By: Craddick

A BILL TO BE ENTITLED

AN ACT

relating to credit services organizations and extensions of consumer credit facilitated by credit services organizations; increasing a criminal penalty.

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

SECTION 1. Subchapter M, Chapter 342, Finance Code, is amended by adding Section 342.607 to read as follows:

Sec. 342.607. DEFERRED PRESENTMENT TRANSACTION DATA COLLECTION SYSTEM. (a) In this section, "credit access business" has the meaning assigned by Section 393.001(2-a).

(b) The commissioner shall establish and implement a database for the compilation of information relating to deferred presentment transactions that allows the commissioner or persons who offer, service, or broker the transactions, including a credit access business, to determine:

(1) whether an individual seeking to enter into a deferred presentment transaction with the person has any outstanding deferred presentment transactions entered into with other persons;

(2) the total number of outstanding deferred presentment transactions entered into by the individual described by Subdivision (1) with other persons; and

(3) whether the person is in compliance with this section and other provisions of law governing deferred presentment...
transactions.

(c) The commissioner shall contract with a third-party vendor to operate the database required by this section. In selecting the vendor, the commissioner shall:

(1) consider the vendor's ability to meet the requirements of this section;
(2) consider the cost of the vendor's services;
(3) give strong consideration to the vendor's ability to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions;
(4) give strong consideration to whether the vendor operates a similar database in another state; and
(5) give strong consideration to whether the vendor's operation of the database would facilitate the enforcement of laws governing deferred presentment transactions and the persons who offer, service, or broker those transactions.

(d) The commissioner shall ensure that:

(1) the third-party vendor operating the database operates the database in accordance with this section and rules adopted by the finance commission under this section; and
(2) the database established under this section:
   (A) allows persons required to submit information to the database to submit and access the required information from any location in this state;
   (B) provides real-time access by the commissioner to information contained in the database from any location in this state; and
(C) contains safeguards to ensure that information contained in the database may not be accessed by an unauthorized person.

(e) A person who offers, services, or brokers a deferred presentment transaction, including a credit access business, shall submit to the database at the time the transaction is entered into data relating to the transaction that the commissioner, by rule of the finance commission, determines necessary.

(f) Information in the database is confidential and is not subject to disclosure under Chapter 552, Government Code.

(g) The finance commission shall adopt rules as necessary to implement this section, including rules:

(1) relating to the form and content of information to be submitted to the database;

(2) prescribing a fee to be paid by persons required to submit information to be included in the database under Subsection (e); and

(3) establishing requirements for the retention, archiving, and deletion of information entered into or stored in the database.

(h) The third-party vendor shall charge a person who offers, services, or brokers a deferred presentment transaction a fee to access or use the database under this section. The fee may be charged on a per-transaction basis and may be used only to pay the costs associated with the maintenance of the database under this section. The finance commission by rule must approve the amount of the fee, which may not exceed $1 per deferred presentment.
transaction.

(i) A person who ceases to offer, service, or broker deferred presentment transactions shall continue to submit information required by this section for any transactions that are outstanding and with respect to which the person continues collection efforts. Not later than the 10th day after the date the person ceases to offer deferred presentment transactions, the person shall submit to the commissioner for approval a plan for continuing compliance with this section. The commissioner shall promptly approve or disapprove the plan. The commissioner may require a person to whom this subsection applies to submit a new or modified plan.

SECTION 2. Section 393.001, Finance Code, is amended by amending Subdivision (3) and adding Subdivisions (2-a), (3-a), (5), (6), (7), (8), (9), and (10) to read as follows:

(2-a) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit.

(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;

(B) obtaining an extension of consumer credit for a consumer in the form of a single-payment deferred presentment transaction, a multiple-payment deferred presentment transaction,
a single-payment motor vehicle title loan, or a multiple-payment
motor vehicle title loan; or

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

(3-a) "Deferred presentment transaction" means a
single-payment or multiple-payment transaction defined as a
deferred presentment transaction by Section 341.001 in connection
with which the consumer is not required to provide real or personal
property as security.

