

By: Truitt

H.B. No. 2594

Substitute the following for H.B. No. 2594:

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C.S.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) 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 certificate of title  
26 loan.

27                   (3) "Deferred presentment transaction" has the

1 meaning assigned by Section 341.001.

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

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

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

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

15 (1) a deferred presentment transaction; or

16 (2) a motor vehicle certificate of title loan.

17 (b) Any usury violation by a lender with respect to an  
18 extension of consumer credit described by Subsection (a) is subject  
19 to Chapter 305. In connection with a determination of usury, the  
20 fees charged by a credit access business do not constitute  
21 interest.

22 (c) A person may not use a device, subterfuge, or pretense  
23 to evade the application of this subchapter.

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

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

3           (1) be under oath;

4           (2) give the approximate location from which the  
5 business is to be conducted;

6           (3) identify the business's principal parties in  
7 interest;

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

13           (5) contain other relevant information that the  
14 commissioner requires for the findings required under Section  
15 393.607.

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

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

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

27           (1) in an amount satisfactory to the commissioner that

1 does not exceed the lesser of:

2 (A) \$50,000 for the first license and \$25,000 for  
3 each additional license; or

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

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

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

10 (c) The bond must be conditioned on:

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

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

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

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

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

25 Sec. 393.607. APPROVAL OR DENIAL OF APPLICATION. (a) The  
26 commissioner shall approve the application and issue to the  
27 applicant a license to operate as a credit access business for

1 purposes of engaging in the activity to which this subchapter  
2 applies if the commissioner finds that:

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

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

6 (B) warrant the belief that the business will be  
7 operated lawfully and fairly, within the purposes of this  
8 subchapter; and

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

12 (b) If the commissioner does not find the eligibility  
13 requirements of Subsection (a) have been met, the commissioner  
14 shall notify the applicant.

15 (c) If an applicant requests a hearing on the application  
16 not later than the 30th day after the date of notification under  
17 Subsection (b), the applicant is entitled to a hearing not later  
18 than the 60th day after the date of the request.

19 (d) The commissioner shall approve or deny the application  
20 not later than the 60th day after the date of the filing of a  
21 completed application with payment of the required fees, or if a  
22 hearing is held, after the date of the completion of the hearing on  
23 the application. The commissioner and the applicant may agree to a  
24 later date in writing.

25 Sec. 393.608. DISPOSITION OF FEES ON DENIAL OF APPLICATION.  
26 If the commissioner denies the application, the commissioner shall  
27 retain the investigation fee and shall return to the applicant the

1 license fee submitted with the application.

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

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

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

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

9 (c) A license holder may not conduct business at a location  
10 other than the address stated on the license, except that a license  
11 holder:

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

13 (2) may operate using e-commerce methods, including  
14 the Internet; and

15 (3) may use remote closing agents.

16 Sec. 393.610. LICENSE DISPLAY. A license holder shall  
17 display a license at the place of business provided on the license.  
18 With respect to business conducted through the Internet, this  
19 requirement may be satisfied by displaying the license on the  
20 business's Internet website.

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

26 (1) \$25,000 for each office; or

27 (2) \$2,500,000 in the aggregate.

1       Sec. 393.612. ANNUAL LICENSE FEE. Not later than December  
2 1, a license holder shall pay to the commissioner for each license  
3 held an annual fee for the year beginning the next January 1, in an  
4 amount determined as provided by Section 14.107.

5       Sec. 393.613. EXPIRATION OF LICENSE ON FAILURE TO PAY  
6 ANNUAL FEE. If the annual fee for a license is not paid before the  
7 16th day after the date on which the written notice of delinquency  
8 of payment has been given to the license holder, the license expires  
9 on the later of:

10           (1) that day; or

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

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

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

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

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

26       (b) If in a three-year period the commissioner suspends or  
27 revokes under this section the licenses of five or more credit



1 access businesses owned or controlled by the same person, including  
2 a corporation that owns multiple businesses, the commissioner may  
3 suspend or revoke the licenses of all credit access businesses  
4 owned or controlled by that person.

