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H.B. No. 2594

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the licensing and regulation of certain credit services
3 organizations and the regulation of certain extensions of consumer
4 credit obtained by those organizations or with regard to which the
5 organizations provide assistance; providing an administrative
6 penalty.

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

8 SECTION 1. Section 393.201, Finance Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) A contract with a credit access business, as defined by
11 Section 393.601, for the performance of services described by
12 Section 393.602(a) must, in addition to the requirements of
13 Subsection (b) and Section 393.302:

14 (1) contain a statement that there is no prepayment
15 penalty;

16 (2) contain a statement that a credit access business
17 must comply with Chapter 392 and the federal Fair Debt Collection
18 Practices Act (15 U.S.C. Section 1692 et seq.) with respect to an
19 extension of consumer credit described by Section 393.602(a);

20 (3) contain a statement that a person may not threaten
21 or pursue criminal charges against a consumer related to a check or
22 other debit authorization provided by the consumer as security for
23 a transaction in the absence of forgery, fraud, theft, or other
24 criminal conduct;

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

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

8 (6) "Office" means the Office of Consumer Credit
9 Commissioner.

10 Sec. 393.602. APPLICABILITY. (a) This subchapter applies
11 only to a credit services organization that obtains for a consumer
12 or assists a consumer in obtaining an extension of consumer credit
13 in the form of:

14 (1) a deferred presentment transaction; or

15 (2) a motor vehicle title loan.

16 (b) Any usury violation by a lender with respect to an
17 extension of consumer credit described by Subsection (a) is subject
18 to Chapter 349. In connection with a determination of usury, the
19 fees charged by a credit access business conducting business under
20 this chapter do not constitute interest.

21 (c) A person may not use a device, subterfuge, or pretense
22 to evade the application of this subchapter. A lawful transaction
23 governed under another statute, including Title 1, Business &
24 Commerce Code, does not violate this subsection and may not be
25 considered a device, subterfuge, or pretense to evade the
26 application of this subchapter.

27 Sec. 393.603. LICENSE REQUIRED. A credit services

1 organization must obtain a license under this subchapter for each
2 location at which the organization operates as a credit access
3 business in performing services described by Section 393.602(a).

4 Sec. 393.604. APPLICATION FOR LICENSE. (a) An application
5 for a license under this subchapter must:

6 (1) be under oath;

7 (2) give the approximate location from which the
8 business is to be conducted;

9 (3) identify the business's principal parties in
10 interest;

11 (4) contain the name, physical address, and telephone
12 number of all third-party lender organizations with which the
13 business contracts to provide services described by Section
14 393.602(a) or from which the business arranges extensions of
15 consumer credit described by Section 393.602(a); and

16 (5) contain other relevant information that the
17 commissioner requires for the findings required under Section
18 393.607.

19 (b) On the filing of one or more license applications, the
20 applicant shall pay to the commissioner an investigation fee of
21 \$200. Except for good cause as determined by the finance
22 commission, a separate investigation fee is not required for
23 multiple license applications.

24 (c) On the filing of each license application, the applicant
25 shall pay to the commissioner for the license's year of issuance a
26 license fee in an amount determined as provided by Section 14.107.

27 Sec. 393.605. BOND. (a) If the commissioner requires, an

1 applicant for a license under this subchapter shall file with the
2 application a bond that is:

3 (1) in an amount satisfactory to the commissioner that
4 does not exceed the lesser of:

5 (A) \$10,000 for the first license and \$10,000 for
6 each additional license; or

7 (B) \$2,500,000; and

8 (2) issued by a surety company qualified to do
9 business as a surety in this state.

10 (b) The bond must be in favor of this state for the use of
11 this state and the use of a person who has a cause of action under
12 this subchapter against the license holder.

13 (c) The bond must be conditioned on:

14 (1) the license holder's faithful performance under
15 this subchapter and rules adopted under this subchapter; and

16 (2) the payment of all amounts that become due to this
17 state or another person under this subchapter during the calendar
18 year for which the bond is given.

19 (d) The aggregate liability of a surety to all persons
20 damaged by the license holder's violation of this subchapter may
21 not exceed the amount of the bond.

