

BILL ANALYSIS

Senate Research Center

H.B. 2594
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Business & Commerce
5/18/2011
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2594 amends current law relating to the licensing and regulation of certain credit services organizations and the regulation of certain extensions of consumer credit obtained by those organizations or with regard to which the organizations provide assistance and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 2 (Sections 393.622, 393.624, and 393.628, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 393.201, Finance Code, by adding Subsection (c), as follows:

(c) Requires a contract with a credit access business, as defined by Section 393.601, for the performance of services described by Section 393.602(a) to, in addition to the requirements of Subsection (b) and Section 393.302:

- (1) contain a statement that there is no prepayment penalty;
- (2) contain a statement that a credit access business must comply with Chapter 392 and the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.) with respect to an extension of consumer credit described by Section 393.602(a);
- (3) contain a statement that a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct;
- (4) contain a statement that a credit access business must comply, to the extent applicable, with 10 U.S.C. Section 987 and any regulations adopted under that law with respect to an extension of consumer credit described by Section 393.602(a);
- (5) disclose to the consumer the lender from whom the extension of consumer credit is obtained, the interest paid or to be paid to the lender, and the specific fees that will be paid to the credit access business for the business's services; and
- (6) the name and address of the Office of Consumer Credit Commissioner (OCC) and the telephone number of the office's consumer helpline.

SECTION 2. Amends Chapter 393, Finance Code, by adding Subchapter G, as follows:

SUBCHAPTER G. LICENSING AND REGULATION OF CERTAIN CREDIT SERVICES ORGANIZATIONS

Sec. 393.601. DEFINITIONS. Defines, in this subchapter, "commissioner," "credit access business," "deferred presentment transaction," "finance commission," "motor vehicle title loan," and "office."

Sec. 393.602. APPLICABILITY. (a) Provides that this subchapter applies only to a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of:

- (1) a deferred presentment transaction; or
- (2) a motor vehicle title loan.

(b) Provides that any usury violation by a lender with respect to an extension of consumer credit described by Subsection (a) is subject to Chapter 349 (Penalties and Liabilities). Provides that in connection with a determination of usury, the fees charged by a credit access business conducting business under this chapter do not constitute interest.

(c) Prohibits a person from using a device, subterfuge, or pretense to evade the application of this subchapter. Provides that a lawful transaction governed under another statute, including Title 1 (Uniform Commercial Code), Business & Commerce Code, does not violate this subsection and is prohibited from being considered a device, subterfuge, or pretense to evade the application of this subchapter.

Sec. 393.603. LICENSE REQUIRED. Requires a credit services organization to obtain a license under this subchapter for each location at which the organization operates as a credit access business in performing services described by Section 393.602(a).

Sec. 393.604. APPLICATION FOR LICENSE. (a) Requires an application for a license under this subchapter to:

- (1) be under oath;
- (2) give the approximate location from which the business is to be conducted;
- (3) identify the business's principal parties in interest;
- (4) contain the name, physical address, and telephone number of all third-party lender organizations with which the business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a); and
- (5) contain other relevant information that the consumer credit commissioner (commissioner) requires for the findings required under Section 393.607.

(b) Requires the applicant, on the filing of one or more license applications, to pay to the commissioner an investigation fee of \$200. Provides that, except for good cause as determined by the Finance Commission of Texas (commission), a separate investigation fee is not required for multiple license applications.

(c) Requires the applicant, on the filing of each license application, to pay to the commissioner for the license's year of issuance a license fee in an amount determined as provided by Section 14.107 (Fees).

Sec. 393.605. BOND. (a) Requires an applicant for a license under this subchapter, if the commissioner requires, to file with the application a bond that is:

(1) in an amount satisfactory to the commissioner that does not exceed the lesser of \$10,000 for the first license and \$10,000 for each additional license; or \$2,500,000; and

(2) issued by a surety company qualified to do business as a surety in this state.

(b) Requires the bond to be in favor of this state for the use of this state and the use of a person who has a cause of action under this subchapter against the license holder.