5 Sec. 393.615. LICENSE SUSPENSION OR REVOCATION FILED WITH  
6 PUBLIC RECORDS. The decision of the commissioner on the suspension  
7 or revocation of a license and the evidence considered by the  
8 commissioner in making the decision shall be filed in the public  
9 records of the commissioner.

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

17 Sec. 393.617. SURRENDER OF LICENSE. A license holder may  
18 surrender a license issued under this subchapter by delivering to  
19 the commissioner:

- 20 (1) the license; and  
21 (2) a written notice of the license's surrender.

22 Sec. 393.618. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR  
23 SURRENDER. (a) The suspension, revocation, or surrender of a  
24 license issued under this subchapter does not affect the obligation  
25 of a contract between the license holder and a consumer entered into  
26 before the revocation, suspension, or surrender.

27 (b) Surrender of a license does not affect the license

1 holder's civil or criminal liability for an act committed before  
2 surrender.

3 Sec. 393.619. MOVING AN OFFICE. (a) A license holder shall  
4 give written notice to the commissioner before the 30th day before  
5 the date the license holder moves an office from the location  
6 provided on the license.

7 (b) The commissioner shall amend a license holder's license  
8 accordingly.

9 Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE. A license  
10 may be transferred or assigned only with the approval of the  
11 commissioner.

12 Sec. 393.621. ADMINISTRATION. The office shall administer  
13 this subchapter.

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

15 (1) adopt rules necessary to enforce and administer  
16 this subchapter;

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

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

25 (b) The finance commission may adopt rules under this  
26 section to allow the commissioner to review, as part of a periodic  
27 examination, any relevant contracts between the credit access

1 business and the third-party lender organizations with which the  
2 credit access business contracts to provide services described by  
3 Section 393.602(a) or from which the business arranges extensions  
4 of consumer credit described by Section 393.602(a). A contract or  
5 information obtained by the commissioner under this section is  
6 considered proprietary and confidential to the respective parties  
7 to the contract, and is not subject to disclosure under Chapter 552,  
8 Government Code.

9 (c) In adopting rules under this section, the finance  
10 commission may not establish limits on the fees charged by a credit  
11 access business and may not authorize the commissioner to establish  
12 such limits.

13 Sec. 393.623. PROVIDING OR ADVERTISING SERVICES WITHOUT  
14 LICENSE PROHIBITED. A credit access business or a representative  
15 of the business may not provide or advertise the services of the  
16 business if the business is not licensed under this subchapter.

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

23 (b) The finance commission may adopt rules to implement this  
24 section.

25 Sec. 393.625. MILITARY BORROWERS. An extension of consumer  
26 credit described by Section 393.602(a) that is obtained by a credit  
27 access business for a member of the United States military or a

1 dependent of a member of the United States military or that the  
2 business assisted that person in obtaining must comply with 10  
3 U.S.C. Section 987 and any regulations adopted under that law, to  
4 the extent applicable.

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

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

14 (1) the number of consumers for whom the business  
15 obtained or assisted in obtaining those extensions of consumer  
16 credit;

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

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

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

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

26 (6) the average amount of the extensions of consumer  
27 credit described by Subdivision (2);

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

3           (8) the number of vehicles surrendered under the terms  
4 of an extension of consumer credit in the form of a motor vehicle  
5 certificate of title loan obtained by the business or that the  
6 business assisted a consumer in obtaining;

7           (9) the average number of extensions of consumer  
8 credit obtained by consumers as a result of entering into the  
9 extensions of consumer credit described by Subdivision (2); and

10           (10) any related information the commissioner  
11 determines necessary.

12           Sec. 393.628. TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) As  
13 part of the licensing fee and procedures described under this  
14 subchapter, each license holder shall pay to the commissioner an  
15 annual assessment to improve consumer credit, financial education,  
16 and asset-building opportunities in this state. The annual  
17 assessment may not exceed \$200 for each license holder as specified  
18 by the finance commission.

19           (b) The Texas Financial Education Endowment shall be  
20 administered by the finance commission to support statewide  
21 financial education and consumer credit building activities and  
22 programs, including:

23           (1) production and dissemination of approved  
24 financial education materials at licensed locations;

25           (2) advertising, marketing, and public awareness  
26 campaigns to improve the credit profiles and credit scores of  
27 consumers in this state;

1           (3) school and youth-based financial literacy and  
2 capability;

3           (4) credit building and credit repair;

4           (5) financial coaching and consumer counseling;

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

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

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

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

14          (e) The finance commission shall adopt rules to administer  
15 this section.