22 (e) A credit access business that files a bond under this
23 section is not required to file a bond under Subchapter E.

24 (f) A credit access business, instead of obtaining a surety
25 bond, may satisfy the requirements of this section by depositing an
26 amount described by Subsection (a)(1) in a surety account held in
27 trust at a federally insured bank or savings association located in

1 this state. The name of the depository, trustee, and account number
2 of the surety account must be filed with the office.

3 Sec. 393.606. INVESTIGATION OF APPLICATION. On the filing
4 of an application and a bond, if required under Section 393.605, and
5 on payment of the required fees, the commissioner shall conduct an
6 investigation to determine whether to issue the license.

7 Sec. 393.607. APPROVAL OR DENIAL OF APPLICATION. (a) The
8 commissioner shall approve the application and issue to the
9 applicant a license to operate as a credit access business for
10 purposes of engaging in the activity to which this subchapter
11 applies if the commissioner finds that:

12 (1) the financial responsibility, experience,
13 character, and general fitness of the applicant are sufficient to:

14 (A) command the confidence of the public; and

15 (B) warrant the belief that the business will be
16 operated lawfully and fairly, within the purposes of this
17 subchapter; and

18 (2) the applicant has net assets of at least \$25,000
19 available for the operation of the business as determined in
20 accordance with Section 393.611.

21 (b) If the commissioner does not find the eligibility
22 requirements of Subsection (a) have been met, the commissioner
23 shall notify the applicant.

24 (c) If an applicant requests a hearing on the application
25 not later than the 30th day after the date of notification under
26 Subsection (b), the applicant is entitled to a hearing not later
27 than the 30th day after the date of the request.

1 (d) The commissioner shall approve or deny the application
2 not later than the 30th day after the date of the filing of a
3 completed application with payment of the required fees, or if a
4 hearing is held, after the date of the completion of the hearing on
5 the application. The commissioner and the applicant may agree to a
6 later date in writing.

7 Sec. 393.608. DISPOSITION OF FEES ON DENIAL OF APPLICATION.
8 If the commissioner denies the application, the commissioner shall
9 retain the investigation fee and shall return to the applicant the
10 license fee submitted with the application.

11 Sec. 393.609. NAME AND PLACE OF LICENSE. (a) A license
12 issued under this subchapter must state:

13 (1) the name of the license holder; and

14 (2) the address of the office from which the business
15 is to be conducted, except as provided by Subsection (c).

16 (b) A license holder may not conduct business under this
17 subchapter under a name other than the name stated on the license.

18 (c) A license holder may not conduct business at a location
19 other than the address stated on the license, except that a license
20 holder:

21 (1) is not required to have an office in this state;

22 and

23 (2) may operate using e-commerce methods, including
24 the Internet.

25 Sec. 393.610. LICENSE DISPLAY. A license holder shall
26 display a license at the place of business provided on the license.
27 With respect to business conducted through the Internet, this

1 requirement may be satisfied by displaying the license on the
2 business's Internet website.

3 Sec. 393.611. MINIMUM ASSETS FOR LICENSE. A license holder
4 shall maintain net assets used or readily available for use in
5 conducting the business of each of the offices for which a license
6 is held under this subchapter, in an amount that is not less than
7 the lesser of:

8 (1) \$25,000 for each office; or

9 (2) \$2,500,000 in the aggregate.

10 Sec. 393.612. ANNUAL LICENSE FEE. Not later than December
11 1, a license holder shall pay to the commissioner for each license
12 held an annual fee for the year beginning the next January 1, in an
13 amount determined as provided by Section 14.107.

14 Sec. 393.613. EXPIRATION OF LICENSE ON FAILURE TO PAY
15 ANNUAL FEE. If the annual fee for a license is not paid before the
16 16th day after the date on which the written notice of delinquency
17 of payment has been given to the license holder, the license expires
18 on the later of:

19 (1) that day; or

20 (2) December 31 of the last year for which an annual
21 fee was paid.