(5) "Motor vehicle title loan" means a single-payment
or multiple-payment loan in which an unencumbered motor vehicle is
given as the only security for the loan. The term does not include a
retail installment transaction under Chapter 348 or another loan
made to finance the purchase of a motor vehicle.

(6) "Multiple-payment deferred presentment
transaction" means a deferred presentment transaction that is not a
single-payment deferred presentment transaction.

(7) "Multiple-payment motor vehicle title loan" means
a motor vehicle title loan that is not a single-payment motor
title loan.

(B) "Refinance" means a rollover, renewal, or other
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. The term includes a new
extension of consumer credit that:

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

(B) is made on or before the seventh day after the
date a previous extension of consumer credit that a credit access
business obtained for a consumer or assisted a consumer in
obtaining was paid in full.

(9) "Single-payment deferred presentment transaction"
means a deferred presentment transaction for which the entire cash
advance, interest, and fees are required under the terms of the
transaction to be payable in a single payment.

(10) "Single-payment motor vehicle title loan" means a
motor vehicle title loan for which the entire principal, interest,
and fees are required under the terms of the loan to be payable in a
single payment.

SECTION 3. Subchapter A, Chapter 393, Finance Code, is
amended by adding Section 393.004 to read as follows:

Sec. 393.004. EFFECT ON MUNICIPAL ORDINANCES. (a) This
chapter does not preempt a municipal ordinance regulating a credit
access business or any form of an extension of consumer credit that
a credit access business is authorized to obtain for a consumer or
assist a consumer in obtaining as provided by Section 393.308.

(b) If a municipal ordinance described by Subsection (a)
conflicts with a provision of this chapter regulating a credit
access business or an extension of consumer credit described by
Subsection (a), the more stringent regulation controls to the
extent of the conflict.

SECTION 4. Section 393.201(c), Finance Code, is amended to
read as follows:
(c) A contract with a credit access business[1], as defined by Section 393.601, for the performance of services described by Section 393.602(a) must, 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:

(A) the lender from whom the extension of consumer credit is obtained;

(B) the interest paid or to be paid to the lender; and

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

(6) contain the name and address of the Office of
SECTION 5. Section 393.203, Finance Code, is amended to read as follows:

Sec. 393.203. ISSUANCE OF CONTRACT AND OTHER DOCUMENTS.

(a) A credit services organization shall give to the consumer, when the document is signed, a copy of the completed contract and any other document the organization requires the consumer to sign.

(b) The contract and other documents provided by a credit access business to a consumer under this section in relation to an extension of consumer credit must be:

(1) provided before signing wholly written:
   (A) in English; and
   (B) if the contract negotiations are not conducted in English, in the language in which the contract is negotiated; and

(2) before signing, read in their entirety in the language in which the contract is negotiated to any consumer who cannot read.

SECTION 6. Section 393.223, Finance Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) Before performing services described by Section 393.602(a) [393.221(1)], a credit access business must provide to a consumer a written disclosure adopted by rule of the Finance Commission of Texas [that discloses the following] in a form prescribed by the commission that:
(1) discloses the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt;

(2) discloses the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; [and]

(3) provides information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans; and

(4) references nonprofit agencies that provide financial education and training or cash assistance to borrowers.

(b-1) The disclosure and notice required by this section must be:

(1) available in English and Spanish at each location at which the credit access business performs services described by Section 393.602(a); and

(2) provided to a consumer wholly written, and read in their entirety at the time provided to any consumer who cannot read, in the language in which the contract is negotiated.

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

Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN EXTENSIONS OF CONSUMER CREDIT. A credit services organization may not obtain
for a consumer or assist a consumer in obtaining an extension of consumer credit in any form other than in the form of a single-payment deferred presentment transaction, a multiple-payment deferred presentment transaction, a single-payment motor vehicle title loan, or a multiple-payment motor vehicle title loan.

SECTION 8. Section 393.501, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) Each day of a continuing violation of a provision of Subchapter C-1 or G constitutes a separate offense.

SECTION 9. Section 393.602(a), Finance Code, is amended to read as follows:

(a) 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].

