

1-1 By: Davis, West S.B. No. 1862  
1-2 (In the Senate - Filed March 11, 2011; March 24, 2011, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 11, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 1; April 11, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1862 By: Watson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to certain extensions of credit to consumers.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter A, Chapter 302, Finance Code, is  
1-13 amended by adding Section 302.003 to read as follows:

1-14 Sec. 302.003. PROHIBITION ON THIRD-PARTY FEES TO ARRANGE OR  
1-15 GUARANTEE CERTAIN EXTENSIONS OF CONSUMER CREDIT. (a) A fee paid  
1-16 or to be paid to a third party to assist a consumer in the  
1-17 transacting, arranging, guaranteeing, or negotiating of an  
1-18 extension of credit may not be contracted for, charged, or received  
1-19 by a creditor or third party in connection with the extension of  
1-20 credit if:

1-21 (1) the extension of credit is secured by a  
1-22 non-purchase money security interest in personal property or is  
1-23 unsecured; and

1-24 (2) the proceeds of the extension of credit are used  
1-25 for personal, family, or household purposes.

1-26 (b) The amount of a fee contracted for, charged, or received  
1-27 in violation of Subsection (a) is considered interest for usury  
1-28 purposes under state law.

1-29 SECTION 2. Section 342.604, Finance Code, is amended by  
1-30 adding Subsection (c) to read as follows:

1-31 (c) A creditor who extends consumer credit to a member of  
1-32 the United States military or a dependent of a member of the United  
1-33 States military must comply with 10 U.S.C. Section 987 and any  
1-34 regulations adopted under that law, to the extent applicable.

1-35 SECTION 3. Subchapter M, Chapter 342, Finance Code, is  
1-36 amended by adding Sections 342.606 and 342.607 to read as follows:

1-37 Sec. 342.606. REQUIREMENTS FOR DEFERRED PRESENTMENT  
1-38 TRANSACTIONS. (a) The provisions of Subchapter F apply to a  
1-39 deferred presentment transaction made under this subchapter.

1-40 (b) As an alternative to the rate provided by Sections  
1-41 342.252, 342.253, and 342.259, the combined interest and fees for a  
1-42 deferred presentment transaction made under this subchapter with a  
1-43 maximum cash advance computed under Subchapter C, Chapter 341,  
1-44 using a reference base amount that is not more than \$200, may not  
1-45 exceed 15 percent of the amount advanced.

1-46 (c) A lender may not enter into a deferred presentment  
1-47 transaction in which the amount of cash advanced exceeds 35 percent  
1-48 of the borrower's gross monthly income.

1-49 (d) On the prepayment of a deferred presentment  
1-50 transaction, the finance charge authorized under this section is  
1-51 considered to be earned at the time the transaction is made and is  
1-52 not subject to refund.

1-53 (e) A lender must accept partial payment of the outstanding  
1-54 principal balance at any time during regular business hours.

1-55 (f) A lender may not for a fee renew, roll over, or otherwise  
1-56 consolidate a deferred presentment transaction. For purposes of  
1-57 this subsection, "roll over" means the refinancing or paying of all  
1-58 or part of the finance charges and advance of a deferred presentment  
1-59 transaction with a new deferred presentment transaction.

1-60 (g) In this subsection, "consecutive loan" means a new  
1-61 deferred presentment transaction that a lender enters into with a  
1-62 borrower not later than the seventh day after the date a previous  
1-63 deferred presentment transaction made to the same borrower is paid

2-1 in full. If a borrower enters into a third consecutive loan, a  
2-2 lender must automatically convert the loan at no additional cost  
2-3 under a written repayment plan as authorized by this subsection  
2-4 under which the borrower must be allowed to repay the loan in not  
2-5 less than four substantially equal installments. A lender is not  
2-6 required to enter into a repayment plan with a borrower more  
2-7 frequently than once every 12 months. The borrower must agree not  
2-8 to enter into an additional deferred presentment transaction during  
2-9 the repayment plan term.

2-10 (h) A lender may not impose a default charge in connection  
2-11 with a deferred presentment transaction.

2-12 (i) The finance commission by rule may require a lender to  
2-13 provide to a borrower materials approved by the commissioner that  
2-14 are designed to:

2-15 (1) inform the borrower of the duties, rights, and  
2-16 responsibilities of the parties to a deferred presentment  
2-17 transaction; and

2-18 (2) educate a borrower about matters of financial  
2-19 literacy.

