment transaction, and the
4 accompanying instrument or ACH debit authorization, the making or
5 collecting of which violates this subchapter or a rule adopted
6 under this subchapter, is void, and the lender or any other party
7 acting by or through the lender has no right to collect, receive, or
8 retain any principal or charges with respect to the transaction. A
9 borrower prevailing in an action to enforce this subsection is
10 entitled to recover the borrower's costs including reasonable
11 attorney's fees.

12 (d) A lender may not use or threaten to use the criminal
13 process to collect a dishonored instrument, unless the borrower
14 commits fraud against the lender.

15 (e) A lender shall comply with the disclosure requirements
16 of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in
17 Lending Act (15 U.S.C. Section 1601 et seq.).

18 (f) Each lender shall report loan data to an approved third
19 party database that is accessible by the commissioner for audit,
20 study, and reporting purposes.

21 Sec. 342.616. PROHIBITED PRACTICES. In addition to the
22 prohibited practices under Section 342.615, the following are
23 prohibited regarding deferred presentment transactions:

24 (1) engaging in unfair, deceptive, or fraudulent
25 practices in the making or collecting of a deferred presentment
26 transaction;

27 (2) taking or attempting to take any security other

1 than the borrower's instrument or ACH debit authorization;

2 (3) holding or attempting to hold more than a single
3 instrument or single ACH debit authorization from the borrower in
4 connection with a deferred presentment transaction, except
5 pursuant to a payment plan under Section 342.617;

6 (4) selling, offering, or soliciting any application
7 for credit insurance in connection with a deferred presentment
8 transaction;

9 (5) conditioning the deferred presentment transaction
10 on any other transaction, offer, or obligation of the borrower,
11 other than as expressly allowed in this subchapter;

12 (6) failing to respond to the commissioner's request
13 for assistance in resolving a complaint;

14 (7) using or threatening to use the criminal process
15 to collect a dishonored check or ACH debit authorization, unless
16 borrower fraud is involved;

17 (8) engaging in any device or subterfuge to evade the
18 requirements of this subchapter, including making cash advances
19 disguised as personal property sales and leaseback transactions or
20 disguising deferred presentment transaction proceeds as cash
21 rebates for a pretextual installment sale of goods or services; or

22 (9) at the same office at which the lender is engaging
23 in deferred presentment transactions, providing or representing
24 services in connection with an extension of consumer credit made by
25 a different lender.

26 Sec. 342.617. PAYMENT PLAN. (a) A lender shall provide a
27 borrower written notice, in a form prescribed or approved by the

1 commissioner, of the borrower's right to request a repayment plan
2 according to Subsection (b). The notice shall be set forth
3 conspicuously at the point of sale and in each deferred presentment
4 transaction services agreement.

5 (b) If a borrower is unable to pay on the due date the full
6 amount owing under a deferred presentment transaction with a
7 lender, the borrower has the right to request a mandatory repayment
8 plan. The borrower must request the repayment plan in writing on or
9 before the due date of the transaction. A borrower who has
10 requested a repayment plan may repay the amount owed according to
11 the following terms:

12 (1) the borrower shall agree not to enter into any
13 additional deferred presentment transactions with any other lender
14 during or for seven days following the payment plan term;

15 (2) the borrower shall be allowed to repay the
16 transaction in not more than four substantially equal installments
17 with one installment due on each of the borrower's next four pay
18 dates; and

19 (3) the lender may not charge a borrower any
20 additional fee for using the mandatory repayment plan.

21 Sec. 342.618. PRACTICES CONCERNING MEMBERS OF THE MILITARY
22 AND THEIR DEPENDENTS. A lender may not enter into a deferred
23 presentment transaction with any active duty member of the military
24 or a dependent of an active duty member of the military.

25 Sec. 342.619. RECORDS AND ANNUAL REPORTS. A lender shall
26 maintain records and file an annual report in accordance with
27 Sections 342.558 and 342.559.

1 Sec. 342.620. AUTHORITY TO CONDUCT DEFERRED PRESENTMENT
2 TRANSACTION BUSINESS. Only a lender may lawfully engage in the
3 deferred presentment transaction business. A lender shall obtain
4 and maintain a separate license for each location where deferred
5 presentment transaction business is conducted.

