

By: Davis, West

S.B. No. 1862

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 borrower  
20 receives regular wages or compensation;

21 (3) agree not to enter into any additional deferred  
22 presentment transactions during the repayment plan term and for a  
23 period of fifteen days after termination of the repayment plan  
24 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  
12 must 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 \$1,400; and

24 (3) 15 percent per month on the portion of the cash  
25 advance that exceeds \$1,400.

26 (b) On the prepayment of an auto title loan, the  
27 finance charge authorized under this section is considered to be

1 earned at the time the loan is made and is not subject to refund.

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

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

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

23 (c) After three renewals of an auto title loan, if a  
24 borrower is unable to pay on the due date the amount owing, then the  
25 lender must offer a repayment plan to the borrower. A lender is not  
26 required to enter into a payment plan with a borrower more  
27 frequently than once every 12 months. If the borrower agrees to the

1 repayment plan, then the borrower must repay the amount owed  
2 according to the following terms:

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

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

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

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

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

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

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



1 plan agreements, the lender is allowed to take possession of the  
2 motor vehicle.

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

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

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

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

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

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

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

27 Sec. 342.661. INFORMATION REQUIRED FOR ANNUAL REPORT. As

1 part of the annual report required under Section 342.559, a  
2 licensee that engages in auto title loans shall submit the  
3 following to the commissioner:

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

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

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

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

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

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

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

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

27 SECTION 6. Section 393.001(3), Finance Code, is amended to

1 read as follows:

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

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

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

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

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

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

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

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