By: Thompson of Harris H.B. No. 3811

A BILL TO BE ENTITLED

AN ACT

relating to extensions of consumer credit in the form of a deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining; providing a civil penalty; adding a provision subject to a criminal penalty.

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

SECTION 1. Section 393.601, Finance Code, is amended by amending Subdivision (3) and adding Subdivisions (5-a) and (7) to read as follows:

(3) "Deferred presentment transaction" means a single-payment or multiple-payment transaction defined as a deferred presentment transaction [has the meaning assigned] by Section 341.001 in connection with which the consumer is not required to provide real or personal property as security. [For purposes of this chapter, this definition does not preclude repayment in more than one installment.]

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

(7) "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.

SECTION 2. Chapter 393, Finance Code, is amended by adding
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Subchapter G-1 to read as follows:

SUBCHAPTER G-1. REGULATIONS IN CONNECTION WITH DEFERRED PRESENTMENT TRANSACTIONS

Sec. 393.701. DEFINITIONS. In this subchapter:

(1) "Deferred presentment transaction" has the meaning assigned by Section 393.601.

(2) "Finance commission" means the Finance Commission of Texas.

(3) "Military borrower" includes a "covered member" or a "dependent" with respect to a covered member, as those terms are defined by 10 U.S.C. Section 987 or a successor statute.

(4) "Multiple-payment deferred presentment transaction" has the meaning assigned by Section 393.601.

(5) "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 deferred presentment transaction becomes due on a later date. The term does not include an extended payment plan described by Section 393.708. 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 fifth 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.

(6) "Single-payment deferred presentment transaction"
Sec. 393.702. PAYMENT METHOD. 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 in the form of a single-payment deferred presentment transaction or a multiple-payment deferred presentment transaction that a credit access business obtained for a consumer or assisted a consumer in obtaining under this chapter.

Sec. 393.703. TERM OF LOAN FOR MILITARY BORROWERS. The term of an extension of consumer credit in the form of a deferred presentment transaction, including all refinances, obtained for a military borrower by a credit access business or that a credit access business assists a military borrower in obtaining may not exceed 90 days.

Sec. 393.704. LIMITATION ON OUTSTANDING DEBT. (a) At any one time, a consumer may have only one outstanding debt from a deferred presentment transaction that a credit access business obtained for the consumer or assisted the consumer in obtaining.

(b) To obtain an extension of consumer credit in the form of a deferred presentment transaction facilitated through the services of a credit access business, a consumer must sign a written certification on a form adopted by finance commission rule stating that the consumer has no other outstanding debt from an extension of consumer credit in the form of a deferred presentment transaction.

(c) A credit access business may not obtain for a consumer
or assist a consumer in obtaining an extension of consumer credit in
the form of a deferred presentment transaction if the consumer
fails to provide the written certification required by Subsection
(b) or if the business has evidence in its possession indicating
that the consumer has an outstanding extension of consumer credit
in the form of a deferred presentment transaction that the credit
access business previously obtained for the consumer or assisted
the consumer in obtaining. This subsection does not prohibit a
credit access business from advancing additional funds under a
refinance otherwise permitted under this chapter.

(d) A credit access business that violates this section is
subject to a civil penalty in an amount not to exceed $1,000 for
each violation.

Sec. 393.705. ESTABLISHMENT OF CONSUMER’S INCOME;
REFERENCE AMOUNT. (a) A credit access business must require
documentation to establish a consumer’s income for purposes of this
subchapter. Acceptable forms of documentation include paper,
facsimile, or electronic copies of:

(1) a payroll document;
(2) a paycheck;
(3) a bank 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;
(7) a signed letter from the consumer’s employer at the
time the single-payment deferred presentment transaction or
multiple-payment deferred presentment transaction is sought;

(8) an executed certification on a form adopted by
finance commission rule that attests to the consumer's monthly or
annual income; or

(9) any other document approved by finance commission
rule.

(b) A credit access business shall retain a copy of the
documentation used to establish a consumer's income under
Subsection (a) according to the business's standard records
retention policy and any applicable rule or regulation establishing
a record retention period.

(c) A credit access business that relies in good faith on a
document presented by the consumer under Subsection (a) to
establish a consumer's income has complied with this section to the
extent the income established under that document meets the
applicable requirements under this subchapter.

(d) A credit access business that obtains for a consumer or
assists a consumer in obtaining an extension of consumer credit in
the form of a single-payment deferred presentment transaction or a
multiple-payment deferred presentment transaction through the
Internet or other electronic means may rely on nationally or
regionally recognized database reporting systems and may maintain a
record of the database reporting system results used to comply with
Subsections (a) and (b).

(e) For purposes of this subchapter, $28,000 is the initial
reference amount with respect to a consumer's income, and the
consumer credit commissioner shall adjust this amount annually in accordance with the Consumer Price Index.

Sec. 393.706. SINGLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION. (a) The amount advanced to a consumer 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, excluding fees, may not exceed:

(1) 25 percent of the consumer's gross monthly income, if the consumer's gross annual income is less than the reference amount; or

(2) 35 percent of the consumer's gross monthly income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(b) The term of an original or refinanced 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 less than 10 days or longer than 35 days.

(c) 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 four times, subject to Section 393.703.