6 Sec. 342.621. EXAMINATION AND INVESTIGATION. A lender may
7 be examined and investigated in accordance with Section 342.552.

8 Sec. 342.622. DECEPTIVE TRADE PRACTICE. A deferred
9 presentment transaction made by a person other than a lender is a
10 deceptive trade practice actionable under Subchapter E, Chapter 17,
11 Business & Commerce Code.

12 ~~["Lender" means a lender licensed under this chapter.~~

13 ~~[(2) "Member of the United States military" means:~~

14 ~~[(A) a member of the armed forces of the United~~
15 ~~States; or~~

16 ~~[(B) a member of the Texas National Guard who is~~
17 ~~called to federal active duty.~~

18 ~~[Sec. 342.602. DISCLOSURES TO MILITARY BORROWERS. Before~~
19 ~~engaging in a deferred presentment transaction, a lender shall~~
20 ~~provide to a customer who is a member of the United States military~~
21 ~~or the member's spouse a written statement that clearly and~~
22 ~~conspicuously states that:~~

23 ~~[(1) the lender is prohibited by law from:~~

24 ~~[(A) garnishing the wages of any borrower,~~
25 ~~including a borrower who is a member of the United States military,~~

26 ~~[(B) conducting any collection activity against~~
27 ~~a borrower who is:~~

1 ~~[(i) a member of the armed forces of the~~
2 ~~United States who is deployed to combat or a combat support posting,~~
3 ~~for the duration of the posting;~~

4 ~~[(ii) a member of the Texas National Guard~~
5 ~~who is called to federal active duty, for the duration of the duty;~~

6 ~~[(iii) the spouse of a person described by~~
7 ~~Paragraph (i), for the duration of the posting; or~~

8 ~~[(iv) the spouse of a person described by~~
9 ~~Paragraph (ii), for the duration of the duty; or~~

10 ~~[(C) from contacting the employer of a member of~~
11 ~~the United States military about a deferred presentment debt of the~~
12 ~~member or the member's spouse;~~

13 ~~[(2) the lender shall honor the terms of a repayment~~
14 ~~agreement entered into with a member of the United States military~~
15 ~~or the member's spouse, including a repayment agreement negotiated~~
16 ~~through military counselors or third-party credit counselors; and~~

17 ~~[(3) the lender shall honor any statement made by a~~
18 ~~commanding officer of a member of the United States military~~
19 ~~declaring any location where deferred presentment transaction~~
20 ~~business is to be conducted by the lender to be a place at which a~~
21 ~~member of the United States military or the member's spouse is~~
22 ~~prohibited from transacting business.~~

23 ~~[Sec. 342.603. PROHIBITED PRACTICES. A lender may not~~
24 ~~contact the employer of a member of the United States military about~~
25 ~~a deferred presentment debt of the member or the member's spouse.~~

26 ~~[Sec. 342.604. MILITARY BORROWER. (a) A lender may not~~
27 ~~engage in collection activity against a borrower who is:~~

1 ~~[(1) a member of the armed forces of the United States~~
2 ~~who is deployed to combat or a combat support posting, for the~~
3 ~~duration of the posting,~~

4 ~~[(2) a member of the Texas National Guard who is called~~
5 ~~to federal active duty, for the duration of the duty,~~

6 ~~[(3) the spouse of a person described by Subdivision~~
7 ~~(1), for the duration of the posting, or~~

8 ~~[(4) the spouse of a person described by Subdivision~~
9 ~~(2), for the duration of the duty.~~

10 ~~[(b) A lender may not garnish the wages of a borrower who is~~
11 ~~a member of the United States military or the member's spouse.~~

12 ~~[Sec. 342.605. REPAYMENT AGREEMENT. With respect to a~~
13 ~~deferred presentment transaction, a lender shall honor a repayment~~
14 ~~agreement entered into with a borrower who is a member of the United~~
15 ~~States military or the member's spouse, including a repayment~~
16 ~~agreement negotiated through a military counselor or a third-party~~
17 ~~credit counselor.]~~

18 SECTION 5. The consumer credit commissioner shall study
19 data on product use, volume of activity, frequency, and other
20 information related to deferred presentment transactions. The
21 commissioner shall report findings on the use of deferred
22 presentment transactions to the legislature not later than December
23 1, 2008.

24 SECTION 6. This Act takes effect September 1, 2007.