

CHAPTER 838

H.B. No. 1230

AN ACT

relating to the regulation of certain persons and entities involved in providing credit.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 3.08, Title 79, Revised Statutes (Article 5069-3.08, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3.08. EXAMINATION OF LENDERS, ACCESS TO RECORDS, INVESTIGATION. At such times as the Commissioner shall deem necessary, the Commissioner, or his duly authorized representative shall make an examination of the place of business of each authorized lender and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of such lender insofar as they pertain to the business regulated by this Chapter. In the course of such examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such lender, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Chapter to consider, investigate, or secure information. Any authorized lender who shall fail or refuse to let the Commissioner or his duly authorized representative examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Chapter and such failure or refusal shall constitute grounds for the suspension or revocation of the lender's license. The information obtained in the course of such examination shall be confidential. Each authorized lender shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense, ~~and the total cost so assessed and charged an authorized lender in any one calendar year shall not exceed Five Hundred Dollars for each licensed or otherwise authorized office].~~

SECTION 2. Section 3, Texas Pawnshop Act (Article 5069–51.03, Vernon’s Texas Civil Statutes), is amended by amending Subsection (b) and by adding Subsection (d) to read as follows:

(b) A pawnbroker may not employ an individual for the purpose of writing pawn transactions, *buying and/or selling merchandise, or the supervising of employees writing pawn transactions or buying and/or selling merchandise* after the 30-day grace period for filing an application for a pawnshop employee license unless the person:

- (1) has timely filed an application for a pawnshop employee license and is awaiting the commissioner’s decision on the application; or
- (2) possesses a valid pawnshop employee license.

(d) *Notwithstanding the provisions of this Act, neither a new license nor an application to transfer an existing license shall be required upon any change, directly or beneficially, in the ownership of any licensed pawnshop, which is owned directly or beneficially by a person that as an issuer has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 (the “Act”) or is an issuer of securities which is required to file reports with the Securities and Exchange Commission pursuant to Section 15(d) of the Act, provided that such person files with the commissioner such information, documents and reports as are required by the provisions of the Act to be filed by such issuer with the Securities and Exchange Commission. Such issuer shall file information on officers and directors of such issuer or any licensed or intermediate subsidiary as is otherwise required of officers and directors of corporate pawnshops. Such issuer shall pay to the commissioner a filing fee of \$100 with each filing required by Section 15(d) of the Act.*

SECTION 3. Section 3A, Texas Pawnshop Act (Article 5069–51.03A, Vernon’s Texas Civil Statutes), is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) To be eligible for a pawnshop license, an applicant must:

- (1) be of good moral character;
- (2) have net assets of at least *\$150,000* [~~\$75,000~~] readily available for use in conducting the business of each licensed pawnshop; and
- (3) show that the pawnshop will be operated lawfully and fairly within the purposes of this Act.

(c) If an applicant for a pawnshop license is a business entity, the eligibility requirements of Subdivision (1) of Subsection (a) of this section apply to each operator and each legal or beneficial owner, and, as to a corporation, to each officer, shareholder *of at least 5 percent of the shares outstanding*, and director.

(d) *If the commissioner is unable to verify that the applicant meets the net assets requirement for a licensed pawnshop, the commissioner may require a finding, including the presentation of a current balance sheet, by an independent certified public accountant that the accountant has reviewed the books and records of the applicant and that the applicant meets the net assets requirements of the Act.*

SECTION 4. Section 4, Texas Pawnshop Act (Article 5069–51.04, Vernon’s Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) *Notwithstanding the provisions of this Act, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 (the “Act”) or is an issuer of securities which is required to file reports with the Securities and Exchange Commission pursuant to Section 15(d) of the Act, provided that such person files with the Commissioner such information, documents and reports as are required by the provisions of the Act to be filed by such issuer with the Securities and Exchange Commission.*

