

By: Craddick

H.B. No. 3786

A BILL TO BE ENTITLED

AN ACT

relating to the requirements for certain extensions of credit to consumers.

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

SECTION 1. Subchapter A, Chapter 302, Finance Code, is amended by adding Section 302.003 to read as follows:

Sec. 302.003. PROHIBITION ON THIRD-PARTY FEES TO ARRANGE OR GUARANTEE CERTAIN EXTENSIONS OF CONSUMER CREDIT. (a) A fee paid or to be paid to a third party to assist a consumer in the transacting, arranging, guaranteeing, or negotiating of an extension of credit may not be contracted for, charged, or received by a creditor or third party in connection with the extension of credit if:

(1) the extension of credit is secured by a non-purchase money security interest in personal property or is unsecured; and

(2) the proceeds of the extension of credit are used for personal, family, or household purposes.

(b) The amount of a fee contracted for, charged, or received in violation of Subsection (a) is considered interest for usury purposes under state law.

SECTION 2. Section 342.604, Finance Code is amended by adding subsection (c) as follows:

(c) A creditor who extends consumer credit to a member of the United States military or a dependent of a member of the United

1 States military must comply with Section 670, Public Law 109-364 or
2 any regulation adopted pursuant thereto.

3 SECTION 3. Subchapter M, Chapter 342, Finance Code, is
4 amended by adding Section 342.606 as follows:

5 Sec. 342.606. REQUIREMENTS FOR DEFERRED PRESENTMENT
6 TRANSACTIONS. (a) The provisions of Subchapter F apply to a
7 deferred presentment transaction made under the authority of this
8 subchapter.

9 (b) As an alternative to the rate provided by Sections
10 342.252, 342.253 and 342.259, a deferred presentment transaction
11 made under this subchapter with a maximum cash advance computed
12 under Subchapter C, Chapter 341, using a reference base amount that
13 is not more than \$200, may provide for a finance charge that does
14 not exceed 15 percent of the cash advance.

15 (c) An authorized lender may not enter into a deferred
16 presentment transaction in which the amount of cash advanced
17 exceeds 35% of the borrower's gross monthly income.

18 (d) On the prepayment of a deferred presentment
19 transaction, the finance charge authorized under this section is
20 considered to be earned at the time the loan is made and is not
21 subject to refund.

22 (e) An authorized lender must accept partial payment of the
23 outstanding principal balance at any time during regular business
24 hours.

25 (f) An authorized lender may not for a fee renew, rollover,
26 or otherwise consolidate a deferred presentment transaction. For
27 purposes of this subsection "rollover" means a transaction in which

1 a borrower refinances or pays all or part of the finance charges and
2 advance of a deferred presentment transaction with a new deferred
3 presentment transaction.

4 (g) If a borrower enters into a third consecutive loan, an
5 authorized lender must provide the borrower an option to repay the
6 advance and each consecutive loan pursuant to a written repayment
7 plan. For purposes of this subsection "consecutive loan" means a
8 new deferred presentment transaction that any lender enters into
9 with a debtor no later than seven days after the date on which a
10 previous deferred presentment transaction made to the same borrower
11 is paid in full. The authorized lender may assess a processing fee
12 of ten percent of the principal amount of the loan per loan not to
13 exceed Fifteen Dollars for administration of the payment plan. A
14 lender is not required to enter into a payment plan with a borrower
15 more frequently than once every 12 months. The borrower must:

16 (1) request the repayment plan, either orally or in
17 writing;

18 (2) repay the loan in four equal installments with one
19 installment due on each of the next four dates on which the
20 borrower receives regular wages or compensation;

21 (3) agree not to enter into any additional deferred
22 presentment transactions during the repayment plan term and
23 for a period of fifteen days after termination of the
24 repayment plan term.

25 (h) An authorized lender may not impose a default charge in
26 connection with a deferred presentment transaction.

27 (i) The finance commission by rule may require a licensee to

1 provide materials approved by the commissioner that are designed
2 to:

3 (1) inform the borrower of the duties, rights, and
4 responsibilities of parties to a deferred presentment transaction;
5 and

6 (2) educate a borrower about matters of financial
7 literacy.

8 (j) As part of the annual report required under Section
9 342.559, a licensee that engages in deferred presentment
10 transactions must submit the following to the commissioner:

11 (1) the amount of cash advanced under each deferred
12 presentment transaction made, serviced, or brokered by the lender
13 during the preceding calendar year;

14 (2) the total number of deferred presentment
15 transactions made, serviced, or brokered by the lender during the
16 preceding calendar year;

17 (3) data regarding extended payment plans and
18 alternative payment arrangements offered by the lender;

19 (4) the gross monthly income reported by an individual
20 to whom a cash advance was made under a deferred presentment
21 transaction during the preceding calendar year, if the lender
22 collects that information from individuals and provided that a
23 lender that submits data provided by individuals is not responsible
24 for an individual borrower's failure to provide accurate
25 information;

26 (5) the total amount of interest, fees, or charges
27 collected by the lender during the preceding calendar year for

1 making, servicing, or brokering deferred presentment transactions;
2 and
3 (6) any other information required by the
4 commissioner.

