

BILL ANALYSIS

C.S.H.B. 2594
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some credit services organizations make payday or auto title loans to consumers outside the scope of the regulatory authority of the Office of Consumer Credit Commissioner. Interested parties assert that the lack of licensing and regulation of these businesses hinders the state's ability to collect consumer data or properly investigate and respond to complaints in relation to these types of loans.

C.S.H.B. 2594 seeks to address these matters by licensing and regulating certain types of loans that obtain for a consumer or assist 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, to be referred to 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 SECTIONS 2 and 4 of this bill.

ANALYSIS

C.S.H.B. 2594 amends the Finance Code to require a contract with a credit access business for obtaining 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 to contain the following:

- a statement that there is no prepayment penalty;
- a statement that a credit access business must comply with statutory provisions governing debt collection and the federal Fair Debt Collection Practices Act with respect to an extension of consumer credit;
- 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;
- a statement that a credit access business is required to comply, to the extent applicable, with federal laws relating to terms of consumer credit and any regulations adopted under those laws with respect to an extension of consumer credit;
- a disclosure regarding the lender from whom the extension of consumer credit is obtained, the interest paid or to be paid to the lender, and the specific fees that will be paid to the credit access business for the business's services; and
- the name and address of the Office of Consumer Credit Commissioner and the telephone number of the office's consumer helpline.

C.S.H.B. 2594 makes its provisions relating to the licensing and regulation of certain credit services organizations applicable 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 a deferred presentment transaction or a motor vehicle certificate of title loan. The bill makes any usury violation by a lender with respect to such an extension of consumer credit subject to statutory penalties and remedies for interest under the Texas Credit Title. The bill establishes that the fees charged by a credit access business, in connection with a determination of usury, do not constitute interest. The bill prohibits a person from using a device, subterfuge, or pretense to evade the application of the licensing and regulation of certain credit services organizations.

C.S.H.B. 2594 requires a credit services organization to obtain a license for each location at which the organization operates as a credit access business in 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. The bill requires the application for a license to be under oath; give the approximate location from which the business is to be conducted; identify the business's principal parties in interest; contain the name, physical address, and telephone number of all third-party lender organizations with which the business contracts to provide services relating to extensions of consumer credit in the form of a deferred presentment transaction or a motor vehicle certificate of title loan or from which the business arranges such extensions of consumer credit; and contain other relevant information that the consumer credit commissioner requires for the findings required under the bill's provisions. The bill requires the applicant, on the filing of one or more license applications, to pay to the commissioner an investigation fee of \$200 and specifies that a separate investigation fee is not required for multiple license applications, except for good cause as determined by the Finance Commission of Texas. The bill requires the applicant, on the filing of each license application, to pay to the commissioner for the license's year of issuance a license fee in an amount determined by the commission under applicable state law.

C.S.H.B. 2594 requires an applicant, if the commissioner requires, to file with the application a bond issued by a surety company qualified to do business as a surety in Texas in an amount satisfactory to the commissioner that does not exceed the lesser of \$50,000 for the first license and \$25,000 for each additional license or \$2,500,000. The bill requires the bond to be in favor of the state for the state's use and the use of a person who has a cause of action against the license holder. The bill requires the bond to be conditioned on the license holder's faithful performance and rules adopted under the bill's provisions and on the payment of all amounts that become due to the state or another person during the calendar year for which the bond is given. The bill prohibits the aggregate liability of a surety to all persons damaged by the license holder's violation of the bill's provisions from exceeding the amount of the bond and specifies that a credit access business that files a bond is not required to file a bond under provisions governing surety bonds and surety accounts of credit services organizations.

C.S.H.B. 2594 requires the commissioner, on the filing of an application and a bond, if required, and on payment of the required fees, to conduct an investigation to determine whether to issue the license. The bill requires the commissioner to approve the application and issue to the applicant a license to operate as a credit access business if the commissioner finds that the applicant's financial responsibility, experience, character, and general fitness are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly and that the applicant has net assets of at least \$25,000 available for the operation of the business. The bill requires the commissioner to notify the applicant if the commissioner does not make such a finding.