22 Sec. 393.614. LICENSE SUSPENSION OR REVOCATION. (a) After
23 notice and a hearing the commissioner may suspend or revoke a
24 license if the commissioner finds that:

25 (1) the license holder failed to pay the annual
26 license fee, an examination fee, an investigation fee, or another
27 charge imposed by the commissioner under this subchapter;

1 (2) the license holder, knowingly or without the
2 exercise of due care, violated this chapter or a rule adopted or
3 order issued under this chapter; or

4 (3) a fact or condition exists that, if it had existed
5 or had been known to exist at the time of the original application
6 for the license, clearly would have justified the commissioner's
7 denial of the application.

8 (b) If in a three-year period the commissioner suspends or
9 revokes under this section the licenses of five or more credit
10 access businesses owned or controlled by the same person, including
11 a corporation that owns multiple businesses, the commissioner may
12 suspend or revoke the licenses of all credit access businesses
13 owned or controlled by that person.

14 Sec. 393.615. LICENSE SUSPENSION OR REVOCATION FILED WITH
15 PUBLIC RECORDS. The decision of the commissioner on the suspension
16 or revocation of a license and the evidence considered by the
17 commissioner in making the decision shall be filed in the public
18 records of the commissioner.

19 Sec. 393.616. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE
20 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a
21 suspended license or issue a new license on application to a person
22 whose license has been revoked if at the time of the reinstatement
23 or issuance no fact or condition exists that clearly would have
24 justified the commissioner's denial of an original application for
25 the license.

26 Sec. 393.617. SURRENDER OF LICENSE. A license holder may
27 surrender a license issued under this subchapter by delivering to

1 the commissioner:

2 (1) the license; and

3 (2) a written notice of the license's surrender.

4 Sec. 393.618. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR
5 SURRENDER. (a) The suspension, revocation, or surrender of a
6 license issued under this subchapter does not affect the obligation
7 of a contract between the license holder and a consumer entered into
8 before the revocation, suspension, or surrender.

9 (b) Surrender of a license does not affect the license
10 holder's civil or criminal liability for an act committed before
11 surrender.

12 Sec. 393.619. MOVING AN OFFICE. (a) A license holder shall
13 give written notice to the commissioner before the 30th day before
14 the date the license holder moves an office from the location
15 provided on the license.

16 (b) The commissioner shall amend a license holder's license
17 accordingly.

18 Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE. A license
19 may be transferred or assigned only with the approval of the
20 commissioner.

21 Sec. 393.621. ADMINISTRATION. The office shall administer
22 this subchapter.

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

24 (1) adopt rules necessary to enforce and administer
25 this subchapter;

26 (2) adopt rules with respect to the quarterly
27 reporting by a credit access business licensed under this

1 subchapter of summary business information relating to extensions
2 of consumer credit described by Section 393.602(a); and

3 (3) adopt rules with respect to periodic examination
4 by the office relating to extensions of consumer credit described
5 by Section 393.602(a), including rules related to charges for
6 defraying the reasonable cost of conducting the examinations.

7 (b) The finance commission may adopt rules under this
8 section to allow the commissioner to review, as part of a periodic
9 examination, any relevant contracts between the credit access
10 business and the third-party lender organizations with which the
11 credit access business contracts to provide services described by
12 Section 393.602(a) or from which the business arranges extensions
13 of consumer credit described by Section 393.602(a). A contract or
14 information obtained by the commissioner under this section is
15 considered proprietary and confidential to the respective parties
16 to the contract, and is not subject to disclosure under Chapter 552,
17 Government Code.

18 (c) In adopting rules under this section, the finance
19 commission may not establish limits on the fees charged by a credit
20 access business and may not authorize the commissioner to establish
21 such limits.

22 Sec. 393.623. PROVIDING OR ADVERTISING SERVICES WITHOUT
23 LICENSE PROHIBITED. A credit access business or a representative
24 of the business may not provide or advertise the services of the
25 business if the business is not licensed under this subchapter.

26 Sec. 393.624. RESTRICTIONS ON OFF-SITE ADVERTISING. (a) A
27 credit access business may not advertise on the premises of a

1 nursing facility, assisted living facility, group home,
2 intermediate care facility for persons with mental retardation, or
3 other similar facility subject to regulation by the Department of
4 Aging and Disability Services.

