

## **BILL ANALYSIS**

C.S.H.B. 2593

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Pensions, Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Consumers who take out certain loans using credit services organizations often find themselves caught in a cycle of debt that results in the assessment of exorbitant charges for a single loan that is renewed multiple times. C.S.H.B. 2593 seeks to address the problem of excess charges on certain loans by placing restrictions on the amounts, fees, renewals, and payment of deferred presentment transactions and certain loans secured by motor vehicle certificates of title and by referring to brokering certain types of loans by obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle certificate of title loan as credit access business.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2593 amends the Finance Code to require an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle certificate of title loan to be payable in two-week or one-month increments or payable in a single payment. The bill prohibits a credit access business from obtaining or assisting in obtaining for a consumer an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle certificate of title loan for which partial payment of the principal amount is not accepted. The bill caps the cash advanced under an extension of consumer credit in the form of a deferred presentment transaction at 25 percent of the borrower's gross monthly family income, if the borrower's gross monthly family income is not more than 100 percent of the federal poverty level for a family of four or 32 percent of the borrower's gross monthly family income, if the borrower's gross monthly family income exceeds 100 percent of the federal poverty level for a family of four. The bill caps the cash advanced under an extension of consumer credit in the form of a motor vehicle certificate of title loan at the lesser of, as applicable, either three percent of the borrower's gross annual family income, if the borrower's gross annual family income is not more than 100 percent of the federal poverty level for a family of four or five percent of the borrower's gross annual family income, if the borrower's gross annual family income exceeds 100 percent of the federal poverty level for a family of four, or 70 percent of the retail value of the motor vehicle. The bill requires a credit access business to keep a record of the document used to establish a borrower's family income. The bill authorizes a credit access business to use an affidavit signed by the borrower to establish the borrower's family income if a paycheck or other documentation establishing income is unavailable. The bill requires an affidavit used for such purposes to state in bold letters the applicable advance limits as specified.

C.S.H.B. 2593 establishes that an extension of consumer credit that is made by a person to a consumer not later than the seventh day after a previous extension of consumer credit made by the same person is paid by the consumer is considered to be a renewal or refinance of the previous extension of credit. The bill prohibits an extension of consumer credit in the form of a

motor vehicle certificate of title loan from being refinanced or renewed or payable in installments more than five times, if the debt is payable monthly or has a term of one month, or eight times, if the debt is payable biweekly, or has a term of two weeks. The bill establishes that the charging of a fee on late payment of the debt or on failure to make a payment is considered to be a refinance of the extension of consumer credit. The bill authorizes a credit access business to obtain for a consumer or assist a consumer in obtaining an extended repayment plan for the extension of consumer credit if the debt is not paid in full after the applicable number of refinances, renewals, or installment payments and prohibits the business from charging the consumer fees in connection with the making of payments of principal and interest under an extended repayment plan. The bill limits a single consumer to entering into only one extended repayment plan in a 14-month period with respect to an extension of consumer credit in the form of a motor vehicle certificate of title loan. The bill establishes that a lender has forfeited any claim to the principal amount of the debt and is required to return the certificate of title to the consumer if a credit access business enters into an agreement to obtain or assist in the obtaining of an extension of consumer credit with a consumer who during the preceding 14 months has entered into an extended repayment plan with respect to the debt and obtains for the consumer or assists the consumer in obtaining extensions of consumer credit in the form of refinances, renewals, or installment payments of the extension up to the maximum limits.

C.S.H.B. 2593 requires an extended repayment plan to provide for four equal or nearly equal payments of principal and interest, with all principal and interest to be paid in full in the fourth payment. The bill requires the intervals between payments to be the same as the initial term of the original extension of consumer credit. The bill establishes that a borrower is considered to have defaulted if the borrower fails to make any scheduled payment under the extended repayment plan. The bill authorizes a credit access business to seek reimbursement from a consumer on behalf of a lender for reasonable and documented costs and fees in association with the sale of a vehicle surrendered in connection with the consumer's default on a debt, except to the extent limited or prohibited by rule of the Finance Commission of Texas. The bill authorizes the finance commission by rule to limit or prohibit unreasonable fees associated with the cost of selling such a vehicle. The bill requires the proceeds of the sale of a motor vehicle, the certificate of title of which is given as security for an extension of consumer credit, to satisfy all outstanding and unpaid indebtedness under that extension of credit and establishes that the borrower is not liable for any deficiency resulting from the sale. The bill requires the lender to pay to the borrower any surplus arising from the sale. The bill authorizes the finance commission by rule to require that an automobile club membership offer made in connection with an extension of consumer credit in the form of a motor vehicle certificate of title loan be accompanied by a disclaimer plainly stating the benefits and limitations of the offer and that the customer's signature is required to be present on any contract documenting the customer's agreement to purchase an automobile club membership. The bill makes it a violation to fail to return the motor vehicle certificate of title after an extension of consumer credit is paid in full.

C.S.H.B. 2593 prohibits an extension of consumer credit in the form of a deferred presentment transaction from being refinanced or renewed or payable in installments more than four times, if the debt is payable monthly or has a term of one month, or six times, if the debt is payable biweekly, or has a term of two weeks. The bill establishes that the charging of a fee on late payment of the debt or on failure to make a payment is considered to be a refinance of the extension of consumer credit.

