

AN ACT

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

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

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

(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;

1 (4) contain a statement that a credit access business
2 must comply, to the extent applicable, with 10 U.S.C. Section 987
3 and any regulations adopted under that law with respect to an
4 extension of consumer credit described by Section 393.602(a);

5 (5) disclose to the consumer:

6 (A) the lender from whom the extension of
7 consumer credit is obtained;

8 (B) the interest paid or to be paid to the lender;
9 and

10 (C) the specific fees that will be paid to the
11 credit access business for the business's services; and

12 (6) the name and address of the Office of Consumer
13 Credit Commissioner and the telephone number of the office's
14 consumer helpline.

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

17 SUBCHAPTER G. LICENSING AND REGULATION OF CERTAIN CREDIT SERVICES
18 ORGANIZATIONS

19 Sec. 393.601. DEFINITIONS. In this subchapter:

20 (1) "Commissioner" means the consumer credit
21 commissioner.

22 (2) "Credit access business" means a credit services
23 organization that obtains for a consumer or assists a consumer in
24 obtaining an extension of consumer credit in the form of a deferred
25 presentment transaction or a motor vehicle title loan.

26 (3) "Deferred presentment transaction" has the
27 meaning assigned by Section 341.001. For purposes of this chapter,

1 this definition does not preclude repayment in more than one
2 installment.

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

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

10 (6) "Office" means the Office of Consumer Credit
11 Commissioner.

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

16 (1) a deferred presentment transaction; or

17 (2) a motor vehicle title loan.

18 (b) A credit access business may assess fees for its
19 services as agreed to between the parties. A credit access business
20 fee may be calculated daily, biweekly, monthly, or on another
21 periodic basis. A credit access business is permitted to charge
22 amounts allowed by other laws, as applicable. A fee may not be
23 charged unless it is disclosed.

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

1 considered a device, subterfuge, or pretense to evade the
2 application of this subchapter.

3 Sec. 393.603. LICENSE REQUIRED. A credit services
4 organization must obtain a license under this subchapter for each
5 location at which the organization operates as a credit access
6 business in performing services described by Section 393.602(a).

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

9 (1) be under oath;

10 (2) give the approximate location from which the
11 business is to be conducted;

12 (3) identify the business's principal parties in
13 interest;

14 (4) contain the name, physical address, and telephone
15 number of all third-party lender organizations with which the
16 business contracts to provide services described by Section
17 393.602(a) or from which the business arranges extensions of
18 consumer credit described by Section 393.602(a); and

19 (5) contain other relevant information that the
20 commissioner requires for the findings required under Section
21 393.607.

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

27 (c) On the filing of each license application, the applicant

1 shall pay to the commissioner for the license's year of issuance a
2 license fee in an amount determined as provided by Section 14.107.

3 Sec. 393.605. BOND. (a) If the commissioner requires, an
4 applicant for a license under this subchapter shall file with the
5 application a bond that is:

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

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

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

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

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

16 (c) The bond must be conditioned on:

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

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

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

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

27 (f) A credit access business, instead of obtaining a surety

1 bond, may satisfy the requirements of this section by depositing an
2 amount described by Subsection (a)(1) in a surety account held in
3 trust at a federally insured bank or savings association located in
4 this state. The name of the depository, trustee, and account number
5 of the surety account must be filed with the office.

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

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

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

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

18 (B) warrant the belief that the business will be
19 operated lawfully and fairly, within the purposes of this
20 subchapter; and

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

24 (b) If the commissioner does not find the eligibility
25 requirements of Subsection (a) have been met, the commissioner
26 shall notify the applicant.

27 (c) If an applicant requests a hearing on the application

1 not later than the 30th day after the date of notification under
2 Subsection (b), the applicant is entitled to a hearing not later
3 than the 30th day after the date of the request.

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

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

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

- 16 (1) the name of the license holder; and
17 (2) the address of the office from which the business
18 is to be conducted, except as provided by Subsection (c).

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

21 (c) A license holder may not conduct business at a location
22 other than the address stated on the license, except that a license
23 holder:

- 24 (1) is not required to have an office in this state;
25 and

26 (2) may operate using e-commerce methods, including
27 the Internet.

1 Sec. 393.610. LICENSE DISPLAY. A license holder shall
2 display a license at the place of business provided on the license.
3 With respect to business conducted through the Internet, this
4 requirement may be satisfied by displaying the license on the
5 business's Internet website.

