A BILL TO BE ENTITLED

AN ACT

relating to the requirements for certain extensions of credit to consumers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 302, Finance Code, is amended by adding Section 302.003 to read as follows:

Sec. 302.003. PROHIBITION ON THIRD-PARTY FEES TO ARRANGE OR GUARANTEE CERTAIN EXTENSIONS OF CONSUMER CREDIT. (a) A fee paid or to be paid to a third party to assist a consumer in the transacting, arranging, guaranteeing, or negotiating of an extension of credit may not be contracted for, charged, or received by a creditor or third party in connection with the extension of credit if:

(1) the extension of credit is secured by a non-purchase money security interest in personal property or is unsecured; and

(2) the proceeds of the extension of credit are used for personal, family, or household purposes.

(b) The amount of a fee contracted for, charged, or received in violation of Subsection (a) is considered interest for usury purposes under state law.

SECTION 2. Section 342.604, Finance Code is amended by adding subsection (c) as follows:

(c) A creditor who extends consumer credit to a member of the United States military or a dependent of a member of the United
States military must comply with Section 670, Public Law 109-364 or any regulation adopted pursuant thereto.

SECTION 3. Subchapter M, Chapter 342, Finance Code, is amended by adding Section 342.606 as follows:

Sec. 342.606. REQUIREMENTS FOR DEFERRED PRESENTMENT TRANSACTIONS. (a) The provisions of Subchapter F apply to a deferred presentment transaction made under the authority of this subchapter.

(b) As an alternative to the rate provided by Sections 342.252, 342.253 and 342.259, a deferred presentment transaction made under this subchapter with a maximum cash advance computed under Subchapter C, Chapter 341, using a reference base amount that is not more than $200, may provide for a finance charge that does not exceed 15 percent of the cash advance.

(c) An authorized lender may not enter into a deferred presentment transaction in which the amount of cash advanced exceeds 35% of the borrower's gross monthly income.

(d) On the prepayment of a deferred presentment transaction, the finance charge authorized under this section is considered to be earned at the time the loan is made and is not subject to refund.

(e) An authorized lender must accept partial payment of the outstanding principal balance at any time during regular business hours.

(f) An authorized lender may not for a fee renew, rollover, or otherwise consolidate a deferred presentment transaction. For purposes of this subsection "rollover" means a transaction in which
a borrower refinances or pays all or part of the finance charges and
advance of a deferred presentment transaction with a new deferred
presentment transaction.

(g) If a borrower enters into a third consecutive loan, an
authorized lender must provide the borrower an option to repay the
advance and each consecutive loan pursuant to a written repayment
plan. For purposes of this subsection "consecutive loan" means a
new deferred presentment transaction that any lender enters into
with a debtor no later than seven days after the date on which a
previous deferred presentment transaction made to the same borrower
is paid in full. The authorized lender may assess a processing fee
of ten percent of the principal amount of the loan per loan not to
exceed Fifteen Dollars for administration of the payment plan. A
lender is not required to enter into a payment plan with a borrower
more frequently than once every 12 months. The borrower must:

(1) request the repayment plan, either orally or in
writing;

(2) repay the loan in four equal installments with one
installment due on each of the next four dates on which the
borrower receives regular wages or compensation;

(3) agree not to enter into any additional deferred
presentment transactions during the repayment plan term and
for a period of fifteen days after termination of the
repayment plan term.

(h) An authorized lender may not impose a default charge in
connection with a deferred presentment transaction.

(i) The finance commission by rule may require a licensee to
provide materials approved by the commissioner that are designed to:

(1) inform the borrower of the duties, rights, and responsibilities of parties to a deferred presentment transaction; and

(2) educate a borrower about matters of financial literacy.

(j) As part of the annual report required under Section 342.559, a licensee that engages in deferred presentment transactions must submit the following to the commissioner:

(1) the amount of cash advanced under each deferred presentment transaction made, serviced, or brokered by the lender during the preceding calendar year;

(2) the total number of deferred presentment transactions made, serviced, or brokered by the lender during the preceding calendar year;

(3) data regarding extended payment plans and alternative payment arrangements offered by the lender;

(4) the gross monthly income reported by an individual to whom a cash advance was made under a deferred presentment transaction during the preceding calendar year, if the lender collects that information from individuals and provided that a lender that submits data provided by individuals is not responsible for an individual borrower's failure to provide accurate information;

(5) the total amount of interest, fees, or charges collected by the lender during the preceding calendar year for
making, servicing, or brokering deferred presentment transactions;
and
(6) any other information required by the commissioner.