C.S.H.B. 2594 entitles an applicant, if the applicant requests a hearing on an application not later than the 30th day after the date of notification from the commissioner that the applicant did not meet the eligibility requirements, to a hearing not later than the 60th day after the date of the request. The bill requires the commissioner to approve or deny an application not later than the 60th day after the date a completed application is filed with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The bill authorizes the commissioner and the applicant to agree to a later date in writing. The bill

requires the commissioner upon denying an application to retain the investigation fee and to return to the applicant the license fee submitted with the application.

C.S.H.B. 2594 requires a credit access business license to state the name of the license holder and the address of the office from which the business is to be conducted. The bill prohibits a license holder from conducting business under a name other than the name stated on the license or at a location other than the address stated on the license, except that a license holder is not required to have an office in Texas, is authorized to operate using e-commerce methods, and is authorized to use remote closing agents. The bill requires a license holder to display a license at the place of business provided on the license and specifies that this requirement may be satisfied by displaying the license on the business's Internet website with respect to business conducted through the Internet.

C.S.H.B. 2594 requires a license holder to maintain net assets used or readily available for use in conducting the business of each of the offices for which a license is held in an amount not less than the lesser of \$25,000 for each office or \$2,500,000 in the aggregate. The bill requires a license holder, not later than December 1, to pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined by the commission under applicable state law. The bill establishes that if the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of that day or December 31 of the last year for which an annual fee was paid.

C.S.H.B. 2594 authorizes the commissioner, after notice and a hearing, to suspend or revoke a license if the commissioner finds that the license holder failed to pay a required fee or another charge imposed by the commissioner; the license holder, knowingly or without due care, violated the law relating to credit services organizations or a rule adopted or order issued under that law; or a fact or condition exists that, if it had existed or had been known to exist at the time of the original license application, clearly would have justified the denial of the application. The bill authorizes the commissioner, if in a three-year period the commissioner suspends or revokes the licenses of five or more credit access businesses owned or controlled by the same person, to suspend or revoke the licenses of all credit access businesses owned or controlled by that person. The bill requires the commissioner's decision on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision to be filed in the commissioner's public records.

C.S.H.B. 2594 authorizes the commissioner to reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license. The bill authorizes a license holder to surrender a license by delivering to the commissioner the license and a written notice of the license's surrender. The bill specifies that the suspension, revocation, or surrender of a license does not affect the obligation of a contract between the license holder and a consumer entered into before the revocation, suspension, or surrender and establishes that a surrender does not affect the license holder's civil or criminal liability for an act committed before surrender.

C.S.H.B. 2594 requires a license holder to give written notice to the commissioner before the 30th day before the date the license holder moves an office from the location provided on the license and requires the commissioner to amend a license holder's license accordingly. The bill authorizes a license to be transferred or assigned only with the commissioner's approval.

C.S.H.B. 2594 requires the Office of Consumer Credit Commissioner to administer the licensing and regulation of credit services organizations performing services as a credit access business. The bill authorizes the Finance Commission of Texas to adopt rules necessary to enforce and administer the bill's provisions, adopt rules with respect to the quarterly reporting by a licensed credit access business of summary business information relating to extensions of consumer credit

in the form of a deferred presentment transaction or a motor vehicle certificate of title loan, and adopt rules with respect to periodic examination by the office relating to those extensions of consumer credit, including rules related to charges for defraying the reasonable cost of conducting the examinations.

C.S.H.B. 2594 authorizes the finance commission to adopt rules to allow the consumer credit 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 those services or from which the business arranges those extensions of consumer credit. The bill specifies that a contract or information obtained by the commissioner is considered proprietary and confidential to the respective parties to the contract, and is not subject to disclosure under the state open records law. The bill prohibits the commission, in adopting rules, from establishing limits on the fees charged by a credit access business and from authorizing the commissioner to establish such limits.

C.S.H.B. 2594 prohibits a credit access business or a representative of the business from providing or advertising the services of the business if the business is not licensed. The bill prohibits a credit access business from advertising on the premises of a nursing facility, assisted living facility, group home, intermediate care facility for persons with mental retardation, or other similar facility subject to regulation by the Department of Aging and Disability Services and authorizes the commission to adopt rules to implement this prohibition.