(d) If a consumer who has not entered into an extended payment plan with the credit access business in the preceding 12
months refinances a single-payment deferred presentment transaction for the last time allowed under this subchapter:

(1) the credit access business must offer at least one extended payment plan to the consumer before initiating any debt collection activities;

(2) the consumer may request, prior to the offer required by Subdivision (1) being made, an extended payment plan at any time on or after the date the consumer refinances the deferred presentment transaction for the last time allowed under this subchapter and on or before the fifth day after the date on which that refinance must be repaid in full;

(3) to comply with the requirement of Subdivision (1), the credit access business shall send a written notice to the consumer disclosing the following:

(A) the amount due under the current terms of the extension of consumer credit if the consumer declines an extended payment plan;

(B) the amounts due on each of the installment dates of an extended payment plan; and

(C) the date by which the consumer must accept the extended payment plan in writing, which date shall be at least five days after the date the written notice is sent;

(4) the credit access business may not initiate debt collection activities unless:

(A) the consumer fails to accept the extended payment plan in writing on or before the deadline contained in the notice required by Subdivision (3);
(B) the consumer declines the extended payment plan; or

(C) the consumer fails to make a payment required by an extended payment plan that the consumer accepted; and

(5) if the consumer declines an extended payment plan that a credit access business is required to offer under Subdivision (1), the consumer must sign an extended payment plan waiver on a form prescribed by the finance commission.

(e) An extended payment plan required to be offered under Subsection (d) must comply with Section 393.708.

(f) A credit access business may offer a consumer an extended payment plan that provides the consumer with additional time to repay the debts obtained through a single-payment deferred presentment transaction, either before or after the consumer refinances the single-payment deferred presentment transaction for the fourth time, more than once in a 12-month period only if the credit access business does not assess additional fees under the extended payment plan and the credit access business fully describes the terms of the extended payment plan, including all due dates and the amount due on each due date, to the consumer before the consumer enters into the extended payment plan. An extended payment plan offered under this subsection is not required to comply with Section 393.708.

Sec. 393.707. MULTIPLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION. (a) The sum of all fees, principal, interest, and other amounts due under any scheduled payment 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:

(1) 10 percent of the consumer's gross monthly income, if the consumer's gross annual income is less than the reference amount; or

(2) 15 percent of the consumer's gross monthly income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(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 may not be payable by the consumer in more than 12 installments or have an original term of more than 180 days, and the loan agreement must specify the number, date, and total amount due with regard to each installment.

(c) An original or refinanced 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 must be payable on a fully amortizing, declining-principal-balance basis with substantially equal payments. If a credit access business precomputes its fees under a multiple-payment deferred presentment transaction and a consumer prepays in full the extension of consumer credit in that form, the credit access business shall refund any unearned fees to the consumer.

(d) The first installment 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 be due before the 10th day after the date the consumer enters into the loan agreement. An installment may not be due before the 14th day or after the 31st day after the date a previous installment is due.

(e) 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 be refinanced only one time, and the combined terms of the original extension of consumer credit and the refinanced extension of consumer credit may not exceed 365 days or include more than 24 installments.

(f) Notwithstanding Subsection (e), a credit access business may offer a consumer an extended payment plan in which the extension of consumer credit is extended beyond 365 days if the extended payment plan complies with Section 393.708 and if the credit access business fully describes the terms of the extended payment plan, including all due dates and the amount due on each due date, to the consumer before the consumer enters into the extended repayment plan.

Sec. 393.708. EXTENDED PAYMENT PLAN REQUIREMENTS. (a) This section applies to extended payment plans required to be offered under Sections 393.706(d) and 393.707.

(b) An extended payment plan must provide for payment in at least:

(1) four substantially equal installments, after
which the outstanding balance will be paid in full, with respect to a single-payment deferred presentment transaction; or

(2) two substantially equal installments added to the original and refinanced term of the extension of consumer credit, after which the outstanding balance, including only the fees that would have been due under the original extension of consumer credit, will be paid in full, with respect to a multiple-payment deferred presentment transaction.

(c) The period between installment payments on an extended payment plan may not be shorter than:

(1) 10 days, with respect to a single-payment deferred presentment transaction; or

(2) 30 days, with respect to a multiple-payment deferred presentment transaction.

(d) The first payment owed under an extended payment plan may not be due before the 10th day after the date the consumer requests an extended payment plan.

(e) A credit access business may not assess additional fees or assist a consumer in obtaining additional extensions of consumer credit if the consumer is paying an extension of credit under an extended payment plan.

(f) A consumer may pay in full a debt subject to an extended payment plan at any time without prepayment penalties.

(g) A person may not engage in debt collection for a debt subject to an extended payment plan if the consumer is in compliance with the extended payment plan.

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

Sec. 393.709. REFINANCES. (a) Any refinance of an extension of consumer credit in the form of a single-payment deferred presentment transaction or multiple-payment deferred presentment transaction 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 extended payment plan requirements under this subchapter, including the applicable income-based limitations under Section 393.706(a) or 393.707(a), except as otherwise provided by this chapter.

(b) The terms of a refinanced extension of consumer credit may be the same as or different from the terms of the original extension of consumer credit.

(c) A person may not use a device, subterfuge, or pretense to evade the refinance requirements and limitations imposed on a credit access business with respect to a single-payment deferred presentment transaction or multiple-payment deferred presentment transaction under this subchapter.

Sec. 393.710. RULES. The finance commission shall adopt any rules necessary to implement this subchapter.

SECTION 3. 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 4. This Act takes effect September 1, 2015.