(k) A person may not threaten or pursue criminal charges against a borrower related to a check or other debit authorization provided by the borrower as part of a deferred presentment transaction.

(l) The commissioner shall prepare and publish a report no later than December 1, 2012 regarding the use of deferred presentment transactions in Texas. In preparing the study, the commissioner shall study the need for comprehensive data reporting and the value and feasibility of a real-time statewide database to provide data for policy development and to enhance a lender's evaluation of a borrower's ability to repay. In reviewing the value and feasibility of a real-time statewide database, the study should consider the use of a database verification fee collected from the borrower to recover the actual costs of the system.

SECTION 4. Subsection (a), Section 342.501, Finance Code, is amended to read as follows:

(a) An authorized lender may not induce or permit a person or a husband and wife to be directly or indirectly obligated under more than one loan contract at any time for the purpose or with the effect of obtaining an amount of interest greater than the amount of interest otherwise authorized under this chapter for a loan of that aggregate amount with a maximum interest charge computed under Section 342.201(a), Section 342.201(e), Section 342.252, Section H.B. No. 3786
342.259, 342.606, Section 342.654, or any combination of those sections.

SECTION 5. Chapter 342, Finance Code is amended by adding Subchapter N as follows:

SUBCHAPTER N. AUTO TITLE LOANS

Sec. 342.651. DEFINITION. (a) In this subchapter, "auto title loan" means an agreement in which an authorized lender agrees to make a loan of money to a borrower, and the borrower agrees to give the authorized lender a non-purchase money security interest in an unencumbered motor vehicle owned by the borrower.

Sec. 342.652. GENERAL REQUIREMENTS. An auto title loan must be in writing and have a loan term of 30 days.

Sec. 342.653. APPLICABILITY OF OTHER SUBCHAPTERS. (a) The provisions of Subchapter E and Subchapter F apply to an auto title loan made under this subchapter.

Sec. 342.654. AUTHORIZED FINANCE CHARGES. (a) As an alternative to the rate provided by Sections 342.201, 342.252, 342.253 and 342.259, an auto title loan made under this subchapter may provide for a finance charge that does not exceed:

(1) 20 percent per month on the portion of the cash advance that does not exceed $700;

(2) 18 percent per month on the portion of the cash advance balance that is greater than $700 but less than $1,400; and

(3) 15 percent per month on the portion of the cash advance that exceeds $1,400.

(b) On the prepayment of an auto title loan, the finance
charge authorized under this section is considered to be earned at
the time the loan is made and is not subject to refund.

Sec. 342.655. ACCEPTANCE OF PARTIAL PAYMENTS. A lender
must accept partial payment of the principal loan balance of an auto
title loan at any time during regular business hours.

Sec. 342.656. RENEWALS. (a) For purposes of this
subsection, "renewal" means a transaction in which a borrower
refinances or pays all or part of the finance charges and advance of
an auto title loan with a new auto title loan.

(b) Beginning with the first renewal and at each successive
renewal thereafter, the borrower must reduce the principal balance
by at least ten percent of the original principal balance of the
auto title loan. If the borrower fails to pay the amount necessary
to reduce the principal balance by ten percent at any renewal, then
the lender may renew the transaction, provided that the lender must
calculate the finance charge as if the principal balance of the loan
were reduced by 10 percent of the original principal balance. This
reduction in principal continues to be due from the borrower in
accordance with the auto title loan agreement, but that amount is
not entitled to accrue interest or finance charges. Alternatively
if the borrower fails to pay, the lender may declare the outstanding
principal balance and any finance charge to be immediately due and
payable.