2-20 (j) A lender may not charge or receive in addition to the  
2-21 interest and charges provided for by this section any additional  
2-22 amount, whether in the form of broker fees, placement fees, or  
2-23 another fee or charge, except costs and disbursements in connection  
2-24 with any suit to collect a deferred presentment transaction,  
2-25 including reasonable attorney's fees that are incurred by a lender  
2-26 as a result of the suit and to which the lender is entitled by law.

2-27 (k) As part of the annual report required under Section  
2-28 342.559, a lender that engages in deferred presentment transactions  
2-29 shall submit the following information to the commissioner covering  
2-30 the preceding calendar year:

2-31 (1) the amount of cash advanced under each deferred  
2-32 presentment transaction made, serviced, or brokered by the lender;

2-33 (2) the total number of deferred presentment  
2-34 transactions made, serviced, or brokered by the lender;

2-35 (3) data regarding extended payment plans and  
2-36 alternative payment arrangements offered by the lender;

2-37 (4) the gross monthly income reported by an individual  
2-38 to whom a cash advance was made under a deferred presentment  
2-39 transaction, if the lender collects that information from  
2-40 individuals;

2-41 (5) the total amount of interest, fees, or charges  
2-42 collected by the lender for making, servicing, or brokering  
2-43 deferred presentment transactions; and

2-44 (6) any other information required by the  
2-45 commissioner.

2-46 (l) For purposes of Subsections (c) and (k)(4), a lender is  
2-47 not responsible for an individual borrower's failure to provide  
2-48 accurate information relating to the borrower's income.

2-49 (m) A person may not threaten or pursue criminal charges  
2-50 against a borrower related to a check or other debit authorization  
2-51 provided by the borrower as part of a deferred presentment  
2-52 transaction. This information must be disclosed in the contract  
2-53 with the borrower, immediately above the place where the borrower  
2-54 signs the contract, in at least 12-point, bold, and underlined type  
2-55 as follows:

2-56 "YOU CANNOT BE PROSECUTED IN ANY CRIMINAL ACTION SIMPLY FOR  
2-57 THE COLLECTION OF THIS TRANSACTION. IT IS NOT A CRIMINAL OFFENSE TO  
2-58 DEFAULT ON THIS PAYDAY LOAN."

2-59 Sec. 342.607. ATTEMPT TO EVADE LAW. This subchapter  
2-60 applies to a person who offers, makes, or brokers a deferred  
2-61 presentment transaction, who assists a consumer in this state in  
2-62 obtaining a deferred presentment transaction, or who wholly or  
2-63 partly arranges a deferred presentment transaction for a third  
2-64 party, regardless of whether the third party is exempt from  
2-65 licensing under this subtitle or whether approval, acceptance, or  
2-66 ratification by the third party is necessary to create a legal  
2-67 obligation for the third party through any communication method,  
2-68 including mail, telephone, the Internet, or other electronic means.

2-69 SECTION 4. Subsection (a), Section 342.501, Finance Code,

3-1 is amended to read as follows:

3-2 (a) An authorized lender may not induce or permit a person  
 3-3 or a husband and wife to be directly or indirectly obligated under  
 3-4 more than one loan contract at any time for the purpose or with the  
 3-5 effect of obtaining an amount of interest greater than the amount of  
 3-6 interest otherwise authorized under this chapter for a loan of that  
 3-7 aggregate amount with a maximum interest charge computed under  
 3-8 Section 342.201(a), Section 342.201(e), Section 342.252, Section  
 3-9 342.259, Section 342.606, Section 342.654, or any combination of  
 3-10 those sections.

3-11 SECTION 5. Chapter 342, Finance Code, is amended by adding  
 3-12 Subchapter N to read as follows:

3-13 SUBCHAPTER N. AUTO TITLE LOANS

3-14 Sec. 342.651. DEFINITIONS. In this subchapter:

3-15 (1) "Auto title loan" means an agreement in which a  
 3-16 lender agrees to make a loan of money to a borrower, and the  
 3-17 borrower agrees to give the lender a non-purchase money security  
 3-18 interest in an unencumbered motor vehicle owned by the borrower.

3-19 (2) "Lender" means a lender licensed under this  
 3-20 chapter.

3-21 Sec. 342.652. GENERAL REQUIREMENTS. An auto title loan  
 3-22 must be in writing and have a loan term of at least one month.

3-23 Sec. 342.653. APPLICABILITY OF OTHER LAW. (a) The  
 3-24 provisions of Subchapters E and F apply to an auto title loan made  
 3-25 under this subchapter.

