relating to 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) to read 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 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

SECTION 3. Subchapter M, Chapter 342, Finance Code, is amended by adding Sections 342.606 and 342.607 to read as follows:

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

(b) As an alternative to the rate provided by Sections 342.252, 342.253, and 342.259, the combined interest and fees for 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 not exceed 15 percent of the amount advanced.

(c) A lender may not enter into a deferred presentment transaction in which the amount of cash advanced exceeds 35 percent 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 transaction is made and is not subject to refund.

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

(f) A lender may not for a fee renew, roll over, or otherwise consolidate a deferred presentment transaction. For purposes of this subsection, "roll over" means the refinancing or paying of all or part of the finance charges and advance of a deferred presentment transaction with a new deferred presentment transaction.

(g) In this subsection, "consecutive loan" means a new deferred presentment transaction that a lender enters into with a borrower not later than the seventh day after the date a previous deferred presentment transaction made to the same borrower is paid.
If a borrower enters into a third consecutive loan, a lender must automatically convert the loan at no additional cost under a written repayment plan as authorized by this subsection under which the borrower must be allowed to repay the loan in not less than four substantially equal installments. A lender is not required to enter into a repayment plan with a borrower more frequently than once every 12 months. The borrower must agree not to enter into an additional deferred presentment transaction during the repayment plan term.

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

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

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

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

(j) A lender may not charge or receive in addition to the interest and charges provided for by this section any additional amount, whether in the form of broker fees, placement fees, or another fee or charge, except costs and disbursements in connection with any suit to collect a deferred presentment transaction, including reasonable attorney's fees that are incurred by a lender as a result of the suit and to which the lender is entitled by law.

(k) As part of the annual report required under Section 342.559, a lender that engages in deferred presentment transactions shall submit the following information to the commissioner covering the preceding calendar year:

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

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

(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, if the lender collects that information from individuals;

(5) the total amount of interest, fees, or charges collected by the lender for making, servicing, or brokering deferred presentment transactions; and

(6) any other information required by the commissioner.

(l) For purposes of Subsections (c) and (k)(4), a lender is not responsible for an individual borrower's failure to provide accurate information relating to the borrower's income.

(m) 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. This information must be disclosed in the contract with the borrower, immediately above the place where the borrower signs the contract, in at least 12-point, bold, and underlined type as follows:

"YOU CANNOT BE PROSECUTED IN ANY CRIMINAL ACTION SIMPLY FOR THE COLLECTION OF THIS TRANSACTION. IT IS NOT A CRIMINAL OFFENSE TO DEFAULT ON THIS PAYDAY LOAN."

Sec. 342.607. ATTEMPT TO EVADE LAW. This subchapter applies to a person who offers, makes, or brokers a deferred presentment transaction, who assists a consumer in this state in obtaining a deferred presentment transaction, or who wholly or partly arranges a deferred presentment transaction for a third party, regardless of whether the third party is exempt from licensing under this subtitle or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party through any communication method, including mail, telephone, the Internet, or other electronic means.

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 342.259, Section 342.606, Section 342.654, or any combination of those sections.

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

SUBCHAPTER N. AUTO TITLE LOANS

Sec. 342.651. DEFINITIONS. In this subchapter:

(1) "Auto title loan" means an agreement in which a lender agrees to make a loan of money to a borrower, and the borrower agrees to give the lender a non-purchase money security interest in an unencumbered motor vehicle owned by the borrower.

(2) "Lender" means a lender licensed under this chapter.

Sec. 342.652. GENERAL REQUIREMENTS. An auto title loan must be in writing and have a loan term of at least one month.

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

(b) A lender that 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 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

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

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

(2) 18 percent a month on the portion of the cash advance that is greater than $700 but does not exceed $1,400; and

(3) 15 percent a month on the portion of the Cash advance that is greater than $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 PAYMENT. A lender must accept partial payment of the principal balance of an auto title loan at any time during regular business hours.

Sec. 342.656. RENEWALS. (a) In this section:

(1) "Consecutive loan" means a new auto title loan that a lender enters into with a borrower not later than the seventh day after the date a previous auto title loan made to the same borrower is paid in full.

