

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1650
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, a credit access business (CAB) arranges short-term consumer loans known as deferred presentment transactions, or "payday loans," and motor vehicle title loans, or "auto title loans."

As of 2012, pursuant to amendments to Chapter 393 (Credit Services Organizations), Finance Code, CABs must comply with certain licensing, disclosure, and data reporting requirements in order to operate in the state.

S.B. 1650 amends Chapter 393 to clarify several requirements that are unclear under current law. S.B. 1650 consolidates several definitions that appear in more than one section of Chapter 393 since H.B. 2592 and H.B. 2594, 82nd Legislature, Regular Session, 2011, were enacted. S.B. 1650 clarifies the existing examination authority of the Office of Consumer Credit Commissioner (OCCC). S.B. 1650 provides that post-maturity CAB fees are limited to court costs, attorney's fees, and reasonable repossession costs (for auto title loans). S.B. 1650 specifies that CAB quarterly and annual reports are confidential (in accordance with open records letter ruling OR2014-05887 from the Office of the Attorney General), but provides that OCCC may publish statewide information and information about certain counties and metropolitan statistical areas. S.B. 1650 clarifies the investment standard for funds received in connection with the Texas Financial Education Fund. S.B. 1650 also adds language to provide consistency and clarify existing prohibitions on filing criminal charges against consumers and violating debt collection laws. (Original Author's / Sponsor's Statement of Intent)

The committee substitute for S.B. 1650 adds the following language to the bill at the request of Appleaseed to have the OCCC issue a study on high-cost lending:

Sec. 393.6271. REPORT ON HIGH-COST LENDING. (a) Not later than December 31 of each year, the consumer credit commissioner shall study and publish on OCCC's Internet website a report on high-cost lending to consumers, including the availability and prices of financial services to individual consumers in this state.

C.S.S.B. 1650 amends current law relating to credit services organizations and extensions of consumer credit, including extensions of consumer credit facilitated by credit services organizations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 6 (Section 393.308, Finance Code) and SECTION 15 (Section 393.632, Finance Code) of this bill.

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 9 (Section 393.622, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 393.001, Finance Code, by amending Subdivision (1) and adding Subdivisions (1-a), (2-a), (3-a), (4-a), (5), (6), (7), and (8), as follows:

- (1) Defines “commissioner.”
- (1-a) Creates this subdivision from existing text.
- (2-a) Defines “credit access business.”
- (3-a) Defines "deferred presentment transaction.”
- (4-a) Defines "finance commission."
- (5) Defines "military borrower."
- (6) Defines "motor vehicle title loan."
- (7) Defines "office."
- (8) Defines "service."

SECTION 2. Amends Sections 393.201(b) and (c), Finance Code, as follows:

(b) Requires that the contract, in addition to the notice required by Section 393.202 (Notice of Cancellation), fully describe the services the credit services organization (organization) shall perform for the consumer, rather than describe the services the organization is to perform for the consumer, including each guarantee and each promise of a full or partial refund and the estimated period for performing and completing all of the services, not to exceed 180 days.

(c) Requires that a contract with a credit access business for the performance of services must, in addition to the requirements of Subsection (b) and Section 393.302 (Charge of Receipt of Consideration Before Completion of Services), rather than requires that a contract with a credit access business, as defined by Section 393.601 (Definitions), for the performance of services described by Section 393.602(a) (providing 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) must, in addition to the requirements of Subsection (b) and Section 393.202:

(1) Makes no change to this subdivision;

(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, rather than with respect to an extension of consumer credit described by Section 393.602(a);

(3) Makes no change to this subdivision;

(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, rather than with respect to an extension of consumer credit described by Section 393.602(a);

(5) disclose to the consumer:

(A) and (B) Makes no change to these paragraphs; and

(C) the specific fees that will be paid to the credit access business for the business's services and to any third party; and

(6) contain the name and address of the Office of Consumer Credit Commissioner (OCCC), the OCCC website address, and the telephone number of the OCCC consumer helpline.

Makes nonsubstantive changes.

SECTION 3. Amends Section 393.222(b), Finance Code, to make a nonsubstantive change.

SECTION 4. Amends Section 393.223(a), Finance Code, as follows:

(a) Requires that a credit access business, before performing services described by Section 393.001(2-a), rather than Section 393.221(1) (defining “credit access business”), provide to a consumer a disclosure adopted by rule of the Finance Commission of Texas (finance commission) that discloses the following in a form prescribed by the finance commission:

- (1) Makes no change to this subdivision;
- (2) Makes a nonsubstantive change to this subdivision;
- (3) Makes a nonsubstantive change to this subdivision; and
- (4) the name of the credit access business and any unique number assigned to the license issued to the business under Subchapter G (Licensing and Regulation of Certain Credit Services Organizations).

Makes a nonsubstantive change.

SECTION 5. Amends Section 393.224, Finance Code, to make nonsubstantive changes.