C.S.H.B. 2594 requires an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle certificate of title loan that is obtained by a credit access business for a member of the United States military or a military dependent or that the business assisted that person in obtaining to comply with certain federal laws relating to terms of consumer credit and any regulations adopted under those laws, to the extent applicable.

C.S.H.B. 2594 specifies that a violation of statutory provisions governing debt collection by a credit access business with respect to an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle certificate of title loan constitutes a violation of the statutory provisions governing the licensing and regulation of credit access businesses.

C.S.H.B. 2594 requires a credit access business to 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 in the form of a deferred presentment transaction or a motor vehicle certificate of title loan during the preceding quarter:

- the number of consumers for whom the business obtained or assisted in obtaining those extensions of consumer credit;
- the number of those extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;
- the number of refinancing of the extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;
- the number of consumers refinancing the extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;
- the number of consumers refinancing more than once the extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;
- the average amount of the extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;
- the total amount of fees charged by the business for obtaining or assisting in obtaining those extensions of consumer credit;
- the number of vehicles surrendered under the terms of an extension of consumer credit in

the form of a motor vehicle certificate of title loan obtained by the business or that the business assisted a consumer in obtaining;

- the average number of extensions of consumer credit obtained by consumers as a result of entering into the extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining; and
- any related information the commissioner determines necessary.

C.S.H.B. 2594 requires each license holder, as part of the licensing fee and procedures, to pay to the commissioner an annual assessment to improve consumer credit, financial education, and asset-building opportunities in Texas. The bill prohibits the annual assessment from exceeding \$200 for each license holder as specified by the finance commission. The bill requires the Texas Financial Education Endowment to be administered by the commission to support statewide financial education and consumer credit building activities and programs, including production and dissemination of approved financial education materials at licensed locations; advertising, marketing, and public awareness campaigns to improve the credit profiles and credit scores of consumers in Texas; school and youth-based financial literacy and capability; credit building and credit repair; financial coaching and consumer counseling; bank account enrollment and incentives for personal savings; and other consumer financial education and asset-building initiatives as considered appropriate by the commission.

C.S.H.B. 2594 authorizes the commission, in implementing these provisions relating to financial education and consumer credit, to solicit gifts, grants, and donations for that purpose and to partner with other state agencies and entities. The bill requires the finance commission to adopt rules to administer these provisions relating to financial education and consumer credit.

C.S.H.B. 2594 includes the bill's provisions relating to the licensing and regulation of certain credit services organizations among the provisions that the commissioner is required to enforce, the provisions for which the finance commission is required to establish reasonable and necessary fees for carrying out the commissioner's powers and duties and for which the commission by rule is required to set licensing and examination fees, and the provisions subject to the commissioner's investigative and enforcement authority.

C.S.H.B. 2594 adds information or material obtained by the commissioner about a credit services organization licensed to do business as a credit access business to the information and material relating to license holders that is made confidential and protected from disclosure. The bill requires the commissioner to assess an administrative penalty against a person who knowingly and wilfully violates or causes a violation of the provisions for licensing and regulating credit access businesses or a rule adopted under those provisions. The bill adds a violation, or the causing of a violation, of those licensing and regulation provisions to the scope of provisions authorizing the commissioner to order restitution to an injured party. The bill adds a violation of the bill's provisions relating to the licensing and regulation of certain credit services organizations to the scope of provisions authorizing the commissioner to accept assurance of voluntary compliance from a person who is engaging or has engaged in a violation of an act or practice.

C.S.H.B. 2594 makes conforming changes and defines "commissioner," "credit access business," "finance commission," "motor vehicle certificate of title loan," and "office" and defines "deferred presentment transaction" by reference.

EFFECTIVE DATE

January 1, 2012.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2594 contains a provision not included in the original setting out additional information a contract with a credit access business is required to contain.

C.S.H.B. 2594 contains provisions not included in the original defining "credit access business," "deferred presentment transaction," "finance commission," "motor vehicle certificate of title loan," and "office" for purposes of provisions relating to the licensing and regulation of a credit services organization operating as a credit access business.