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

11 (1) \$25,000 for each office; or

12 (2) \$2,500,000 in the aggregate.

13 Sec. 393.612. ANNUAL LICENSE FEE. Not later than December
14 1, a license holder shall pay to the commissioner for each license
15 held an annual fee for the year beginning the next January 1, in an
16 amount determined as provided by Section 14.107.

17 Sec. 393.613. EXPIRATION OF LICENSE ON FAILURE TO PAY
18 ANNUAL FEE. If the annual fee for a license is not paid before the
19 16th day after the date on which the written notice of delinquency
20 of payment has been given to the license holder, the license expires
21 on the later of:

22 (1) that day; or

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

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

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

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

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

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

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

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

1 the license.

2 Sec. 393.617. SURRENDER OF LICENSE. A license holder may
3 surrender a license issued under this subchapter by delivering to
4 the commissioner:

5 (1) the license; and

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

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

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

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

19 (b) The commissioner shall amend a license holder's license
20 accordingly.

21 Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE. A license
22 may be transferred or assigned only with the approval of the
23 commissioner.

24 Sec. 393.621. ADMINISTRATION. The office shall administer
25 this subchapter.

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

27 (1) adopt rules necessary to enforce and administer

1 this subchapter;

2 (2) adopt rules with respect to the quarterly
3 reporting by a credit access business licensed under this
4 subchapter of summary business information relating to extensions
5 of consumer credit described by Section 393.602(a); and

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

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

21 (c) Nothing in Section 393.201(c) or Sections
22 393.601-393.628 grants authority to the finance commission or the
23 Office of Consumer Credit Commissioner to establish a limit on the
24 fees charged by a credit access business.

25 Sec. 393.623. PROVIDING OR ADVERTISING SERVICES WITHOUT
26 LICENSE PROHIBITED. A credit access business or a representative
27 of the business may not provide or advertise the services of the

1 business if the business is not licensed under this subchapter.

2 Sec. 393.624. RESTRICTIONS ON OFF-SITE ADVERTISING. (a) A
3 credit access business may not advertise on the premises of a
4 nursing facility, assisted living facility, group home,
5 intermediate care facility for persons with mental retardation, or
6 other similar facility subject to regulation by the Department of
7 Aging and Disability Services.

8 (b) The finance commission may adopt rules to implement this
9 section.

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

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

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

26 (1) the number of consumers for whom the business
27 obtained or assisted in obtaining those extensions of consumer

1 credit;

2 (2) the number of those extensions of consumer credit
3 obtained by the business or that the business assisted consumers in
4 obtaining;

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

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

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

11 (6) the average amount of the extensions of consumer
12 credit described by Subdivision (2);

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

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

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

23 (10) any related information the commissioner
24 determines necessary.

25 Sec. 393.628. TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) As
26 part of the licensing fee and procedures described under this
27 subchapter, each credit access business or license holder shall pay

1 to the commissioner an annual assessment to improve consumer
2 credit, financial education, and asset-building opportunities in
3 this state. The annual assessment may not exceed \$200 for each
4 license as specified by the finance commission.

5 (b) The commissioner shall remit to the comptroller amounts
6 received under Subsection (a) for deposit in an interest-bearing
7 deposit account in the Texas Treasury Safekeeping Trust Company.
8 Money in the account may be spent by the finance commission only for
9 the purposes provided by this section. Amounts in the account may
10 be invested and reinvested in the same manner as funds of the
11 Employees Retirement System of Texas, and the interest from those
12 investments shall be deposited to the credit of the account.

13 (c) The Texas Financial Education Endowment shall be
14 administered by the finance commission to support statewide
15 financial education and consumer credit building activities and
16 programs, including:

17 (1) production and dissemination of approved
18 financial education materials at licensed locations;

19 (2) advertising, marketing, and public awareness
20 campaigns to improve the credit profiles and credit scores of
21 consumers in this state;

22 (3) school and youth-based financial literacy and
23 capability;

24 (4) credit building and credit repair;

25 (5) financial coaching and consumer counseling;

26 (6) bank account enrollment and incentives for
27 personal savings; and

1 (7) other consumer financial education and
2 asset-building initiatives as considered appropriate by the
3 finance commission.