(2) "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 after the first renewal, the minimum required payment or finance charge must reduce the principal balance by at least 10 percent of the original principal balance of the auto title loan. Alternatively, if the borrower fails to pay on the due date, the lender may declare the outstanding principal balance and any finance charge to be immediately due and payable.
(c) After three renewals or consecutive loans of an auto title loan, if a borrower is unable to pay on the due date the amount owing, then the lender must automatically convert the loan at no additional cost under a written repayment plan as authorized by this section. A lender is not required to enter into a repayment plan with a borrower more frequently than once every 12 months. The borrower must repay the amount owed according to the following terms:

1. the borrower must be allowed to repay the loan in not less than four substantially equal installments; and
2. the lender may not charge a borrower any additional interest or fee for using the repayment plan.

(d) A 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 lender’s keeping 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 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 term or at the end of any renewal or renewals of the agreement period, the lender is allowed to take possession of the motor vehicle. If after taking possession of the vehicle under this subsection the lender sells the vehicle for an amount that exceeds the amount owed to the lender by the borrower, the borrower is entitled to the excess amount. A lender may assess and collect reasonable fees to recover the costs of taking possession of and selling a motor vehicle under this section.

(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 simply because the borrower defaulted on the loan. This information must be disclosed in the contract with the borrower, immediately above the place where the borrower signs the contract, in at least 12-point, bold, and underlined type as follows:

"YOU CANNOT BE PROSECUTED IN ANY CRIMINAL ACTION SIMPLY FOR THE COLLECTION OF THIS TRANSACTION. IT IS NOT A CRIMINAL OFFENSE TO DEFAULT ON THIS 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 lender to provide to a borrower materials approved by the commissioner that are designed to:

1. inform the borrower of the duties, rights, and responsibilities of the parties to an auto title loan transaction; and
2. educate a borrower about matters of financial literacy.

Sec. 342.661. INFORMATION REQUIRED FOR ANNUAL REPORT. (a) As part of the annual report required under Section 342.559, a lender that engages in auto title loans shall submit the following information to the commissioner covering the preceding calendar year:
(1) the amount of cash advanced under each auto title loan made, serviced, or brokered by the lender;
(2) the total number of auto title loans made, serviced, or brokered by the lender;
(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 an auto title loan, if the lender collects that information from individuals;
(5) the total amount of interest, fees, or charges collected by the lender for making, servicing, or brokering auto title loans;
(6) the total number of vehicles repossessed by the lender; and
(7) any other information required by the commissioner.

For purposes of Subsection (a)(4), a lender is not responsible for an individual borrower's failure to provide accurate information relating to the borrower's income.

Sec. 342.662. ATTEMPT TO EVADE LAW. This subchapter applies to a person who offers, makes, or brokers an auto title loan, who assists a consumer in this state in obtaining an auto title loan, or who wholly or partly arranges an auto title loan for a third party, regardless of whether the third party is exempt from licensing under this subtitle or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party through any communication method, including mail, telephone, the Internet, or other electronic means.

SECTION 6. Subdivision (3), Section 393.001, 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
    [CL] providing advice or assistance to a consumer with regard to Paragraph (A) [or [CL].

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. (a) The consumer credit commissioner shall prepare and publish a report not later than December 1, 2012, regarding the use of deferred presentment transactions in this state. In preparing the report, the commissioner shall study the need for comprehensive data reporting and the value and feasibility of a real-time statewide database system to provide data for policy development and to enhance a lender's evaluation of a borrower's ability to repay a deferred presentment transaction. In reviewing the value and feasibility of a real-time statewide database system, as part of the study, the commissioner should consider the use of a database verification fee collected from the borrower to recover the actual costs of the system. The commissioner shall also study the appropriateness of the rate structure provided by Section 342.606, Finance Code, as added by this Act, in regard to the manner in which the deferred presentment transactions are used, and assess whether the protections included in that section are effectively addressing the cycle of ongoing debt that can be caused by high-cost single-payment loans.

(b) The consumer credit commissioner shall prepare and publish a report not later than December 1, 2012, regarding the use of auto title loans in this state. In preparing the report, the commissioner shall study the need for comprehensive data reporting and the value and feasibility of a real-time statewide database
system to provide data for policy development and to enhance a lender's evaluation of a borrower's ability to repay an auto title loan. In reviewing the value and feasibility of a real-time statewide database system, as part of the study, the commissioner should consider the use of a database verification fee collected from the borrower to recover the actual costs of the system. The commissioner shall also study the appropriateness of the rate structure provided by Section 342.654, Finance Code, as added by this Act, in regard to the manner in which the auto title loans are used, and assess whether the protections included in that section are effectively addressing the cycle of ongoing debt that can be caused by high-cost single-payment transactions.

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

* * * * *