SECTION 10. Section 393.604(a), Finance Code, is amended to read as follows:

(a) An application for a license under this subchapter must:

(1) be under oath;
(2) contain the applicant's name and the street address, mailing address, facsimile number, and telephone number of the applicant at the location for which the license is sought;
(3) give the approximate location from which the business is to be conducted;
(4) [44] identify the business's principal parties in
interest;

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

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

(B) from which the business arranges extensions of consumer credit [described by Section 393.602(a)]; and

(6)[(5)] contain other relevant information that the commissioner requires for the findings required under Section 393.607.

SECTION 11. Section 393.620, Finance Code, is amended to read as follows:

Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. A license may not be transferred or assigned [only with the approval of the commissioner].

SECTION 12. Sections 393.622(a) and (b), Finance Code, are amended to read as follows:

(a) The finance commission may:

(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 the business obtained for a consumer or assisted a consumer in obtaining [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 [described by Section 393.602(a)], including rules related to charges for defraying the reasonable cost of conducting the examinations.

(b) The finance commission may 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)]. 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, Government Code.

SECTION 13. Sections 393.625, 393.626, and 393.627, Finance Code, are amended to read as follows:

Sec. 393.625. MILITARY BORROWERS. 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 must 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. A violation of Chapter 392 by a credit access business with respect to obtaining for a consumer or assisting a consumer in obtaining an extension of
consumer credit [described by Section 393.602(a)] constitutes a violation of this subchapter.

Sec. 393.627. QUARTERLY REPORT TO COMMISSIONER. A credit access business shall 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;
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.

SECTION 14. Subchapter G, Chapter 393, Finance Code, is
amended by adding Sections 393.629 through 393.637 to read as
follows:

Sec. 393.629. GENERAL LIMITATIONS ON EXTENSIONS OF CONSUMER
CREDIT; PAYMENT METHOD. (a) The provisions of this chapter
applicable to a credit access business apply to any consumer
physically located in this state at the time the extension of
consumer credit is made, regardless of whether the extension of
consumer credit was made in person in this state.

(b) A credit access business shall accept a payment made in
cash or by electronic transfer, cashier's check, teller's check, or
money order offered by the consumer or another party, to retire or
otherwise pay down debt incurred under an extension of consumer
credit that a credit access business obtained for a consumer or
assisted a consumer in obtaining under this chapter.

Sec. 393.630. ESTABLISHMENT OF INCOME. A credit access
business must require documentation to establish a consumer's
income for purposes of this subchapter. The only acceptable forms
of documentation are paper, facsimile, or electronic copies of:

(1) a payroll document;

(2) a paycheck;
(3) a bank, credit union, debit card, or other account statement;

(4) a report from a nationally or regionally recognized credit and data reporting company;

(5) Internal Revenue Service Form W-2 from the preceding year;

(6) the income tax return from the preceding tax year;

or

(7) a signed letter from the consumer's employer at the time the extension of consumer credit is sought.

Sec. 393.631. SINGLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION. (a) The sum of all fees, principal, interest, and other amounts due under an extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed 20 percent of the consumer's gross monthly income.

(b) An extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not be refinanced more than three times. An amount from each payment of a refinanced deferred presentment transaction described by this subsection must be used to repay at least 25 percent of the principal amount of the original debt.

Sec. 393.632. MULTIPLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION. (a) The sum of all fees, principal, interest, and other amounts due under all scheduled payments of an extension of
consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed 20 percent of the consumer's gross monthly income.

(b) An extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining and all fees associated with the debt may not be payable by the consumer in more than four installments. An amount from each installment payment must be used to repay at least 25 percent of the principal amount of the debt.

(c) An extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not be refinanced.

Sec. 393.633. SINGLE-PAYMENT MOTOR VEHICLE TITLE LOAN.

(a) The sum of all fees, principal, interest, and other amounts due under an extension of consumer credit in the form of a single-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed the lesser of:

   (1) three percent of the consumer's gross annual income; or
   (2) 70 percent of the retail value of the motor vehicle securing the debt.

(b) An extension of consumer credit in the form of a single-payment motor vehicle title loan that a credit access
business obtains for a consumer or assists a consumer in obtaining may not be refinanced more than three times. An amount from each payment of a refinanced motor vehicle title loan described by this subsection must be used to repay at least 25 percent of the principal amount of the original debt.