SECTION 6. Amends Subchapter D, Chapter 393, Finance Code, by adding Section 393.308, as follows:

Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN LOANS OR EXTENSIONS OF CREDIT. (a) Prohibits a credit services organization from obtaining for a consumer or assist a consumer in obtaining an extension of consumer credit that:

- (1) is made by a lender that is affiliated with the credit services organization or has any ownership, directors, officers, members, or employees in common with the credit services organization; or
 - (2) results in any portion of the fee charged by the credit services organization being passed to a lender.
- (b) Prohibits a credit services organization from charging or receiving from a consumer a fee or other valuable consideration in connection with a loan or other extension of consumer credit that is prohibited by Subsection (a).
- (c) Authorizes the finance commission to adopt rules to implement this section.

SECTION 7. Amends Section 393.602, Finance Code, as follows:

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, rather than in obtaining an extension of consumer credit in the form of a deferred presentment transaction, or a motor vehicle title loan.

- (b) Authorizes a credit access business to assess fees as agreed to between the parties for services performed to obtain for a consumer, assist a consumer in obtaining, or service an extension of consumer credit in the form of a deferred

presentment transaction or motor vehicle title loan, including a new extension of consumer credit, rather than authorizes a credit access business to assess fees for its services as agreed to between the parties. Prohibits a credit access business from charging any fee for an action performed after maturity of an extension of consumer credit that the business obtains for a consumer or assists a consumer in obtaining, except for a charge authorized under Section 393.629.

(b-1) Authorizes a credit services organization that is not obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit, notwithstanding Subsection (a) or (b), to also charge or receive from a consumer a fee or other valuable consideration in connection with advice, assistance, or other services that the credit services organization provides to improve a consumer's credit history or rating.

(c) Prohibits a person from using a device, subterfuge, or pretense to evade the application of the provisions of this chapter that apply to a credit access business, rather than 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 may not be considered a device, subterfuge, or pretense to evade the application of this chapter, rather than this subchapter.

SECTION 8. Amends Section 393.604(a), Finance Code, as follows:

(a) Requires that an application for a license under this subchapter:

(1)-(3) Makes no change to these subdivisions

(4) contain the name, physical address, and telephone number of all third-party lender organizations:

(A) with which the business contracts to provide services, rather than services described by Section 393.602(a); or

(B) from which the business arranges extensions of consumer credit, rather than consumer credit described by Section 393.602(a); and

(5) Makes no change to this subdivision.

SECTION 9. Amends Section 393.622, Finance Code, as follows:

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

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

(2) adopt rules with respect to reports of summary business information required to be submitted by a licensed credit access business under Section 393.627 (Quarterly Report to Commissioner), rather than 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 the business obtained for a consumer or assisted a consumer in obtaining, rather than 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) Makes a conforming change.

(c) Provides that nothing in Section 393.201(c) or Sections 393.602-393.628 grants authority to the finance commission or the OCCC to establish a limit on the fees charged by a credit access business, rather than provides that nothing in Section 393.201(c) or Sections 393.601-393.628 grants authority to the finance commission or the OCCC.

SECTION 10. Amends Subchapter G, Chapter 393, Finance Code, by adding Sections 393.6221 and 393.6222, as follows:

Sec. 393.6221. EXAMINATION OR INVESTIGATION BY COMMISSIONER; OATHS. (a) Requires the consumer credit commissioner (commissioner) or the commissioner's representative, at the times the commissioner considers necessary, to:

- (1) examine each place of business of each credit access business; and
- (2) investigate the credit access business's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under this chapter.

(b) Requires the credit access business to:

- (1) give the commissioner or the commissioner's representative free access to the credit access business's office, place of business, files, safes, and vaults; and
- (2) allow the commissioner or the commissioner's representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) Authorizes the commissioner or the commissioner's representative, during an examination or an investigation, to administer oaths and examine a person under oath on a subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

Sec. 393.6222. CREDIT ACCESS BUSINESS'S RECORDS; DOCUMENT RETENTION REQUIREMENTS. (a) Requires a credit access business to maintain a record of each extension of consumer credit that the business obtains for a consumer or assists a consumer in obtaining under this chapter as is necessary to enable the commissioner to determine whether the credit access business is complying with this chapter.

(b) Requires a credit access business to keep the record until the later of:

- (1) the fourth anniversary of the date of the contract described by Section 393.201; or
- (2) the second anniversary of the date on which the final entry is made in the record.

(c) Requires that a record described by Subsection (a) be prepared in accordance with accepted accounting practices.

(d) Requires the commissioner to accept a credit access business's system of records if the system discloses the information reasonably required under Subsection (a).

SECTION 11. Amends Section 393.625, Finance Code, as follows:

Sec. 393.625. MILITARY BORROWERS. Requires an extension of consumer credit that is obtained by a credit access business for a military borrower or that the business

assisted a military borrower in obtaining to comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable, rather than provides that 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 State 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.

SECTION 12. Amends Section 393.626, Finance Code, as follows:

Sec. 393.626. DEBT COLLECTION PRACTICES. (a) Creates this subsection from existing text. Makes a conforming change.

(b) Requires a credit access business, with respect to an extension of consumer credit, to comply with all provisions of the Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.) that apply to a debt collector as defined by 15 U.S.C. Section 1692a. Provides that a violation of those provisions is a violation of this subchapter.