5 (b) The finance commission may adopt rules to implement this
6 section.

7 Sec. 393.625. MILITARY BORROWERS. An extension of consumer
8 credit described by Section 393.602(a) that is obtained by a credit
9 access business for a member of the United States military or a
10 dependent of a member of the United States military or that the
11 business assisted that person in obtaining must comply with 10
12 U.S.C. Section 987 and any regulations adopted under that law, to
13 the extent applicable.

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

18 Sec. 393.627. QUARTERLY REPORT TO COMMISSIONER. A credit
19 access business shall file a quarterly report with the commissioner
20 on a form prescribed by the commissioner that provides the
21 following information relating to extensions of consumer credit
22 described by Section 393.602(a) during the preceding quarter:

23 (1) the number of consumers for whom the business
24 obtained or assisted in obtaining those extensions of consumer
25 credit;

26 (2) the number of those extensions of consumer credit
27 obtained by the business or that the business assisted consumers in

1 obtaining;

2 (3) the number of refinancing transactions of the
3 extensions of consumer credit described by Subdivision (2);

4 (4) the number of consumers refinancing the extensions
5 of consumer credit described by Subdivision (2);

6 (5) the number of consumers refinancing more than once
7 the extensions of consumer credit described by Subdivision (2);

8 (6) the average amount of the extensions of consumer
9 credit described by Subdivision (2);

10 (7) the total amount of fees charged by the business
11 for the activities described by Subdivision (1);

12 (8) the number of vehicles surrendered or repossessed
13 under the terms of an extension of consumer credit in the form of a
14 motor vehicle title loan obtained by the business or that the
15 business assisted a consumer in obtaining;

16 (9) the mean, median, and mode of the number of
17 extensions of consumer credit obtained by consumers as a result of
18 entering into the extensions of consumer credit described by
19 Subdivision (2); and

20 (10) any related information the commissioner
21 determines necessary.

22 Sec. 393.628. TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) As
23 part of the licensing fee and procedures described under this
24 subchapter, each license holder shall pay to the commissioner an
25 annual assessment to improve consumer credit, financial education,
26 and asset-building opportunities in this state. The annual
27 assessment may not exceed \$200 for each license as specified by the

1 finance commission.

2 (b) The Texas Financial Education Endowment shall be
3 administered by the finance commission to support statewide
4 financial education and consumer credit building activities and
5 programs, including:

6 (1) production and dissemination of approved
7 financial education materials at licensed locations;

8 (2) advertising, marketing, and public awareness
9 campaigns to improve the credit profiles and credit scores of
10 consumers in this state;

11 (3) school and youth-based financial literacy and
12 capability;

13 (4) credit building and credit repair;

14 (5) financial coaching and consumer counseling;

15 (6) bank account enrollment and incentives for
16 personal savings; and

17 (7) other consumer financial education and
18 asset-building initiatives as considered appropriate by the
19 finance commission.

20 (c) In implementing this section, the finance commission
21 may solicit gifts, grants, and donations for this purpose.

22 (d) The finance commission may partner with other state
23 agencies and entities to implement this section.

24 (e) The finance commission shall adopt rules to administer
25 this section.

26 SECTION 3. Section 14.101, Finance Code, is amended to read
27 as follows:

1 Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The
2 commissioner shall enforce this chapter, Subtitles B and C of Title
3 4, Chapter 393 with respect to a credit access business, and Chapter
4 394 in person or through an assistant commissioner, examiner, or
5 other employee of the office.

6 SECTION 4. Section 14.107, Finance Code, is amended to read
7 as follows:

8 Sec. 14.107. FEES. (a) The finance commission shall
9 establish reasonable and necessary fees for carrying out the
10 commissioner's powers and duties under this chapter, Title 4,
11 Chapter 393 with respect to a credit access business, and Chapters
12 371, 392, and 394 and under Chapters 51, 302, 601, and 621, Business
13 & Commerce Code.

