

By: Truitt

H.B. No. 2594

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the registration and regulation of credit services
3 organizations that obtain for consumers certain extensions of
4 credit; providing a penalty.

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

6 SECTION 1. Section 14.101, Finance Code, is amended to read
7 as follows:

8 Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The
9 commissioner shall enforce this chapter, Subtitles B and C of Title
10 4, Subchapter B-1 of Chapter 393, and Chapter 394 in person or
11 through an assistant commissioner, examiner, or other employee of
12 the office.

13 SECTION 2. Section 14.107(a), Finance Code, is amended to
14 read as follows:

15 (a) The finance commission shall establish reasonable and
16 necessary fees for carrying out the commissioner's powers and
17 duties under this chapter, Title 4, Subchapter B-1 of Chapter 393,
18 and Chapters 371, 392, and 394 and under Chapters 51, 302, 601, and
19 621, Business & Commerce Code.

20 SECTION 3. Section 14.201, Finance Code, is amended to read
21 as follows:

22 Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY.
23 Investigative and enforcement authority under this subchapter
24 applies only to this chapter, Subtitles B and C of Title 4,

1 Subchapter B-1 of Chapter 393, and Chapter 394.

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

4 (a) Except as provided by Subsection (b), information or
5 material obtained or compiled by the commissioner in relation to an
6 examination by the commissioner or the commissioner's
7 representative of a license holder or registrant under Subtitle B
8 or C, Title 4, Subchapter B-1 of Chapter 393, or Chapter 394 is
9 confidential and may not be disclosed by the commissioner or an
10 officer or employee of the Office of Consumer Credit Commissioner,
11 including:

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

15 (2) work performed by the commissioner or the
16 commissioner's representative on information obtained from a
17 license holder or registrant for the purposes of an examination
18 conducted under Subtitle B or C, Title 4, Subchapter B-1 of Chapter
19 393, or Chapter 394;

20 (3) a report on an examination of a license holder or
21 registrant conducted under Subtitle B or C, Title 4, Subchapter B-1
22 of Chapter 393, or Chapter 394; and

23 (4) any written communications between the license
24 holder or registrant, as applicable, and the commissioner or the
25 commissioner's representative relating to or referencing an
26 examination conducted under Subtitle B or C, Title 4, Subchapter
27 B-1 of Chapter 393, or Chapter 394.

1 SECTION 5. Section 14.251, Finance Code, is amended to read
2 as follows:

3 Sec. 14.251. ASSESSMENT OF PENALTY; RESTITUTION ORDER.

4 (a) The commissioner may assess an administrative penalty against
5 a person who knowingly and wilfully violates or causes a violation
6 of this chapter, Subchapter B-1 of Chapter 393, Chapter 394, or
7 Subtitle B, Title 4, or a rule adopted under this chapter,
8 Subchapter B-1 of Chapter 393, Chapter 394, or Subtitle B, Title 4.

9 (b) The commissioner may order a person who violates or
10 causes a violation of this chapter, Subchapter B-1 of Chapter 393,
11 Chapter 394, or Subtitle B, Title 4, or a rule adopted under this
12 chapter, Subchapter B-1 of Chapter 393, Chapter 394, or Subtitle B,
13 Title 4, to make restitution to an identifiable person injured by
14 the violation.

15 SECTION 6. Section 14.261(a), Finance Code, is amended to
16 read as follows:

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

- 20 (1) this chapter or a rule adopted under this chapter;
21 (2) Subchapter B-1 of Chapter 393 or Chapter 394; or
22 (3) Subtitle B, Title 4, or a rule adopted under
23 Subtitle B, Title 4.

24 SECTION 7. Section 14.262, Finance Code, is amended to read
25 as follows:

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

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

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

- 9 (1) this chapter or a rule adopted under this chapter;
10 (2) Subchapter B-1 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 8. Section 393.001, Finance Code, is amended by
14 adding Subdivision (5) to read as follows:

15 (5) "Commissioner" means the consumer credit
16 commissioner.

17 SECTION 9. Chapter 393, Finance Code, is amended by adding
18 Subchapter B-1 to read as follows:

19 SUBCHAPTER B-1. REGISTRATION WITH CONSUMER CREDIT COMMISSIONER AND
20 REPORTING REQUIRED FOR CREDIT SERVICES ORGANIZATIONS OBTAINING
21 CERTAIN EXTENSIONS OF CONSUMER CREDIT

22 Sec. 393.131. APPLICABILITY. This subchapter applies only
23 to a credit services organization that obtains, facilitates, or
24 otherwise assists in obtaining for a consumer:

- 25 (1) an extension of consumer credit, other than a
26 purchase money security interest loan, in which a motor vehicle
27 certificate of title is given by the consumer as security for the

1 debt; or

2 (2) an extension of consumer credit in the form of a
3 deferred presentment transaction, as that term is defined by
4 Section 341.001.

5 Sec. 393.132. REGISTRATION WITH CONSUMER CREDIT
6 COMMISSIONER. (a) Before conducting business in this state, a
7 credit services organization shall file with the commissioner an
8 application for a registration under this chapter that:

9 (1) is accompanied by the fee required by Section
10 393.135;

11 (2) contains the name and address of:

12 (A) the organization; and

13 (B) each person who directly or indirectly owns
14 or controls at least 10 percent of the outstanding shares of stock
15 in the organization; and

16 (3) fully discloses any litigation or unresolved
17 complaint relating to the operation of the organization filed with
18 a governmental authority of this state or contains a notarized
19 statement that there has been no litigation or unresolved complaint
20 of that type.