C.S.H.B. 2593 authorizes a credit access business to obtain for a consumer or assist a consumer in obtaining an extended repayment plan if the extension of consumer credit is not paid in full after the applicable number of refinances, renewals, or installment payments, but prohibits a business from charging the consumer fees in connection with the making of payments of principal and interest to a lender under an extended repayment plan. The bill limits a single consumer to entering one extended repayment plan in a 12-month period with respect to an extension of consumer credit in the form of a deferred presentment transaction. The bill

establishes that the person making the cash advance has forfeited any claim to the principal amount of the debt if a credit access business enters into an agreement to obtain or assist in the obtaining of an extension of consumer credit with a consumer who during the preceding 12 months has entered into an extended repayment plan with respect to the debt and obtains for the consumer or assists the consumer in obtaining extensions of consumer credit in the form of refinances, renewals, or installment payments of the debt up to the maximum limit. The bill requires an extended repayment plan to provide for four equal or nearly equal payments of principal and interest, with all principal and interest to be paid in full in the fourth payment. The bill requires the intervals between payments to be the same as the initial term of the original extension of consumer credit. The bill establishes that a borrower is considered to have defaulted if the borrower fails to make any scheduled payment under the extended repayment plan.

C.S.H.B. 2593 defines "commissioner," "credit access business," "finance commission," "motor vehicle certificate of title loan," and "office," and defines "deferred presentment transaction" by reference. The bill makes its provisions applicable only to an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle certificate of title loan that a credit access business obtains for a consumer or that a credit access business assists a consumer in obtaining.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2593 differs from the original by capping the cash advanced under an extension of consumer credit in the form of a deferred presentment transaction at 25 percent or 32 percent of the borrower's gross monthly family income depending on the amount of that income with respect to the federal poverty level for a family of four, whereas the original prohibits an authorized lender from entering into a deferred presentment transaction in which the amount of cash advanced exceeds the lesser of \$2,000 or 35 percent of the borrower's gross monthly income and prohibits a credit services organization from obtaining, facilitating or otherwise assisting in obtaining for a consumer an extension of credit in the form of a deferred presentment transaction in which the amount of cash advanced exceeds the lesser of that dollar amount or percentage of gross monthly income.

C.S.H.B. 2593 differs from the original by capping the cash advanced under an extension of consumer credit in the form of a motor vehicle certificate of title loan at the lesser of, as applicable, three percent or five percent of the borrower's gross monthly family income depending on the amount of that income with respect to the federal poverty level for a family of four or 70 percent of the vehicle's retail value, whereas the original prohibits an authorized lender from making a motor vehicle certificate of title loan in an amount exceeding the lesser of \$2,500 or 50 percent of the borrower's gross monthly income and prohibits a credit services organization from obtaining, facilitating, or otherwise assisting in obtaining for a consumer an extension of consumer credit in which a motor vehicle certificate of title is given by the consumer as security for the debt that is in an amount exceeding the lesser of that dollar amount or percentage of gross monthly income.

C.S.H.B. 2593 contains provisions not included in the original requiring a credit access business to keep a record of the document used to establish a borrower's family income, authorizing the use of a signed affidavit to establish the borrower's family income, if a paycheck or other documentation establishing income is unavailable, and requiring such affidavit to state applicable advance limits.

C.S.H.B. 2593 contains a provision not included in the original making its provisions apply only

to an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle certificate of title loan that a credit access business obtains for a consumer or that a credit access business assists a consumer in obtaining.

C.S.H.B. 2593 differs from the original by limiting the extension of consumer credit in the form of a motor vehicle certificate of title loan or in the form of a deferred presentment transaction from being refinanced or renewed or payable in installments more than a certain amount of times, whereas the original limits the number of consecutive reauthorizations, in which a borrower refinances or pays all or part of the finance charges and advance of a deferred presentment transaction or of a motor vehicle certificate of title loan, that a lender may make of a deferred presentment transaction or of a motor vehicle certificate of title loan and the number of reauthorizations a credit services organization may make of a deferred presentment transaction or of an extension of consumer credit in which a motor vehicle certificate title is given as a security for the debt.

C.S.H.B. 2593 omits provisions included in the original relating to the acceptance of partial payments by an authorized lender of an amount owed under a deferred presentment transaction or of a motor vehicle certificate of title loan and the acceptance of partial payments by a credit services organization for an extension of consumer credit in the form of a deferred presentment transaction or in which a motor vehicle certificate title is given as a security for the debt, in which provisions the lender or credit services organization is prohibited from charging additional fees or charges on payment of a specified percentage or more of the principal amount.

C.S.H.B. 2593 contains provisions not included in the original requiring an extension of consumer credit to be payable in two-week or one-month increments or payable in a single payment.

C.S.H.B. 2593 contains a provision not included in the original establishing that an extension of consumer credit that is made by a person to a consumer not later than the seventh day after a previous extension is considered to be a renewal or refinance of the previous extension of credit. The substitute contains provisions not included in the original establishing that charging a fee on late payment of the debt or on failure to make a payment is considered a refinance of the extension of consumer credit, authorizing a credit access business to obtain for a consumer or assist a consumer in obtaining an extended repayment plan under certain conditions and prohibiting the business from charging the consumer fees in connection with the making of payments under the extended repayment plan, limiting a single consumer to entering into only one extended repayment plan in a 14-month period with respect to an extension of consumer credit either in the form of a motor vehicle certificate of title loan or in a 12-month period with respect to a deferred presentment transaction, requiring an extended repayment plan to provide for four equal or nearly equal payments with all principal and interest paid in full in the fourth payment, and establishing other restrictions on extensions of credit in either form.

C.S.H.B. 2593 contains definitions not included in the original defining "commissioner," "credit access business," "finance commission," and "office." The substitute omits a definition included in the original defining "consecutive reauthorization." The substitute differs from the original by making a nonsubstantive change to the definition for "motor vehicle certificate of title loan."