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Opportunity missed in Texas' payday lending law
By JIM HAWKINS

Read more: http://www.chron.com/disp/story.mpl/editorial/outlook/7591239.html#ixzz1O81hmRcl

Gov. Rick Perry has two payday lending bills on his desk waiting to be signed. These bills are designed to protect consumers, but in reality, they do virtually nothing toward accomplishing this goal.

Proponents of the bills have rightly pointed out that payday lenders and auto title lenders have operated without substantial state regulation in Texas because of a strange loophole that allows them to organize as Credit Service Organizations. These bills, their sponsors argue, bring real protections to Texans using these loans.

I believe that payday loans and auto title loans have a useful social function, and I have spent a significant part of my academic career arguing against bans on high-cost, short-term credit products. Still, I find it incredible that anyone would claim these bills are going to provide Texas consumers even a modicum of protection.

These bills actually contain substantially less protection for consumers than the "best practices" created by the payday loan industry itself. That's right — if payday lenders just follow what their own trade group - the Community Financial Services Association of America (CFSA) - instructs, consumers will be better off than they will under these bills. For instance, the CFSA attempts to combat the cycle of debt some payday customers experience by limiting the number of rollovers a consumer can take out. A "rollover" occurs when a borrower just pays the interest due on the loan but none of the principal, rolling over the loan for a new period and incurring another interest charge. The Texas bills are silent on this issue. Also, CFSA members commit to allow consumers to rescind a payday loan if they change their mind by the end of the day. Consumers in Texas do not have that right but are instead stuck with a costly decision even if they immediately come to regret it. Most importantly, the CFSA demands its members allow consumers to have an extended payment plan if they need one to pay off the loan, instead of the usual one-time payment common in payday loan transactions. The Texas bills make no such demand, leaving borrowers with a single lump-sum payment, even if they have proven month after month they cannot scrape enough money together to make that payment.

The proposed Texas laws lack consumer protection measures common even in states with the least amount of short-term credit regulation. Take auto title loans, where a borrower's paid-off vehicle provides collateral for a one-month, high-cost loan, for instance. Numerous states forbid title lenders from suing borrowers if they default on a loan and the sale of their vehicle doesn't generate enough cash to cover the loan amount. The Texas bills do not have this protection.
Borrowers in Texas who default on title loans not only can lose their car or truck, but they can also face a lawsuit if their loan amount and the costs of repossessing and selling the vehicle were higher than the amount the car or truck brought at auction.

Even the new disclosure requirements that legislators are celebrating are largely already required by the federal Truth in Lending Act. Requiring disclosures that are already provided for in existing law is fine, but it doesn't add any protections for consumers.

The one bright spot in the bills also may not accomplish its goals. The legislation requires lenders to report information about their business operations to the state. But these provisions misunderstand how the payday lending industry works, so the information gained will be inaccurate.

Lenders must report "the number of refinancing transactions of the extensions of consumer credit," presumably to gain information about the number of times borrowers are rolling over their loan before they finally pay it off. However, without more, this provision will not give us an accurate account. Borrowers can jump from one lender to another. If a borrower has rolled over a loan three times with one company and then pays off that loan with a new loan from another company, the borrower is still functionally rolling over the same loan. The bill's reporting requirements, however, would consider it a new loan and not a rollover.

I support short-term lending, and I oppose legislation aimed at making it impossible for payday lenders and auto title lenders to operate.

For people who need some money to overcome a short-term emergency and have no other access to credit, payday lenders and auto title lenders can provide a needed bridge. But this legislation is a missed opportunity. If Texas wants these businesses to provide access to credit to people without bank accounts or with poor credit histories, we need to provide a baseline of protection, not a package of reforms that leaves consumers with less protection than reputable lenders themselves are offering.

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