21 (b) The credit services organization shall keep a copy of
22 the registration application in its files.

23 (c) The commissioner may require a credit services
24 organization to provide information in addition to the information
25 contained in the registration application as the commissioner
26 determines necessary.

27 (d) A registration issued under this subchapter expires on

1 the first anniversary of its date of issuance and must be renewed
2 annually. A registered credit services organization may renew a
3 registration by filing a renewal application, in the form
4 prescribed by the commissioner, and paying the renewal fee.

5 (e) Unless the commissioner notifies an applicant that a
6 longer period is necessary, the commissioner shall approve or deny
7 an initial registration not later than the 60th day after the date
8 on which the completed application, including all required
9 information and payments, is filed. The commissioner shall inform
10 the applicant in writing of the reason for denial.

11 (f) A credit services organization may renew a registration
12 by paying the appropriate fee and completing all required
13 documents.

14 (g) The Finance Commission of Texas by rule may establish
15 procedures to facilitate the registration and collection of fees
16 under this section.

17 (h) The commissioner may refuse an initial application if
18 the application contains errors or incomplete information. An
19 application is incomplete if it does not include all of the
20 information required by this section and the commissioner as
21 provided by this section.

22 (i) The commissioner may deny an initial application if:

23 (1) the applicant or any principal of the applicant
24 has been convicted of a crime or found civilly liable for an offense
25 involving moral turpitude, including forgery, embezzlement,
26 obtaining money under false pretenses, larceny, extortion,
27 conspiracy to defraud, or any other similar offense or violation;

1 (2) the registration of the applicant or any principal
2 of the applicant has been revoked or suspended in this state or
3 another state, unless the applicant provides information that the
4 commissioner finds sufficient to show that the grounds for the
5 previous revocation or suspension no longer exist and any problem
6 cited in the previous revocation has been corrected; or

7 (3) the commissioner, based on specific evidence,
8 finds that the applicant does not warrant the belief that the
9 business will be operated lawfully and fairly and within the
10 provisions and purposes of this chapter.

11 (j) On written request, the applicant is entitled to a
12 hearing, pursuant to Chapter 2001, Government Code, on the question
13 of the applicant's qualifications for initial registration if the
14 commissioner has notified the applicant in writing that the initial
15 application has been denied. A request for a hearing may not be
16 made after the 30th day after the date the commissioner mails a
17 notice to the applicant stating that the application has been
18 denied and stating the reasons for the denial.

19 (k) In addition to the power to refuse an initial
20 application as specified in this section, the commissioner may
21 suspend or revoke a credit services organization's registration
22 after notice and hearing if the commissioner finds that any of the
23 following conditions are met:

24 (1) a fact or condition exists that if it had existed
25 when the organization applied for registration would have been
26 grounds for denying registration;

27 (2) a fact or condition exists that the commissioner

1 was not aware of when the organization applied for registration and
2 would have been grounds for denying registration;

3 (3) the organization violates this chapter, a rule
4 adopted under this chapter, or an order of the commissioner under
5 this chapter;

6 (4) the organization fails to respond within a
7 reasonable time and in an appropriate manner to communications from
8 the commissioner; or

9 (5) the organization fails to warrant the belief that
10 the business will be operated lawfully and fairly and within the
11 provisions and purposes of this chapter.

12 (1) The commissioner shall maintain a list of registered
13 credit services organizations under this subchapter and make the
14 list available to interested persons and to the public.

15 Sec. 393.133. UPDATE OF REGISTRATION INFORMATION. A credit
16 services organization shall update information provided in a
17 registration application or renewal not later than the 90th day
18 after the date on which the information changes.

19 Sec. 393.134. INSPECTION OF REGISTRATION APPLICATION. A
20 credit services organization shall allow a consumer to inspect the
21 registration application on request.

22 Sec. 393.135. FILING FEE. The commissioner may charge a
23 credit services organization a reasonable fee to cover the cost of
24 filing a registration application or renewal application and
25 administering this subchapter, in an amount determined by the
26 Finance Commission of Texas.

27 Sec. 393.136. ADVERTISING OR PROVIDING SERVICES WITHOUT

1 REGISTRATION PROHIBITED. A credit services organization or a
2 representative of the organization may not provide or advertise the
3 services of the organization if the organization is not registered
4 under this subchapter.

5 Sec. 393.137. ANNUAL REPORT TO COMMISSIONER. A credit
6 services organization shall file an annual report with the
7 commissioner on a form prescribed by the commissioner that states
8 for the preceding calendar year the following information with
9 respect to each type of the extensions of consumer credit described
10 by Section 393.131 that the organization obtains, facilitates, or
11 otherwise assists in obtaining:

12 (1) the number of consumers for which the extensions
13 of credit were obtained or facilitated;

14 (2) the number of extensions of credit obtained or
15 facilitated;

16 (3) the number of renewals of the extensions of
17 credit;

18 (4) the number of consumers renewing the extensions of
19 credit;

20 (5) the number of consumers making multiple renewals
21 of extensions of credit;

22 (6) the average amount of the extensions of credit;
23 and

24 (7) any related information the commissioner
25 determines necessary.

26 SECTION 10. (a) Except as provided by Subsection (b) of
27 this section, this Act takes effect September 1, 2011.

H.B. No. 2594

1 (b) Section 14.251, Finance Code, as amended by this Act,
2 and Section 393.132, Finance Code, as added by this Act, take effect
3 January 1, 2012.