(c) Requires the bond to be conditioned on:

(1) the license holder's faithful performance under this subchapter and rules adopted under this subchapter; and

(2) the payment of all amounts that become due to this state or another person under this subchapter during the calendar year for which the bond is given.

(d) Prohibits the aggregate liability of a surety to all persons damaged by the license holder's violation of this subchapter from exceeding the amount of the bond.

(e) Provides that a credit access business that files a bond under this section is not required to file a bond under Subchapter E (Surety Bond; Surety Amount).

(f) Authorizes a credit access business, instead of obtaining a surety bond, to satisfy the requirements of this section by depositing an amount described by Subsection (a)(1) in a surety account held in trust at a federally insured bank or savings association located in this state. Requires the name of the depository, trustee, and account number of the surety account to be filed with OCC.

Sec. 393.606. INVESTIGATION OF APPLICATION. Requires the commissioner, on the filing of an application and a bond, if required under Section 393.605, and on payment of the required fees, to conduct an investigation to determine whether to issue the license.

Sec. 393.607. APPROVAL OR DENIAL OF APPLICATION. (a) Requires the commissioner to approve the application and issue to the applicant a license to operate as a credit access business for purposes of engaging in the activity to which this subchapter applies if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public, and (B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this subchapter; and

(2) the applicant has net assets of at least \$25,000 available for the operation of the business as determined in accordance with Section 393.611.

(b) Requires the commissioner, if the commissioner does not find the eligibility requirements of Subsection (a) have been met, to notify the applicant.

(c) Provides that if an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 30th day after the date of the request.

(d) Requires the commissioner to approve or deny the application not later than the 30th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. Authorizes the commissioner and the applicant to agree to a later date in writing.

Sec. 393.608. DISPOSITION OF FEES ON DENIAL OF APPLICATION. Requires the commissioner, if the commissioner denies the application, to retain the investigation fee and to return to the applicant the license fee submitted with the application.

Sec. 393.609. NAME AND PLACE OF LICENSE. (a) Requires that a license issued under this subchapter state:

- (1) the name of the license holder; and
- (2) the address of OCC from which the business is to be conducted, except as provided by Subsection (c).

(b) Prohibits a license holder from conducting business under this subchapter under a name other than the name stated on the license.

(c) Prohibits a license holder from conducting business at a location other than the address stated on the license, except that a license holder:

- (1) is not required to have an office in this state; and
- (2) may operate using e-commerce methods, including the Internet.

Sec. 393.610. LICENSE DISPLAY. Requires a license holder to display a license at the place of business provided on the license. Authorizes this requirement, with respect to business conducted through the Internet, to be satisfied by displaying the license on the business's Internet website.

Sec. 393.611. MINIMUM ASSETS FOR LICENSE. Requires a license holder to maintain net assets used or readily available for use in conducting the business of each of the offices for which a license is held under this subchapter, in an amount that is not less than the lesser of:

- (1) \$25,000 for each office; or
- (2) \$2,500,000 in the aggregate.

Sec. 393.612. ANNUAL LICENSE FEE. Requires a license holder, not later than December 1, to pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

Sec. 393.613. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. Provides that if the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

- (1) that day; or
- (2) December 31 of the last year for which an annual fee was paid.

Sec. 393.614. LICENSE SUSPENSION OR REVOCATION. (a) Authorizes the commissioner, after notice and a hearing, to suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the annual license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this subchapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

(b) Authorizes the commissioner, if in a three-year period the commissioner suspends or revokes under this section the licenses of five or more credit access businesses owned or controlled by the same person, including a corporation that owns multiple businesses, to suspend or revoke the licenses of all credit access businesses owned or controlled by that person.

Sec. 393.615. LICENSE SUSPENSION OR REVOCATION FILED WITH PUBLIC RECORDS. Requires the decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision to be filed in the public records of the commissioner.

