

SUBJECT: Licensing, contracting, and oversight of payday and auto title lending

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 7 ayes — Truitt, Creighton, Hernandez Luna, Legler, Nash, Orr, Veasey

0 nays

2 absent — Anchia, C. Anderson

WITNESSES: *(On original bill:)*

For — *(Registered, but did not testify: Michael Price, Texas Coalition for Consumer Choice)*

Against — *(Registered, but did not testify: Jennifer Allmon, Texas Catholic Conference, Roman Catholic Bishops of Texas; Kelly Rand, Catholic Charities, Diocese of Fort Worth; Richard Tomlinson; Tracey Whitley)*

On — Ann Baddour, Texas Appleseed; Don Baylor, Center for Public Policy Priorities; Ryan Brannan, Texas Public Policy Foundation; Lori Henning, Texas Association of Goodwills; Sealy Hutchings, Office of Consumer Credit Commissioner; Tim Morstad, AARP; Suzii Paynter, Christian Life Coalition Baptist General Convention of Texas; *(Registered, but did not testify: Rob Norcross, Consumer Service Alliance of Texas; Alex Vaughn, Cash America International, Inc.)*

BACKGROUND: Finance Code, title 5 regulates the protection of consumers of financial services. Within that title, ch. 393 regulates credit services organizations (CSOs), one of which is defined as a person who provides, or represents that the person can or will provide, for the payment of valuable consideration, any of the following services with respect to the extension of consumer credit by others: (a) improving a consumer's credit history or rating, (b) obtaining an extension of consumer credit for a consumer, or (c) providing advice or assistance to a consumer with regard to (a) or (b).

Finance Code, title 2 establishes financial regulatory agencies, including the Office of the Consumer Credit Commissioner (OCCC), in ch. 14.

Finance Code, title 4, subtitle B regulates loans and financed transactions. Within that title, ch. 342 regulates consumer loans and grants the Finance Commission of Texas authority to adopt rules to enforce the chapter.

DIGEST:

CSHB 2594 would add a new subch. G to Finance Code, ch. 393 to create licensing and regulation of credit access businesses. The subchapter would define a “credit access business” (CAB) as a CSO that obtained for a consumer or assisted a consumer in obtaining an extension of consumer credit in the form of a payday loan or an auto title loan.

The bill would authorize various fees associated with licensing and examination of CABs, as well as an annual assessment paid by CABs to support a Texas Financial Education Endowment. CABs would have to report quarterly to OCCC. The subchapter would allow the Finance Commission to adopt rules for specified purposes, but it would prohibit the Finance Commission and OCCC from establishing limits on the fees charged by a CAB.

The bill would amend the ch. 393 regulations on forms and terms of contracts to require that a contract between a CAB and a consumer contain certain statements and disclosures.

Under the bill, OCCC would assess an administrative penalty against a CAB that knowingly and willfully violated ch. 393 or a rule adopted under ch. 393, and OCCC could order the CAB to make restitution to a person injured by the violation.

The bill would take effect January 1, 2012.

**SUPPORTERS
SAY:**

CSHB 2594 would enable the Finance Commission and OCCC to license, oversee, and collect data on the payday and auto title lending industry, which currently is not meaningfully regulated in any way. The bill would prohibit predatory practices and ensure that CABs comply with the law, protecting consumers and stabilizing the market for legitimate operators.

CSHB 2594 is part of a package of three bills, along with CSHB 2592 and CSHB 2593, designed to address a range of concerns associated with payday and auto title lending. The trio of bills is the negotiated product of more than 40 hours of mediation between consumer advocacy groups and the payday and auto title lending industry. These bills would bring the

industry, which has grown rapidly under the very minimal restrictions of the CSO chapter, under meaningful state regulation for the first time.

The bills would prevent predatory practices and provide recourse for consumers exploited by rogue actors in the industry. At the same time, the bills would protect consumers' access to these short-term loans.

Furthermore, the bills would protect the businesses and employees in the industry and would not erect barriers to entering the market. The bills would keep the affected businesses, CABs, in ch. 393 because they are loan brokers, not lenders. Entities as traditionally at odds on CSO regulation as ACE Cash Express and the Center for Public Policy Priorities support CSHB 2594.

The bill would establish only reasonable fees needed to investigate consumer complaints, conduct licensing investigations, and support much-needed financial education in the state. Compared to the very healthy profits reaped by CABs, these fees would be minimal.

The bill would grant OCCC and the Finance Commission limited, specified rulemaking authority to implement the bill's requirements as would be most effective as the industry continued to evolve, but it would not allow either agency to set fees or any other charges used by CABs.

The bill would establish necessary, valuable business operating standards and allow market competition to bring CAB fees down naturally. CABs provide a needed loan-brokering service and deserve to earn a profit. This package of bills would establish balanced and reasonable regulations that will stabilize the market, benefitting consumers and businesses..

**OPPONENTS
SAY:**

CSHB 2594 would impose multiple fees, including an annual fee, upon businesses. These fees would be passed through to the consumer in the form of raised product prices, which would restrict consumer access to the market. One of these fees, a \$200 license application investigation fee, would be retained by OCCC, even if it rejected the license application.

CSHB 2592 would give OCCC new regulatory authority, which could have unintended consequences. For example, the Texas Department of Insurance has exercised regulatory authority in the past with the stated intent of protecting consumers but ended up regulating prices and harming consumers instead.

OTHER
OPPONENTS
SAY:

CSHB 2594 would create a licensing structure but would not create many needed business operating standards that CSOs would have to meet or that OCCC could enforce. Many critical operating standards and loan product requirements would be provided by CSHB 2592 and CSHB 2593, but CSHB 2594 would have to be accompanied by these other two bills to provide meaningful regulation of CSOs. The licensing structure alone would not be enough to address the cycle of debt that traps families and nabs charitable assistance and taxpayer-funded public benefits given to these families, redirecting this money directly into the pockets of private companies.

CSHB 2594 would codify a CSO's freedom to charge exorbitant fees by explicitly prohibiting the Finance Commission or OCCC from capping them and by explicitly exempting them from usury determinations. At least under the current regulatory framework, a usury determination potentially could include the fees charged by a CSO as interest.

While CSHB 2594 and its two counterpart bills would begin to address the dangers of predatory lending, they also would legitimize the abusive business model that exploits the CSO loophole of ch. 393 to evade the appropriate regulation of consumer loans required in ch. 342. By creating the "credit access business" designation within ch. 393, these bills would entrench the three-party lending model that uses a credit repair statute as a vehicle to make 500 percent interest rate consumer loans.