SECTION 5. Section 6, Texas Pawnshop Act (Article 5069–51.06, Vernon’s Texas Civil Statutes), is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(d) Each licensee shall maintain net assets either used or readily available for use in the conduct of the business of each licensed pawnshop in the amount of \$150,000 [~~\$75,000~~], as determined by using the definition of net assets prescribed by this Act; provided, however,

(1) as to licenses in force on the effective date of this Act, the then applicable net assets requirement shall continue to apply to such license until there is a change of ownership of the licensed business; and

(2) as to license applications pending on the effective date of this Act, the net assets requirement shall be \$75,000 [~~\$25,000~~], [~~as determined by the definition and policy of the Commissioner in force at the time the application was filed,~~] and shall remain \$75,000 [~~\$25,000~~] until there is a change of ownership of the licensed business.

(f) *No political subdivision may discriminate against a licensee by designating the licensed premise other than general retail or the equivalent for zoning purposes.*

SECTION 6. Section 7A(a), Texas Pawnshop Act (Article 5069–51.07A, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) To be eligible for a pawnshop employee license, an individual must be of *good moral character*, good business repute, and possess the character and general fitness necessary to warrant belief that the employee will operate the business lawfully and fairly within the provisions of this Act.

SECTION 7. Section 8(a), Texas Pawnshop Act (Article 5069–51.08, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) At such times as the Commissioner may deem necessary, the Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records of such licensee insofar as they pertain to the business regulated by this Act. Such books, accounts, papers, correspondence and records shall also be open for inspection at any reasonable time by any peace officer, without need of judicial writ or other process. In the course of an examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes, and vaults of such licensee, and shall have the right to make copies of any books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Act to consider, investigate, or secure information. Any licensee who fails or refuses to let the Commissioner or his duly authorized representative or any peace officer examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential and privileged, except for use in a criminal investigation or prosecution. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examinations and a proportionate share of general administrative expense, ~~not to exceed \$500 in any calendar year, and in the event a licensee hereunder is also licensed to do business under Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), in the same place of business licensed hereunder, the aggregate charges for examinations authorized by the said Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), and by this Act shall not exceed \$500 in any calendar year~~.

SECTION 8. Section 10, Texas Pawnshop Act (Article 5069–51.10, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. PAWN TICKET. The pawnbroker, at the time the pawn transaction is entered, shall deliver to the pledgor a memorandum or ticket on which shall be clearly set forth the following:

(a) The name and address of the pawnshop;

(b) The name and address of the pledgor, ~~the [and] pledgor's description, and the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the pledgor [or the distinctive number from pledgor's driver's license or military identification];~~

(c) The date of the transaction;

(d) An identification and description of the pledged goods, including serial numbers if reasonably available;

(e) The amount of cash advanced or credit extended to the pledgor, designated as the "Amount Financed";

(f) The amount of the pawn service charge, designated as the "Finance Charge";

(g) The total amount (the Amount Financed plus the Finance Charge) which must be paid to redeem the pledged goods on the maturity date, designated as the "Total of Payments";

(h) The "Annual Percentage Rate", computed in accordance with the regulations issued by the Federal Reserve Board of the United States pursuant to the Truth-in-Lending Act, Title I, Act of May 29, 1968, Public Law 90-321, 82 Stat. 146, as amended;

(i) The maturity date of the pawn transaction;

(j) A statement to the effect that the pledgor is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days after the specified maturity date.

SECTION 9. Section 15, Texas Pawnshop Act (Article 5069-51.15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. LOST OR DESTROYED TICKET. If the pawn ticket is lost, destroyed, or stolen, the pledgor may so notify the pawnbroker in writing, and receipt of such notice shall invalidate such pawn ticket, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn ticket, the pawnbroker shall require the pledgor to make a *written statement [affidavit]* of the loss, destruction or theft of the ticket. *The pawnbroker shall record on the written statement the identifying information required by Section 10(b) of this Act, the date the statement is given, and the number of the pawn ticket lost, destroyed, or stolen. The statement must be signed by the pawnbroker or the pawnshop employee who accepts the statement from the pledgor. A pawnbroker is entitled to a fee not to exceed \$1 in connection with each lost, destroyed, or stolen pawn ticket and the taking of a properly prepared written statement for the pawn ticket.*

SECTION 10. Section 16, Texas Pawnshop Act (Article 5069-51.16, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. PROHIBITED PRACTICES. A pawnbroker shall not:

(a) Accept a pledge from a person under the age of eighteen years.