5 (k) A person may not threaten or pursue criminal charges
6 against a borrower related to a check or other debit authorization
7 provided by the borrower as part of a deferred presentment
8 transaction.

9 (l) The commissioner shall prepare and publish a report no
10 later than December 1, 2012 regarding the use of deferred
11 presentment transactions in Texas. In preparing the study, the
12 commissioner shall study the need for comprehensive data reporting
13 and the value and feasibility of a real-time statewide database to
14 provide data for policy development and to enhance a lender's
15 evaluation of a borrower's ability to repay. In reviewing the value
16 and feasibility of a real-time statewide database, the study should
17 consider the use of a database verification fee collected from the
18 borrower to recover the actual costs of the system.

19 SECTION 4. Subsection (a), Section 342.501, Finance Code,
20 is amended to read as follows:

21 (a) An authorized lender may not induce or permit a person
22 or a husband and wife to be directly or indirectly obligated under
23 more than one loan contract at any time for the purpose or with the
24 effect of obtaining an amount of interest greater than the amount of
25 interest otherwise authorized under this chapter for a loan of that
26 aggregate amount with a maximum interest charge computed under
27 Section 342.201(a), Section 342.201(e), Section 342.252, Section

1 342.259, 342.606, Section 342.654, or any combination of those
2 sections.

3 SECTION 5. Chapter 342, Finance Code is amended by adding
4 Subchapter N as follows:

5 SUBCHAPTER N. AUTO TITLE LOANS

6 Sec. 342.651. DEFINITION. (a) In this subchapter, "auto
7 title loan" means an agreement in which an authorized lender agrees
8 to make a loan of money to a borrower, and the borrower agrees to
9 give the authorized lender a non-purchase money security interest
10 in an unencumbered motor vehicle owned by the borrower.

11 Sec. 342.652. GENERAL REQUIREMENTS. An auto title loan must
12 be in writing and have a loan term of 30 days.

13 Sec. 342.653. APPLICABILITY OF OTHER SUBCHAPTERS. (a) The
14 provisions of Subchapter E and Subchapter F apply to an auto title
15 loan made under this subchapter.

16 Sec. 342.654. AUTHORIZED FINANCE CHARGES. (a) As an
17 alternative to the rate provided by Sections 342.201, 342.252,
18 342.253 and 342.259, an auto title loan made under this subchapter
19 may provide for a finance charge that does not exceed:

20 (1) 20 percent per month on the portion of the cash
21 advance that does not exceed \$700;

22 (2) 18 percent per month on the portion of the cash
23 advance balance that is greater than \$700 but less than
24 \$1,400; and

25 (3) 15 percent per month on the portion of the cash
26 advance that exceeds \$1,400.

27 (b) On the prepayment of an auto title loan, the finance

1 charge authorized under this section is considered to be earned at
2 the time the loan is made and is not subject to refund.

3 Sec. 342.655. ACCEPTANCE OF PARTIAL PAYMENTS. A lender
4 must accept partial payment of the principal loan balance of an auto
5 title loan at any time during regular business hours.

6 Sec. 342.656. RENEWALS. (a) For purposes of this
7 subsection, "renewal" means a transaction in which a borrower
8 refinances or pays all or part of the finance charges and advance of
9 an auto title loan with a new auto title loan.

10 (b) Beginning with the first renewal and at each successive
11 renewal thereafter, the borrower must reduce the principal balance
12 by at least ten percent of the original principal balance of the
13 auto title loan. If the borrower fails to pay the amount necessary
14 to reduce the principal balance by ten percent at any renewal, then
15 the lender may renew the transaction, provided that the lender must
16 calculate the finance charge as if the principal balance of the loan
17 were reduced by 10 percent of the original principal balance. This
18 reduction in principal continues to be due from the borrower in
19 accordance with the auto title loan agreement, but that amount is
20 not entitled to accrue interest or finance charges. Alternatively
21 if the borrower fails to pay, the lender may declare the outstanding
22 principal balance and any finance charge to be immediately due and
23 payable.

24 (c) After three renewals of an auto title loan, if a
25 borrower is unable to pay on the due date the amount owing, then the
26 lender must offer a repayment plan to the borrower. A lender is not
27 required to enter into a payment plan with a borrower more

1 frequently than once every 12 months. If the borrower agrees to the
2 repayment plan, then the borrower must repay the amount owed
3 according to the following terms:

4 (1) the borrower must be allowed to repay the loan in
5 not more than four substantially equal installments with one
6 installment due on each of the next four dates on which the borrower
7 receives regular wages or compensation; and

8 (2) the authorized lender may not charge a borrower
9 any additional interest or fee for using the repayment plan.