C.S.H.B. 2594 differs from the original by requiring a credit services organization to obtain a license for each location at which the organization operates as a credit access business to obtain for a consumer or assist a consumer in obtaining an extension of credit in the form of a deferred presentment transaction or a motor vehicle certificate of title loan, whereas the original requires a credit services organization to register with the consumer credit commissioner before conducting substantially the same type of business in Texas.

C.S.H.B. 2594 differs from the original by making its provisions applicable 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 a deferred presentment transaction or a motor vehicle certificate of title loan, whereas the original, in corresponding provisions, makes its provisions applicable to a credit services organization that assists in obtaining for a consumer an extension of consumer credit, other than a purchase money security interest loan, in which a motor vehicle certificate of title is given by the consumer as security for the debt or an extension of consumer credit in the form of a deferred presentment transaction.

C.S.H.B. 2594 contains provisions not included in the original relating to the licensing requirement, including provisions for the license application; the filing of a bond with such application; investigation of the application; grounds for approving or denying the application; disposition of fees on denial of application; required contents of the license; required display of the license; minimum assets required for the license; annual license fee; expiration of license on failure to pay that fee; grounds for suspension or revocation of license; reinstatement; issuing a new license after revocation; surrender of license and the effects of a suspension, revocation, or surrender; office relocation; and transfer or assignment of license.

C.S.H.B. 2594 omits provisions included in the original relating to a consumer credit organization's required application for registration with the consumer credit commissioner to conduct certain business in Texas, updating registration information, inspecting the registration application, and the fee associated with filing the registration.

C.S.H.B. 2594 contains a provision not included in the original requiring the Office of Consumer Credit Commissioner to administer the licensing and regulation of a credit services organization operating as a credit access business.

C.S.H.B. 2594 differs from the original by authorizing the Finance Commission of Texas to adopt rules relating to the licensing and regulation of a credit services organization operating as a credit access business, whereas the original authorizes the commission by rule to establish procedures to facilitate the registration and collection of fees relating to the registration of a credit services organization.

C.S.H.B. 2594 differs from the original by prohibiting the providing or advertising of services if the business whose services are advertised is not licensed and by placing restrictions on off-site advertising, whereas the original prohibits the providing or advertising of services if the organization whose services are advertised is not registered.

C.S.H.B. 2594 contains a provision not included in the original requiring an applicable extension of consumer credit that is obtained by a credit access business for a member of the United States military or a dependent or that the business assisted that person in obtaining to comply with

certain federal laws, to the extent applicable.

C.S.H.B. 2594 contains a provision not included in the original specifying that a violation of statutory provisions governing debt collection by a credit access business with respect to an applicable extension of consumer credit constitutes a violation under the bill's provisions.

C.S.H.B. 2594 differs from the original by requiring a credit access business to report certain information to the commissioner on a quarterly basis, whereas the original requires a credit services organization to report different information to the commissioner on an annual basis.

C.S.H.B. 2594 contains a provision not included in the original requiring each license holder to pay to the commissioner a maximum annual assessment to improve consumer credit, financial education, and credit building opportunities in Texas. The substitute contains provisions not included in the original requiring administration of the Texas Financial Education Endowment to support statewide financial education and consumer credit building activities and programs and authorizing the commission to solicit gifts, grants, and donations for that purpose and to partner with other state agencies and entities.

C.S.H.B. 2594 omits a provision included in the original requiring the commissioner to maintain a list of registered credit services organizations and to make the list available to interested persons and to the public.

C.S.H.B. 2594 contains a provision not included in the original requiring the commissioner to assess an administrative penalty against a person who knowingly and wilfully violates or causes a violation of the provisions relating to the licensing and regulation of a credit services organization operating as a credit access business or a rule adopted under those provisions, whereas the original authorizes the commissioner to assess an administrative penalty for a knowing or wilful violation of the provisions relating to the registration of a credit services organization with the commissioner.

C.S.H.B. 2594 differs from the original by making its provisions effective January 1, 2012, whereas the original makes its provisions effective on that date, except as otherwise provided by its provisions.