Sec. 393.616. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. Authorizes the commissioner to reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Sec. 393.617. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under this subchapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Sec. 393.618. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) Provides that the suspension, revocation, or surrender of a license issued under this subchapter does not affect the obligation of a contract between the license holder and a consumer entered into before the revocation, suspension, or surrender.

(b) Provides that surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 393.619. MOVING AN OFFICE. (a) Requires a license holder to give written notice to the commissioner before the 30th day before the date the license holder moves an office from the location provided on the license.

(b) Requires the commissioner to amend a license holder's license accordingly.

Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE. Authorizes a license to be transferred or assigned only with the approval of the commissioner.

Sec. 393.621. ADMINISTRATION. Requires OCC to administer this subchapter.

Sec. 393.622. RULES. (a) Authorizes the commission to:

(1) adopt rules necessary to enforce and administer this subchapter;

(2) adopt rules with respect to the quarterly reporting by a credit access business licensed under this subchapter of summary business information relating to extensions of consumer credit described by Section 393.602(a); and

(3) adopt rules with respect to periodic examination by the office relating to extensions of consumer credit described by Section 393.602(a), including rules related to charges for defraying the reasonable cost of conducting the examinations.

(b) Authorizes the commission to adopt rules under this section to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a). Provides that a contract or information obtained by the commissioner under this section is considered proprietary and confidential to the respective parties to the contract, and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(c) Prohibits the commission, in adopting rules under this section, from establishing limits on the fees charged by a credit access business and from authorizing the commissioner to establish such limits.

Sec. 393.623. PROVIDING OR ADVERTISING SERVICES WITHOUT LICENSE PROHIBITED. Prohibits a credit access business or a representative of the business from providing or advertising the services of the business if the business is not licensed under this subchapter.

Sec. 393.624. RESTRICTIONS ON OFF-SITE ADVERTISING. (a) Prohibits a credit access business from advertising on the premises of a nursing facility, assisted living facility, group home, intermediate care facility for persons with mental retardation, or other similar facility subject to regulation by the Department of Aging and Disability Services.

(b) Authorizes the commission to adopt rules to implement this section.

Sec. 393.625. MILITARY BORROWERS. Requires an extension of consumer credit described by Section 393.602(a) that is obtained by a credit access business for a member of the United States military or a dependent of a member of the United States military or that the business assisted that person in obtaining to comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

Sec. 393.626. DEBT COLLECTION PRACTICES. Provides that a violation of Chapter 392 by a credit access business with respect to an extension of consumer credit described by Section 393.602(a) constitutes a violation of this subchapter.

Sec. 393.627. QUARTERLY REPORT TO COMMISSIONER. Requires a credit access business to file a quarterly report with the commissioner on a form prescribed by the commissioner that provides the following information relating to extensions of consumer credit described by Section 393.602(a) during the preceding quarter:

(1) the number of consumers for whom the business obtained or assisted in obtaining those extensions of consumer credit;

(2) the number of those extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;

- (3) the number of refinancing transactions of the extensions of consumer credit described by Subdivision (2);
- (4) the number of consumers refinancing the extensions of consumer credit described by Subdivision (2);
- (5) the number of consumers refinancing more than once the extensions of consumer credit described by Subdivision (2);
- (6) the average amount of the extensions of consumer credit described by Subdivision (2);
- (7) the total amount of fees charged by the business for the activities described by Subdivision (1);
- (8) the number of vehicles surrendered or repossessed under the terms of an extension of consumer credit in the form of a motor vehicle title loan obtained by the business or that the business assisted a consumer in obtaining;
- (9) the mean, median, and mode of the number of extensions of consumer credit obtained by consumers as a result of entering into the extensions of consumer credit described by Subdivision (2); and
- (10) any related information the commissioner determines necessary.

Sec. 393.628. TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) Requires each license holder, as part of the licensing fee and procedures described under this subchapter, to pay to the commissioner an annual assessment to improve consumer credit, financial education, and asset-building opportunities in this state. Prohibits the annual assessment from exceeding \$200 for each license as specified by the commission.