Sec. 393.634. MULTIPLE-PAYMENT MOTOR VEHICLE TITLE-loan.

(a) The sum of all fees, principal, interest, and other amounts due under all scheduled payments of an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed the lesser of:

(1) three percent of the consumer's gross annual income; or

(2) 70 percent of the retail value of the motor vehicle securing the debt.

(b) An extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining and all fees associated with the debt may not be payable by the consumer in more than four installments. An amount from each installment payment must be used to repay at least 25 percent of the principal amount of the debt.

(c) An extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not be refinanced.

Sec. 393.635. REFINANCES. (a) Any refinance of an
extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining:

1. must be authorized under this subchapter;
2. must be in the same form as the original extension of consumer credit; and
3. must meet all the requirements applicable to the original extension of consumer credit, including the duration, transaction, and applicable income-based or vehicle value-based limitations under Section 393.631(a), 393.632(a), 393.633(a), or 393.634(a).

(b) For purposes of this section, a single-payment deferred presentment transaction, a multiple-payment deferred presentment transaction, a single-payment motor vehicle title loan, and a multiple-payment motor vehicle title loan are the different forms of extensions of consumer credit that a credit access business may obtain for a consumer or assist a consumer in obtaining.

(c) A person may not use a device, subterfuge, or pretense to evade the refinance requirements and limitations imposed on a credit access business under this subchapter.

Sec. 393.636. MAINTENANCE OF RECORDS. (a) A credit access business shall maintain a complete set of records of all extensions of consumer credit obtained for consumers by the business or that the business assisted consumers in obtaining. The record pertaining to each extension of consumer credit must be retained until the third anniversary of the date the extension of consumer credit was obtained and must include:

1. the name and address of the consumer;
the principal amount of the cash advance or loan;

(3) the length of the original term of the extension of consumer credit, the number of installments or refinances, if applicable, and the length of the term of any refinance;

(4) the fees charged by the credit access business for obtaining for a consumer or assisting the consumer in obtaining the extension of consumer credit; and

(5) the documentation used to establish a consumer’s income under Section 393.630.

(b) A credit access business shall retain a copy of each written agreement between the business and a consumer pertaining to an extension of consumer credit, including any agreement regarding refinancing an extension of consumer credit, until the third anniversary of the date on which the agreement was entered into.

(c) A credit access business shall retain a copy of each report filed under Section 393.627 until the third anniversary of the date on which the report was filed.

(d) A record described by this section must be available for inspection on request by the office during the normal business hours of the credit access business.

Sec. 393.637. RULES. The finance commission shall adopt any rules necessary to implement Sections 393.629-393.636.

SECTION 15. The following laws are repealed:

(1) Section 393.221, Finance Code; and

(2) Sections 393.601(2), (3), and (5), Finance Code.

SECTION 16. The consumer credit commissioner shall establish and implement the database under Section 342.607, Finance
Code, as added by this Act, not later than January 1, 2016, and shall prescribe the date by which a person who offers, services, or brokers a deferred presentment transaction must begin submitting data as provided by that section.

SECTION 17. The changes in law made by this Act apply only to an extension of consumer credit made on or after the effective date of this Act. 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. For purposes of this section, a refinance of an extension of consumer credit is considered made on the date the extension of consumer credit being refinanced was made.

SECTION 18. (a) The change in law made by this Act to Section 393.223, Finance Code, applies only to a disclosure or notice provided by a credit access business on or after January 1, 2016. A disclosure or notice provided by a credit access business before January 1, 2016, is governed by Section 393.223, Finance Code, as that section existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) The Finance Commission of Texas shall adopt rules prescribing forms under Section 393.223(a), Finance Code, as amended by this Act, not later than November 1, 2015.

SECTION 19. Section 393.636, Finance Code, as added by this Act, applies only to a record created on or after the effective date of this Act. A record created before the effective date of this Act is governed by the law in effect when the record was created, and
the former law is continued in effect for that purpose.

SECTION 20. This Act takes effect September 1, 2015.