16          SECTION 3. Section 14.101, Finance Code, is amended to read  
17 as follows:

18          Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The  
19 commissioner shall enforce this chapter, Subtitles B and C of Title  
20 4, Subchapter G of Chapter 393, and Chapter 394 in person or through  
21 an assistant commissioner, examiner, or other employee of the  
22 office.

23          SECTION 4. Section 14.107, Finance Code, is amended to read  
24 as follows:

25          Sec. 14.107. FEES. (a) The finance commission shall  
26 establish reasonable and necessary fees for carrying out the  
27 commissioner's powers and duties under this chapter, Title 4,

1 Subchapter G of Chapter 393, and Chapters 371, 392, and 394 and  
2 under Chapters 51, 302, 601, and 621, Business & Commerce Code.

3 (b) The finance commission by rule shall set the fees for  
4 licensing and examination under Subchapter G of Chapter 393 or  
5 Chapter 342, 347, 348, 351, or 371 at amounts or rates necessary to  
6 recover the costs of administering those chapters. The rules may  
7 provide that the amount of a fee charged to a license holder is  
8 based on the volume of the license holder's regulated business and  
9 other key factors. The commissioner may provide for collection of a  
10 single annual fee from a person licensed under Subchapter G of  
11 Chapter 393 or Chapter 342, 347, 348, 351, or 371 to include amounts  
12 due for both licensing and examination.

13 SECTION 5. Section 14.201, Finance Code, is amended to read  
14 as follows:

15 Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY.  
16 Investigative and enforcement authority under this subchapter  
17 applies only to this chapter, Subtitles B and C of Title 4,  
18 Subchapter G of Chapter 393, and Chapter 394.

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

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

1 including:

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

5 (2) work performed by the commissioner or the  
6 commissioner's representative on information obtained from a  
7 license holder or registrant for the purposes of an examination  
8 conducted under Subtitle B or C, Title 4, Subchapter G of Chapter  
9 393, or Chapter 394;

10 (3) a report on an examination of a license holder or  
11 registrant conducted under Subtitle B or C, Title 4, Subchapter G of  
12 Chapter 393, or Chapter 394; and

13 (4) any written communications between the license  
14 holder or registrant, as applicable, and the commissioner or the  
15 commissioner's representative relating to or referencing an  
16 examination conducted under Subtitle B or C, Title 4, Subchapter G  
17 of Chapter 393, or Chapter 394.

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

21 (a-1) The commissioner shall assess an administrative  
22 penalty against a person who knowingly and wilfully violates or  
23 causes a violation of Subchapter G, Chapter 393, or a rule adopted  
24 under Subchapter G, Chapter 393.

25 (b) The commissioner may order a person who violates or  
26 causes a violation of this chapter, Subchapter G of Chapter 393,  
27 Chapter 394, or Subtitle B, Title 4, or a rule adopted under this



1 chapter, Subchapter G of Chapter 393, Chapter 394, or Subtitle B,  
2 Title 4, to make restitution to an identifiable person injured by  
3 the violation.

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

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

- 9 (1) this chapter or a rule adopted under this chapter;  
10 (2) Subchapter G of Chapter 393 or Chapter 394; or  
11 (3) Subtitle B, Title 4, or a rule adopted under  
12 Subtitle B, Title 4.

13 SECTION 9. Section 14.262, Finance Code, is amended to read  
14 as follows:

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

- 17 (1) this chapter or a rule adopted under this chapter;  
18 (2) Subchapter G of Chapter 393 or Chapter 394; or  
19 (3) Subtitle B, Title 4, or a rule adopted under  
20 Subtitle B, Title 4.

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

- 25 (1) this chapter or a rule adopted under this chapter;  
26 (2) Subchapter G of Chapter 393 or Chapter 394; or  
27 (3) Subtitle B, Title 4, or a rule adopted under

1 Subtitle B, Title 4.

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