(b) Requires the Texas Financial Education Endowment to be administered by the commission to support statewide financial education and consumer credit building activities and programs, including:

- (1) production and dissemination of approved financial education materials at licensed locations;
- (2) advertising, marketing, and public awareness campaigns to improve the credit profiles and credit scores of consumers in this state;
- (3) school and youth-based financial literacy and capability;
- (4) credit building and credit repair;
- (5) financial coaching and consumer counseling;
- (6) bank account enrollment and incentives for personal savings; and
- (7) other consumer financial education and asset-building initiatives as considered appropriate by the finance commission.

(c) Requires the commission, in implementing this section, to solicit gifts, grants, and donations for this purpose.

(d) Authorizes the commission to partner with other state agencies and entities to implement this section.

(e) Requires the commission to adopt rules to administer this section.

SECTION 3. Amends Section 14.101, Finance Code, to require the commissioner to enforce this chapter, Subtitles B and C, Title 4, Chapter 393 with respect to a credit access business, and Chapter 394 in person or through an assistant commissioner, examiner, or other employee of the office.

SECTION 4. Amends Section 14.107, Finance Code, as follows:

Sec. 14.107. FEES. (a) Requires the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, Chapter 393 with respect to a credit access business, and Chapters 371 (Pawnshops), 392 (Debt Collection), and 394 (Debtor) and under Chapters 51 (Business Opportunities), 302 (Regulation of Telephone Solicitation), 601 (Cancellation of Certain Consumer Transactions), and 621 (Contests and Gift Giveaways), Business & Commerce Code.

(b) Requires the commission by rule to set the fees for licensing and examination under Chapter 393 with respect to a credit access business or Chapter 342, 347, 348, 351, or 371 at amounts or rates necessary to recover the costs of administering those chapters. Authorizes the rules to provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. Authorizes the commissioner to provide for collection of a single annual fee from a person licensed under Subchapter G of Chapter 393 or Chapter 342, 347, 348, 351, or 371 to include amounts due for both licensing and examination.

SECTION 5. Amends Section 14.201, Finance Code, to provide that investigative and enforcement activity under this subchapter applies only to this chapter, Subtitles B and C of Title 4, Chapter 393 with respect to credit access business, and Chapter 394.

SECTION 6. Amends Section 14.2015(a), Finance Code, to make conforming changes.

SECTION 7. Amends Section 14.251, Finance Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires the commissioner to assess an administrative penalty against a credit access business who knowingly and wilfully violates or causes a violation of Chapter 393, or a rule adopted under Chapter 393.

(b) Authorizes the commissioner to order a person who violates or causes a violation of this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4, or a credit access business who violates or causes a violation of Chapter 393 or a rule adopted under Chapter 393, to make restitution to an identifiable person injured by the violation.

SECTION 8. Amends Section 14.261(a), Finance Code, as follows:

(a) Authorizes the commissioner in administering this chapter, to accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of:

- (1) this chapter or a rule adopted under this chapter;
- (2) Chapter 393, if the person is a credit access business, or Chapter 394; or
- (3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

SECTION 9. Amends Section 14.262, Finance Code, as follows:

Sec. 14.262. EFFECT OF ASSURANCE. (a) Provides that an assurance of voluntary compliance is not an admission of a violation of:

- (1) this chapter or a rule adopted under this chapter;
- (2) Chapter 393 with respect to a credit access business or Chapter 394; or
- (3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

(b) Provides that unless an assurance of voluntary compliance is rescinded by agreement or voided by a court for good cause, a subsequent failure to comply with the assurance is prima facie evidence of a violation of:

- (1) this chapter or a rule adopted under this chapter;
- (2) Chapter 393 with respect to a credit access business or Chapter 394; or
- (3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

SECTION 10. Effective date: January 1, 2012.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment #1

(1) Amends SECTION 2, page 13, line 24, by striking "license holder" and substituting "credit access business or license holder".

Committee Amendment #2

(1) Amends SECTION 2, page 2, line 27, to add after the underlined period "For purposes of this chapter, this definition does not preclude repayment in more than one installment.".