By: Eltife S.B. No. 1650

A BILL TO BE ENTITLED
AN ACT
relating to credit services organizations and extensions of consumer credit, including extensions of consumer credit facilitated by credit services organizations.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 393.001, Finance Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a), (2-a), (3-a), (4-a), (5), (6), (7), and (8) to read as follows:
(1) "Commissioner" means the consumer credit commissioner.
(1-a) "Consumer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.
(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-a) "Deferred presentment transaction" means a deferred presentment transaction under Section 341.001, in connection with which the consumer is not required to provide real or personal property as security.
(4-a) "Finance commission" means the Finance Commission of Texas.
(5) "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.

(6) "Motor vehicle title loan" means a 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.

(7) "Office" means the Office of Consumer Credit Commissioner.

(8) "Service" means an act, conduct, or activity that is performed or to be performed for a consumer's benefit or that involves assisting a consumer in obtaining an extension of consumer credit, including:

(A) negotiating or closing a loan or other extension of consumer credit;

(B) issuing a guaranty, letter of credit, or other credit enhancement; and

(C) servicing an extension of consumer credit.

SECTION 2. Sections 393.201(b) and (c), Finance Code, are amended to read as follows:

(b) In addition to the notice required by Section 393.202, the contract must:

(1) contain the payment terms, including the total payments to be made by the consumer, whether to the organization or to another person;

(2) fully describe the services the organization shall perform for the consumer, including each guarantee and each promise of a full or partial refund and the estimated period for
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performing and completing all of the services, not to exceed 180 days;

(3) contain the address of the organization's principal place of business; and

(4) contain the name and address of the organization's agent in this state authorized to receive service of process.

(c) A contract with a credit access business[, 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
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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 to any third party; and

(6) contain the name and address of the office, the office's website address, [Office of Consumer Credit Commissioner] and the telephone number of the office's consumer helpline.

SECTION 3. Section 393.222(b), Finance Code, is amended to read as follows:

(b) The finance commission [Finance Commission of Texas] may adopt rules to implement this section.

SECTION 4. Section 393.223(a), Finance Code, is amended to read as follows:

(a) Before performing services described by Section 393.001(2-a) [393.221(1)], a credit access business must provide to a consumer a disclosure adopted by rule of the finance commission [Finance Commission of Texas] that discloses the following in a form prescribed by the commission:

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

(4) the name of the credit access business and any unique number assigned to the license issued to the business under Subchapter G.

SECTION 5. Section 393.224, Finance Code, is amended to read as follows:

Sec. 393.224. ADMINISTRATIVE PENALTY. The [consumer credit] commissioner, in accordance with rules adopted by the finance commission [Finance Commission of Texas], may assess an administrative penalty against a credit access business that knowingly and wilfully violates this subchapter or a rule adopted under this subchapter in the manner provided by Subchapter F, Chapter 14.

SECTION 6. Subchapter D, Chapter 393, Finance Code, is amended by adding Section 393.308 to read as follows:

Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN LOANS OR EXTENSIONS OF CREDIT. (a) A credit services organization may not obtain 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
results in any portion of the fee charged by the credit services organization being passed to a lender.

(b) A credit services organization may not charge or receive 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) The finance commission may adopt rules to implement this section.

SECTION 7. Section 393.602, Finance Code, is amended to read as follows:

Sec. 393.602. APPLICABILITY. (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].

(b) A credit access business may assess fees as agreed to between the parties for its 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 as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed. A credit access business may not charge 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) Notwithstanding Subsection (a) or (b), a credit services organization that is not obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit may 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) A person may not use a device, subterfuge, or pretense to evade the application of the provisions of this chapter that apply to a credit access business. A lawful transaction governed under another statute, including Title 1, 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.

SECTION 8. 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. give the approximate location from which the business is to be conducted;
3. identify the business's principal parties in interest;
4. contain the name, physical address, and telephone number of all third-party lender organizations:
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(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

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

SECTION 9. Section 393.622, Finance Code, is amended to read as follows:

Sec. 393.622. RULES. (a) The finance commission may:

(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 [the quarterly reporting] by a licensed credit access business under Section 393.627 [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 [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.

(c) Nothing in Section 393.601(c) or Sections
393.602-393.628 [393.601-393.628] grants authority to the finance
commission or the office [Office of Consumer Credit Commissioner]
to establish a limit on the fees charged by a credit access
business.

SECTION 10. Subchapter G, Chapter 393, Finance Code, is
amended by adding Sections 393.6221 and 393.6222 to read as
follows:

Sec. 393.6221. EXAMINATION OR INVESTIGATION BY
COMMISSIONER; OATHS. (a) At the times the commissioner considers
necessary, the commissioner or the commissioner's representative
shall:

(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) The credit access business shall:
(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) During an examination or an investigation, the commissioner or the commissioner's representative may 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) A credit access business shall 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) A credit access business shall 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) A record described by Subsection (a) must be prepared in accordance with accepted accounting practices.

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

SECTION 11. Section 393.625, Finance Code, is 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 military borrower [member of the United States military or a dependent of a member of the United States military] or that the business assisted a military borrower [that person] in obtaining must comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

SECTION 12. Section 393.626, Finance Code, is amended to read as follows:

Sec. 393.626. DEBT COLLECTION PRACTICES. (a) A violation of Chapter 392 by a credit access business with respect to an extension of consumer credit [described by Section 393.602(a)] constitutes a violation of this subchapter.

(b) With respect to an extension of consumer credit, a credit access business must 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. A violation of those provisions is a violation of this subchapter.

SECTION 13. Section 393.627, Finance Code, is amended to read as follows:

Sec. 393.627. REPORTS [QUARTERLY REPORT] TO COMMISSIONER. (a) 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; and
9. [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.

(b) A credit access business shall 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) All information submitted by a credit access business to
the commissioner for inclusion in a report under this section is
confidential.

(d) The commissioner shall 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. Subchapter G, Chapter 393, Finance Code, is amended by adding Section 393.6271 to read as follows:

Sec. 393.6271. REPORT ON HIGH-COST LENDING. (a) Not later than December 31 of each year, the commissioner shall study and publish on the office'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) In coordination with the finance commission's administration of the Texas Financial Education Endowment, the commissioner may contract with public and private entities to carry out research for the report required by this section.

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

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

(b) The commissioner shall remit to the comptroller amounts received under Subsection (a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Money in the account may be spent by the finance commission only for the purposes provided by this section. Amounts in the account may 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
collection the investment of all the assets of the account
rather than a single investment [the same manner as funds of the
Employees Retirement System of Texas], and the interest from those
investments shall be deposited to the credit of the account.

(b-1) The expenses of managing the investments shall be paid
from the account.

SECTION 16. Subchapter G, Chapter 393, Finance Code, is
amended by adding Sections 393.629 through 393.632 to read as
follows:

Sec. 393.629. CHARGES FOR COLLECTING DEBT. 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.
A credit access business may not threaten or pursue 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. 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) Each extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining must meet all the requirements applicable to the original extension of consumer credit, including the disclosure and contract requirements described by Sections 393.105, 393.201, 393.202, 393.203, and 393.223.

(b) 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. The finance commission shall adopt any rules necessary to implement Sections 393.629-393.631.

SECTION 17. Sections 393.221 and 393.601, Finance Code, are repealed.

SECTION 18. The changes in law made by this Act apply only to an extension of consumer credit, including an extension of consumer credit described by Section 393.631, Finance Code, as
added by this Act, 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. 

SECTION 19. This Act takes effect September 1, 2015.