14 (b) The finance commission by rule shall set the fees for
15 licensing and examination under Chapter 393 with respect to a
16 credit access business or Chapter 342, 347, 348, 351, or 371 at
17 amounts or rates necessary to recover the costs of administering
18 those chapters. The rules may provide that the amount of a fee
19 charged to a license holder is based on the volume of the license
20 holder's regulated business and other key factors. The
21 commissioner may provide for collection of a single annual fee from
22 a person licensed under Subchapter G of Chapter 393 or Chapter 342,
23 347, 348, 351, or 371 to include amounts due for both licensing and
24 examination.

25 SECTION 5. Section 14.201, Finance Code, is amended to read
26 as follows:

27 Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY.

1 Investigative and enforcement authority under this subchapter
2 applies only to this chapter, Subtitles B and C of Title 4, Chapter
3 393 with respect to a credit access business, and Chapter 394.

4 SECTION 6. Section 14.2015(a), Finance Code, is amended to
5 read as follows:

6 (a) Except as provided by Subsection (b), information or
7 material obtained or compiled by the commissioner in relation to an
8 examination by the commissioner or the commissioner's
9 representative of a license holder or registrant under Subtitle B
10 or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 is
11 confidential and may not be disclosed by the commissioner or an
12 officer or employee of the Office of Consumer Credit Commissioner,
13 including:

14 (1) information obtained from a license holder or
15 registrant under Subtitle B or C, Title 4, Subchapter G of Chapter
16 393, or Chapter 394;

17 (2) work performed by the commissioner or the
18 commissioner's representative on information obtained from a
19 license holder or registrant for the purposes of an examination
20 conducted under Subtitle B or C, Title 4, Chapter 393 with respect
21 to a credit access business, or Chapter 394;

22 (3) a report on an examination of a license holder or
23 registrant conducted under Subtitle B or C, Title 4, Chapter 393
24 with respect to a credit access business, or Chapter 394; and

25 (4) any written communications between the license
26 holder or registrant, as applicable, and the commissioner or the
27 commissioner's representative relating to or referencing an

1 examination conducted under Subtitle B or C, Title 4, Chapter 393
2 with respect to a credit access business, or Chapter 394.

3 SECTION 7. Section 14.251, Finance Code, is amended by
4 adding Subsection (a-1) and amending Subsection (b) to read as
5 follows:

6 (a-1) The commissioner shall assess an administrative
7 penalty against a credit access business who knowingly and wilfully
8 violates or causes a violation of Chapter 393, or a rule adopted
9 under Chapter 393.

10 (b) The commissioner may order a person who violates or
11 causes a violation of this chapter, Chapter 394, or Subtitle B,
12 Title 4, or a rule adopted under this chapter, Chapter 394, or
13 Subtitle B, Title 4, or a credit access business who violates or
14 causes a violation of Chapter 393 or a rule adopted under Chapter
15 393, to make restitution to an identifiable person injured by the
16 violation.

17 SECTION 8. Section 14.261(a), Finance Code, is amended to
18 read as follows:

19 (a) In administering this chapter, the commissioner may
20 accept assurance of voluntary compliance from a person who is
21 engaging in or has engaged in an act or practice in violation of:

22 (1) this chapter or a rule adopted under this chapter;

23 (2) Chapter 393, if the person is a credit access
24 business, or Chapter 394; or

25 (3) Subtitle B, Title 4, or a rule adopted under
26 Subtitle B, Title 4.

27 SECTION 9. Section 14.262, Finance Code, is amended to read

1 as follows:

2 Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of
3 voluntary compliance is not an admission of a violation of:

- 4 (1) this chapter or a rule adopted under this chapter;
5 (2) Chapter 393 with respect to a credit access
6 business or Chapter 394; or

7 (3) Subtitle B, Title 4, or a rule adopted under
8 Subtitle B, Title 4.

9 (b) Unless an assurance of voluntary compliance is
10 rescinded by agreement or voided by a court for good cause, a
11 subsequent failure to comply with the assurance is prima facie
12 evidence of a violation of:

- 13 (1) this chapter or a rule adopted under this chapter;
14 (2) Chapter 393 with respect to a credit access
15 business or Chapter 394; or

16 (3) Subtitle B, Title 4, or a rule adopted under
17 Subtitle B, Title 4.

18 SECTION 10. This Act takes effect January 1, 2012.