4 (d) In implementing this section, the finance commission
5 may solicit gifts, grants, and donations for this purpose.

6 (e) The finance commission may partner with other state
7 agencies and entities to implement this section.

8 (f) The finance commission shall adopt rules to administer
9 this section.

10 SECTION 3. Section 14.101, Finance Code, is amended to read
11 as follows:

12 Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The
13 commissioner shall enforce this chapter, Subtitles B and C of Title
14 4, Chapter 393 with respect to a credit access business, and Chapter
15 394 in person or through an assistant commissioner, examiner, or
16 other employee of the office.

17 SECTION 4. Section 14.107, Finance Code, is amended to read
18 as follows:

19 Sec. 14.107. FEES. (a) The finance commission shall
20 establish reasonable and necessary fees for carrying out the
21 commissioner's powers and duties under this chapter, Title 4,
22 Chapter 393 with respect to a credit access business, and Chapters
23 371, 392, and 394 and under Chapters 51, 302, 601, and 621, Business
24 & Commerce Code.

25 (b) The finance commission by rule shall set the fees for
26 licensing and examination under Chapter 393 with respect to a
27 credit access business or Chapter 342, 347, 348, 351, or 371 at

1 amounts or rates necessary to recover the costs of administering
2 those chapters. The rules may provide that the amount of a fee
3 charged to a license holder is based on the volume of the license
4 holder's regulated business and other key factors. The
5 commissioner may provide for collection of a single annual fee from
6 a person licensed under Subchapter G of Chapter 393 or Chapter 342,
7 347, 348, 351, or 371 to include amounts due for both licensing and
8 examination.

9 SECTION 5. Section 14.201, Finance Code, is amended to read
10 as follows:

11 Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY.
12 Investigative and enforcement authority under this subchapter
13 applies only to this chapter, Subtitles B and C of Title 4, Chapter
14 393 with respect to a credit access business, and Chapter 394.

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

17 (a) Except as provided by Subsection (b), information or
18 material obtained or compiled by the commissioner in relation to an
19 examination by the commissioner or the commissioner's
20 representative of a license holder or registrant under Subtitle B
21 or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 is
22 confidential and may not be disclosed by the commissioner or an
23 officer or employee of the Office of Consumer Credit Commissioner,
24 including:

25 (1) information obtained from a license holder or
26 registrant under Subtitle B or C, Title 4, Subchapter G of Chapter
27 393, or Chapter 394;

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

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

9 (4) any written communications between the license
10 holder or registrant, as applicable, and the commissioner or the
11 commissioner's representative relating to or referencing an
12 examination conducted under Subtitle B or C, Title 4, Chapter 393
13 with respect to a credit access business, or Chapter 394.

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

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

21 (b) The commissioner may order a person who violates or
22 causes a violation of this chapter, Chapter 394, or Subtitle B,
23 Title 4, or a rule adopted under this chapter, Chapter 394, or
24 Subtitle B, Title 4, or a credit access business who violates or
25 causes a violation of Chapter 393 or a rule adopted under Chapter
26 393, to make restitution to an identifiable person injured by the
27 violation.

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

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

- 6 (1) this chapter or a rule adopted under this chapter;
7 (2) Chapter 393, if the person is a credit access
8 business, or Chapter 394; or
9 (3) Subtitle B, Title 4, or a rule adopted under
10 Subtitle B, Title 4.

11 SECTION 9. Section 14.262, Finance Code, is amended to read
12 as follows:

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

- 15 (1) this chapter or a rule adopted under this chapter;
16 (2) Chapter 393 with respect to a credit access
17 business or Chapter 394; or
18 (3) Subtitle B, Title 4, or a rule adopted under
19 Subtitle B, Title 4.

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

- 24 (1) this chapter or a rule adopted under this chapter;
25 (2) Chapter 393 with respect to a credit access
26 business or Chapter 394; or
27 (3) Subtitle B, Title 4, or a rule adopted under

H.B. No. 2594

1 Subtitle B, Title 4.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 2594 was passed by the House on May 13, 2011, by the following vote: Yeas 84, Nays 50, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2594 on May 26, 2011, by the following vote: Yeas 103, Nays 35, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2594 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 28, Nays 2, 1 present, not voting.

Secretary of the Senate

APPROVED: _____

Date

Governor