10 (d) An authorized lender and a borrower may agree to enter a
11 repayment plan described by Subsection (c) at any time during the
12 term of an auto title loan or during the term of any renewal.

13 (e) An authorized lender may not impose a default charge in
14 connection with an auto title loan.

15 Sec. 342.657. POSSESSION OF MOTOR VEHICLE OR CERTIFICATE OF
16 TITLE. (a) In an auto title loan subject to this subchapter, the
17 borrower shall agree to the authorized lender's possession of the
18 certificate of title.

19 (b) The borrower shall have the exclusive right to redeem
20 the certificate of title by repaying the auto title loan in full and
21 by complying with the auto title loan agreement. When the
22 certificate of title is redeemed, the authorized lender shall
23 release the security interest in the motor vehicle, and return the
24 certificate of title to the borrower.

25 (c) The auto title loan agreement must provide that, on
26 failure by the borrower to redeem the certificate of title at the
27 end of the original 30-day term period, or at the end of any 30-day

1 renewal or renewals of the agreement period or extended payment
2 plan agreements, the lender is allowed to take possession of the
3 motor vehicle.

4 (d) The lender shall retain physical possession of the
5 certificate of title for the entire term of the auto title loan
6 agreement, but is not required to retain physical possession of the
7 motor vehicle at any time.

8 (e) A lender may only hold unencumbered certificates of
9 title for pledge.

10 Sec. 342.658. NO CRIMINAL PROSECUTION. A person may not
11 threaten or pursue criminal charges against a borrower related to a
12 check or other debit authorization provided by the borrower as part
13 of an auto title loan.

14 Sec. 342.659. CONSIDERATION OF BORROWER'S ABILITY TO REPAY.
15 When making or negotiating an auto title loan, the lender must
16 consider, in determining the size, duration, and schedule of
17 installments of the loan, the financial ability of the borrower to
18 repay the loan, and specifically evaluate whether the borrower will
19 be reasonably able to pay the loan in cash at the time and in the
20 manner provided in the auto title loan agreement.

21 Sec. 342.660. CONSUMER INFORMATION. The finance commission
22 by rule may require a licensee to provide materials approved by the
23 commissioner that are designed to:

24 (1) inform the borrower of the duties, rights, and
25 responsibilities of parties to an auto title loan; and

26 (2) educate a borrower about matters of financial
27 literacy.

1 Sec. 342.661. INFORMATION REQUIRED FOR ANNUAL REPORT. As
2 part of the annual report required under Section 342.559, a
3 licensee that engages in auto title loans shall submit the
4 following to the commissioner:

5 (1) the amount of cash advanced under each auto title
6 loan made, serviced, or brokered by the lender during the preceding
7 calendar year;

8 (2) the total number of auto title loans made,
9 serviced, or brokered by the lender during the preceding calendar
10 year;

11 (3) the total number of auto title loans renewed
12 during the preceding calendar year;

13 (4) data regarding any alternative payment
14 arrangements or extended payment plans offered by the lender;

15 (5) the gross monthly income reported by an individual
16 to whom a cash advance was made under an auto title loan during the
17 preceding calendar year, if the lender collects that information
18 from individuals and provided that a lender that submits data
19 provided by individuals is not responsible for an individual
20 borrower's failure to provide accurate information;

21 (6) the total amount of interest, fees, or charges
22 collected by the lender during the preceding calendar year for
23 making, servicing, or brokering auto title loans;

24 (7) the total number of motor vehicles repossessed;
25 and

26 (8) any other information required by the
27 commissioner.

1 SECTION 6. Section 393.001(3), Finance Code, is amended to
2 read as follows:

3 (3) "Credit services organization" means a person who
4 provides, or represents that the person can or will provide, for the
5 payment of valuable consideration any of the following services
6 with respect to the extension of consumer credit by others:

7 (A) improving a consumer's credit history or
8 rating; or

9 (B) [~~obtaining an extension of consumer credit~~
10 ~~for a consumer; or~~

11 [~~(C)~~] providing advice or assistance to a
12 consumer with regard to Paragraph (A) [~~or (B)~~].

13 SECTION 7. Subchapter D, Chapter 393, Finance Code, is
14 amended by adding Section 393.308 to read as follows:

15 Sec. 393.308. OBTAINING EXTENSIONS OF CONSUMER CREDIT
16 PROHIBITED. A credit services organization may not obtain an
17 extension of consumer credit for a consumer or assist a consumer in
18 obtaining an extension of consumer credit.

19 SECTION 8. Section 342.601(1), Finance Code, is repealed.

20 SECTION 9. This Act takes effect September 1, 2011.