(b) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction.

(c) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Act.

(d) Fail to exercise reasonable care to protect pledged goods from loss or damage.

(e) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kind(s) of merchandise. All such replacements are subject to the approval or rejection of the Commissioner. *For the purposes of this subdivision, "lost" includes destroyed or having disappeared because of any cause, whether known or unknown, that results in the pledged goods being unavailable for return to the pledgor.*

(f) Make any charge for insurance in connection with a pawn transaction.

(g) Enter any pawn transaction which has a maturity date more than one month after the date of the transaction.

(h) Display for sale in storefront windows or sidewalk display case so that same may be viewed from the street, any pistol, dirk, dagger, blackjack, hand chain, sword cane, knuckles made of any metal or any hard substance, switchblade knife, springblade knife, or throwblade knife, or depict same on any sign or advertisement which may be viewed from the street.

(i) *Purchase used or secondhand personal property unless a record is established that contains:*

(1) *the name, address, physical description, and the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the seller;*

(2) *a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; and*

(3) *a signed document from the seller providing that the seller has the right to sell the property.*

SECTION 11. Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 6.11, Article 6A.18, and Article 7.11 to read as follows:

Art. 6.11. REGISTRATION. Each holder governed by this chapter who is not a credit union or an authorized lender under Chapter 3 of this title shall register with the Office of Consumer Credit Commissioner. Each holder shall pay an annual fee of \$10 for each location at which retail installment transactions subject to this chapter are originated, serviced, or collected. The commissioner by rule may establish procedures to facilitate the registration and collection of fees, including rules staggering the due dates of the fees throughout the year.

Art. 6A.18. REGISTRATION. Each creditor or assignee governed by this chapter who is not a credit union or an authorized lender under Chapter 3 of this title shall register with the Office of Consumer Credit Commissioner. Each creditor or assignee shall pay an annual fee of \$10 for each location at which credit transactions subject to this chapter are originated, serviced, or collected. The commissioner by rule may establish procedures to facilitate the registration and collection of fees, including rules staggering the due dates of the fees throughout the year.

Art. 7.11. REGISTRATION. Each holder governed by this chapter who is not a credit union or an authorized lender under Chapter 3 of this title shall register with the Office of Consumer Credit Commissioner. Each holder shall pay an annual fee of \$10 for each location at which credit transactions subject to this chapter are originated, serviced, or collected. The commissioner by rule may establish procedures to facilitate the registration and collection of fees, including rules staggering the due dates of the fees throughout the year.

SECTION 12. (a) This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose.

(b) Section 1 of this Act is effective September 1, 1987, and all other sections are effective immediately.

SECTION 13. The amendment made by this Act to Section 16(e), Texas Pawnshop Act (Article 5069-51.16, Vernon's Texas Civil Statutes), is not a change in the law but a clarification of the legislature's original intent in the passage of Section 16(e).

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Ch. 838, § 14

70th LEGISLATURE—REGULAR SESSION

Passed by the House on April 30, 1987, by a non-record vote; and that the House refused to concur in Senate amendments to H.B. No. 1230 on May 28, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1230 on May 31, 1987, by the following vote: Yeas 146, Nays 0, 1 present, not voting. Passed by the Senate, with amendments, on May 25, 1987, by the following vote: Yeas 29, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1230 on May 31, 1987, by the following vote: Yeas 27, Nays 0.

Approved June 20, 1987.

Effective June 20, 1987, except § 1 effective Sept. 1, 1987.