

## **BILL ANALYSIS**

C.S.S.B. 1251  
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Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law authorizes a regulated lender to impose a nonrefundable flat charge in addition to interest charges imposed by the lender based on the amount and term of a loan. This flat charge is referred to as the administrative fee for non-real property loans and as the acquisition charge for certain other loans. Interested parties report that the administrative fee has not been increased in more than 10 years and the acquisition charge has not been increased in more than 20 years. C.S.S.B. 1251 seeks to introduce more flexibility and promote competition by allowing the Finance Commission of Texas to set the maximum amount of the administrative fee and acquisition charge by rule and by making other related changes.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 3 and 4 of this bill.

### **ANALYSIS**

C.S.S.B. 1251 amends the Finance Code to authorize the Finance Commission of Texas by rule to prescribe a reasonable maximum amount of an administrative fee for a non-real property loan contract that is greater than the maximum amount authorized for the amount of the loan. The bill clarifies that an administrative fee is not interest.

C.S.S.B. 1251 authorizes the finance commission by rule to prescribe a reasonable maximum amount for an acquisition charge on a cash advance that is greater than the maximum amount authorized under statutory provisions prescribing such charges based on the amount of the cash advance. The bill clarifies that an acquisition charge under statutory provisions prescribing alternate charges for certain consumer loans is not interest.

C.S.S.B. 1251 authorizes a loan contract for a cash advance to provide for an interest charge computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan. The bill prohibits the compounding of interest under the scheduled installment earnings method or true daily earnings method. The bill prohibits the principal balance of such a loan contract from including the acquisition charge, installment account handling charge, default charges, deferment charges, or return check fees. The bill specifies that interest may accrue on the principal balance from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

C.S.S.B. 1251 requires a payment on a loan contract that provides for an alternate interest charge computation method as authorized by the bill to be applied to the borrower's account in the following order or, at the lender's option, under another method of applying a payment that is more favorable to the borrower: the straight line allocation of the acquisition charge using the original scheduled term of the loan based on the proportional scheduled payment that was paid or scheduled to be paid; default charges; return check fees; any other charges authorized under

statutory provisions regulating cash advance loans; accrued interest authorized under these provisions relating to an alternate interest charge computation method; and principal. The bill applies statutory provisions providing for a refund of precomputed interest on certain consumer loan contracts to interest contracted for under the bill's provisions.

### EFFECTIVE DATE

September 1, 2013.

### COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1251 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Section 342.002, Finance Code, is amended.

SECTION 2. The heading to Section 342.201, Finance Code, is amended.

SECTION 3. Section 342.201, Finance Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) A loan contract under this subchapter may provide for an administrative fee in an amount not to exceed the lesser of five percent of the total amount financed or \$100 ~~[\$25 for a loan of more than \$1,000 or \$20 for a loan of \$1,000 or less]~~. The administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. An administrative fee is not interest. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period, except that if the loan has an interest charge authorized by Subsection (e) the lender may not contract for or receive the administrative fee more than once in any 365-day period. One dollar of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(g) The finance commission by rule may prescribe a reasonable amount of an administrative fee for a loan contract under this subchapter that is greater than the amount authorized by this section for the

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Section 342.201, Finance Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) A loan contract under this subchapter may provide 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. The administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. An administrative fee is not interest. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period, except that if the loan has an interest charge authorized by Subsection (e) the lender may not contract for or receive the administrative fee more than once in any 365-day period. One dollar of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(g) The finance commission by rule may prescribe a reasonable **maximum** amount of an administrative fee for a loan contract under this subchapter that is greater than the **maximum** amount authorized by this section

amount of the loan.

SECTION 4. Section 342.252, Finance Code, is amended to read as follows:

Sec. 342.252. ALTERNATE CHARGES [~~INTEREST CHARGE~~]. (a) Instead of the charges authorized by Section 342.201, a loan contract may provide for:

(1) 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 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:

(i) \$3 a month if the cash advance is not more than \$35;

(ii) \$3.50 a month if the cash advance is more than \$35 but not more than \$70; or

(iii) \$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 that is not more than 10 percent of the amount of the cash advance [~~\$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) For an acquisition charge authorized by this subchapter, the finance commission by rule may prescribe a reasonable amount for an acquisition charge that is greater than the maximum amount authorized by the applicable section of this subchapter for the amount of the cash advance.

(c) An acquisition charge under this subchapter is not interest.

SECTION 5. Section 342.255, Finance Code, is amended.

SECTION 6. Section 342.257, Finance Code, is amended to read as follows:

Sec. 342.257. DEFAULT CHARGE; DEFERMENT OF PAYMENT. The provisions of Subchapter E relating to additional interest for default and additional interest for the deferment of installments

for the amount of the loan.

SECTION 4. Section 342.252, Finance Code, is amended to read as follows:

Sec. 342.252. ALTERNATE CHARGES [~~INTEREST CHARGE~~]. (a) Instead of the charges authorized by Section 342.201, a loan contract may provide for:

(1) 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 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:

(i) \$3 a month if the cash advance is not more than \$35;

(ii) \$3.50 a month if the cash advance is more than \$35 but not more than \$70; or

(iii) \$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 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) For an acquisition charge authorized by this subchapter, the finance commission by rule may prescribe a reasonable maximum amount for an acquisition charge that is greater than the maximum amount authorized by the applicable section of this subchapter for the amount of the cash advance.

(c) An acquisition charge under this subchapter is not interest.

SECTION 5. Same as engrossed version.

No equivalent provision.

apply to a loan made under this subchapter. Provided, that on a loan contract in which the cash advance is \$100 or more, instead of additional interest for default under Subchapter E, the contract may provide for a delinquency charge if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays. The delinquency charge on a loan with a cash advance of \$100 or more may not exceed the greater of \$20 [~~\$10~~] or five cents for each \$1 of the delinquent installment.

SECTION 7. Subsection (a), Section 342.259, Finance Code, is amended to read as follows:

(a) Instead of the charges authorized by Sections 342.201 and 342.252, a loan made under this subchapter with a maximum cash advance computed under Subchapter C, Chapter 341, using a reference base amount that is more than \$100 but not more than \$200, may provide for:

(1) an acquisition charge that is not more than 10 percent of the amount of the cash advance [~~\$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 8. Subsection (a), Section 342.352, Finance Code, is amended.

SECTION 9. Subchapter F, Chapter 342, Finance Code, is amended.

SECTION 10. The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 2013.

No equivalent provision.

SECTION 6. Same as engrossed version except for recitation.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Same as engrossed version.