(c) After three renewals of an auto title loan, if a
borrower is unable to pay on the due date the amount owing, then the
lender must offer a repayment plan to the borrower. A lender is not
required to enter into a payment plan with a borrower more
frequently than once every 12 months. If the borrower agrees to the repayment plan, then the borrower must repay the amount owed according to the following terms:

(1) the borrower must be allowed to repay the loan in not more than four substantially equal installments with one installment due on each of the next four dates on which the borrower receives regular wages or compensation; and

(2) the authorized lender may not charge a borrower any additional interest or fee for using the repayment plan.

(d) An authorized lender and a borrower may agree to enter a repayment plan described by Subsection (c) at any time during the term of an auto title loan or during the term of any renewal.

(e) An authorized lender may not impose a default charge in connection with an auto title loan.

Sec. 342.657. POSSESSION OF MOTOR VEHICLE OR CERTIFICATE OF TITLE. (a) In an auto title loan subject to this subchapter, the borrower shall agree to the authorized lender's possession of the certificate of title.

(b) The borrower shall have the exclusive right to redeem the certificate of title by repaying the auto title loan in full and by complying with the auto title loan agreement. When the certificate of title is redeemed, the authorized lender shall release the security interest in the motor vehicle, and return the certificate of title to the borrower.

(c) The auto title loan agreement must provide that, on failure by the borrower to redeem the certificate of title at the end of the original 30-day term period, or at the end of any 30-day
renewal or renewals of the agreement period or extended payment
plan agreements, the lender is allowed to take possession of the
motor vehicle.

(d) The lender shall retain physical possession of the
certificate of title for the entire term of the auto title loan
agreement, but is not required to retain physical possession of the
motor vehicle at any time.

(e) A lender may only hold unencumbered certificates of
title for pledge.

Sec. 342.658. NO CRIMINAL PROSECUTION. A person may not
threaten or pursue criminal charges against a borrower related to a
check or other debit authorization provided by the borrower as part
of an auto title loan.

Sec. 342.659. CONSIDERATION OF BORROWER'S ABILITY TO REPAY.
When making or negotiating an auto title loan, the lender must
consider, in determining the size, duration, and schedule of
installments of the loan, the financial ability of the borrower to
repay the loan, and specifically evaluate whether the borrower will
be reasonably able to pay the loan in cash at the time and in the
manner provided in the auto title loan agreement.

Sec. 342.660. CONSUMER INFORMATION. The finance commission
by rule may require a licensee to provide materials approved by the
commissioner that are designed to:

(1) inform the borrower of the duties, rights, and
responsibilities of parties to an auto title loan; and

(2) educate a borrower about matters of financial
literacy.
Sec. 342.661. INFORMATION REQUIRED FOR ANNUAL REPORT. As part of the annual report required under Section 342.559, a licensee that engages in auto title loans shall submit the following to the commissioner:

(1) the amount of cash advanced under each auto title loan made, serviced, or brokered by the lender during the preceding calendar year;

(2) the total number of auto title loans made, serviced, or brokered by the lender during the preceding calendar year;

(3) the total number of auto title loans renewed during the preceding calendar year;

(4) data regarding any alternative payment arrangements or extended payment plans offered by the lender;

(5) the gross monthly income reported by an individual to whom a cash advance was made under an auto title loan during the preceding calendar year, if the lender collects that information from individuals and provided that a lender that submits data provided by individuals is not responsible for an individual borrower's failure to provide accurate information;

(6) the total amount of interest, fees, or charges collected by the lender during the preceding calendar year for making, servicing, or brokering auto title loans;

(7) the total number of motor vehicles repossessed; and

(8) any other information required by the commissioner.
SECTION 6. Section 393.001(3), Finance Code, is amended to read as follows:

(3) "Credit services organization" means 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; or

(B) [obtaining an extension of consumer credit for a consumer; or

(C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

SECTION 7. Subchapter D, Chapter 393, Finance Code, is amended by adding Section 393.308 to read as follows:

Sec. 393.308. OBTAINING EXTENSIONS OF CONSUMER CREDIT PROHIBITED. A credit services organization may not obtain an extension of consumer credit for a consumer or assist a consumer in obtaining an extension of consumer credit.

SECTION 8. Section 342.601(1), Finance Code, is repealed.

SECTION 9. This Act takes effect September 1, 2011.