SECTION 13. Amends Section 393.627, Finance Code, as follows:

Sec. 393.627. New heading: REPORTS TO COMMISSIONER. (a) Creates this subsection from existing text. Makes a conforming change. Makes a nonsubstantive change. Deletes existing text requiring a credit access business to file a quarterly report with the commissioner on a form prescribed by the commissioner that provides 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).

(b) Requires a credit access business to file with the commissioner an annual report for each licensed location on a form prescribed by the commissioner that provides the following information relating to extensions of consumer credit during the preceding year:

(1) the number of extensions of consumer credit paid in full or otherwise closed for a reduced payoff;

(2) the number of refinancing transactions of extensions of consumer credit that occurred before the extension of consumer credit was paid in full or otherwise closed for a reduced payoff;

(3) the total amount of fees charged by the business in connection with extensions of consumer credit;

(4) the number of consumers for whom the business obtained or assisted in obtaining an extension of consumer credit;

(5) the total dollar amount of extensions of consumer credit that the business obtained for or assisted consumers in obtaining; and

(6) any related information the commissioner determines necessary.

(c) Provides that all information submitted by a credit access business to the commissioner for inclusion in a report under this section is confidential.

(d) Requires the commissioner to publish a statewide consolidated analysis and recapitulation of reports filed under this section, including an analysis of the 15 largest metropolitan statistical areas and the five largest counties of this state.

SECTION 14. Amends Subchapter G, Chapter 393, Finance Code, by adding Section 393.6271, as follows:

Sec. 393.6271. REPORT ON HIGH-COST LENDING. (a) Requires the commissioner, not later than December 31 of each year, to study and publish on OCCC's Internet website a report on high-cost lending to consumers, including the availability and prices of financial services to individual consumers in this state.

(b) Authorizes the commissioner, in coordination with the finance commission's administration of the Texas Financial Education Endowment, to contract with public and private entities to carry out research for the report required by this section.

(c) Requires the commissioner, not later than December 31 of each year, to provide the report to the legislature.

SECTION 15. Amends Section 393.628, Finance Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires the commissioner to remit to the comptroller amounts received under Subsection (a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Authorizes money in the account to be spent by the finance commission only for the purposes provided by this section. Authorizes amounts in the account to be invested and reinvested in any kind of investment that prudent investors, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances then prevailing, taking into consideration the investment of all the assets of the account rather than a single investment, and requires the interest from those investments to be deposited to the credit of the account, rather than authorizes amounts in the account to be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas.

(b-1) Requires that the expenses of managing the investments be paid from the account.

SECTION 16. Amends Subchapter G, Chapter 393, Finance Code, by adding Sections 393.629 through 393.632, as follows:

Sec. 393.629. CHARGES FOR COLLECTING DEBT. Provides that a contract between a consumer and a credit access business may provide for the payment of:

(1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the credit access business or the third-party lender;

(2) court costs and disbursements; and

(3) for a motor vehicle title loan, reasonable expenses incurred in connection with the repossession, sequestration, holding, or disposition of the motor vehicle that do not exceed the amount actually paid by the credit access business or the lender to a third party for the repossession, sequestration, holding, or disposition of the motor vehicle.

Sec. 393.630. FILING A CRIMINAL CHARGE AGAINST A CONSUMER. Prohibits a credit access business from threatening or pursuing a criminal charge against a consumer related to an extension of consumer credit unless the credit access business possesses evidence that is sufficient to prove that the consumer violated a criminal law. Provides that, for purposes of this section, in a deferred presentment transaction, a person does not violate a criminal law solely by issuing a check or authorization on an account with insufficient funds.

Sec. 393.631. REQUIREMENTS APPLICABLE TO EACH EXTENSION OF CONSUMER CREDIT. (a) Requires that each extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining meet all the requirements applicable to the original extension of consumer credit, including the disclosure and contract requirements described by Sections 393.105 (Disclosure Statement), 393.201 (Form and Terms of Contract), 393.202, 393.203 (Issuance of Contract and Other Documents), and 393.223 (Consumer Transaction Information).

(b) Provides that an extension of consumer credit under Subsection (a) includes:

(1) an original extension of consumer credit;

(2) any type of transaction in which all or a portion of the principal, fees, or interest due under an outstanding extension of consumer credit becomes due on a later date; and

(3) an extension of consumer credit that consists of debt arising from principal, fees, or interest that was not paid in full under an outstanding or previous extension of consumer credit.

Sec. 393.632. RULES. Requires the finance commission to adopt any rules necessary to implement Sections 393.629-393.631.

SECTION 17. Repealer: Section 393.221 (Definitions), Finance Code.

Repealer: Section 393.601 (Definitions), Finance Code.

SECTION 18. Provides that the changes in law made by this Act apply only to an extension of consumer credit, including a new extension of consumer credit as defined by Section 393.631, Finance Code, as added by this Act, made on or after the effective date of this Act. Provides that an extension of consumer credit made before the effective date of this Act is governed by the law in effect on the date the extension of consumer credit was made, and the former law is continued in effect for that purpose.

SECTION 19. Effective date: September 1, 2015.