3-26 (b) A lender that extends consumer credit to a member of the  
 3-27 United States military or a dependent of a member of the United  
 3-28 States military must comply with 10 U.S.C. Section 987 and any  
 3-29 regulations adopted under that law, to the extent applicable.

3-30 Sec. 342.654. AUTHORIZED FINANCE CHARGES. (a) As an  
 3-31 alternative to the rate provided by Sections 342.201, 342.252,  
 3-32 342.253, and 342.259, an auto title loan made under this subchapter  
 3-33 may provide for a finance charge that does not exceed in the  
 3-34 aggregate:

3-35 (1) 20 percent a month on the portion of the cash  
 3-36 advance that does not exceed \$700;

3-37 (2) 18 percent a month on the portion of the cash  
 3-38 advance that is greater than \$700 but does not exceed \$1,400; and

3-39 (3) 15 percent a month on the portion of the cash  
 3-40 advance that is greater than \$1,400.

3-41 (b) On the prepayment of an auto title loan, the finance  
 3-42 charge authorized under this section is considered to be earned at  
 3-43 the time the loan is made and is not subject to refund.

3-44 (c) A lender may not charge or receive in addition to the  
 3-45 interest and charges provided for by this section any additional  
 3-46 amount, whether in the form of broker fees, placement fees, or  
 3-47 another fee or charge, except fees authorized under Section  
 3-48 342.657(c) and costs and disbursements in connection with any suit  
 3-49 to collect an auto title loan, including reasonable attorney's fees  
 3-50 that are incurred by a lender as a result of the suit and to which  
 3-51 the lender is entitled by law.

3-52 Sec. 342.655. ACCEPTANCE OF PARTIAL PAYMENT. A lender must  
 3-53 accept partial payment of the principal loan balance of an auto  
 3-54 title loan at any time during regular business hours.

3-55 Sec. 342.656. RENEWALS. (a) In this section:

3-56 (1) "Consecutive loan" means a new auto title loan  
 3-57 that a lender enters into with a borrower not later than the seventh  
 3-58 day after the date a previous auto title loan made to the same  
 3-59 borrower is paid in full.

3-60 (2) "Renewal" means a transaction in which a borrower  
 3-61 refinances or pays all or part of the finance charges and advance of  
 3-62 an auto title loan with a new auto title loan.

3-63 (b) Beginning with the first renewal and at each successive  
 3-64 renewal after the first renewal, the minimum required payment or  
 3-65 finance charge must reduce the principal balance by at least 10  
 3-66 percent of the original principal balance of the auto title loan.  
 3-67 Alternatively, if the borrower fails to pay on the due date, the  
 3-68 lender may declare the outstanding principal balance and any  
 3-69 finance charge to be immediately due and payable.

4-1 (c) After three renewals or consecutive loans of an auto  
 4-2 title loan, if a borrower is unable to pay on the due date the amount  
 4-3 owing, then the lender must automatically convert the loan at no  
 4-4 additional cost under a written repayment plan as authorized by  
 4-5 this section. A lender is not required to enter into a repayment  
 4-6 plan with a borrower more frequently than once every 12 months. The  
 4-7 borrower must repay the amount owed according to the following  
 4-8 terms:

4-9 (1) the borrower must be allowed to repay the loan in  
 4-10 not less than four substantially equal installments; and

4-11 (2) the lender may not charge a borrower any  
 4-12 additional interest or fee for using the repayment plan.

4-13 (d) A lender may not impose a default charge in connection  
 4-14 with an auto title loan.

4-15 Sec. 342.657. POSSESSION OF MOTOR VEHICLE OR CERTIFICATE OF  
 4-16 TITLE. (a) In an auto title loan subject to this subchapter, the  
 4-17 borrower shall agree to the lender's keeping possession of the  
 4-18 certificate of title.

4-19 (b) The borrower shall have the exclusive right to redeem  
 4-20 the certificate of title by repaying the auto title loan in full and  
 4-21 by complying with the auto title loan agreement. When the  
 4-22 certificate of title is redeemed, the lender shall release the  
 4-23 security interest in the motor vehicle and return the certificate  
 4-24 of title to the borrower.

4-25 (c) The auto title loan agreement must provide that, on  
 4-26 failure by the borrower to redeem the certificate of title at the  
 4-27 end of the original term or at the end of any renewal or renewals of  
 4-28 the agreement period, the lender is allowed to take possession of  
 4-29 the motor vehicle. If after taking possession of the vehicle under  
 4-30 this subsection the lender sells the vehicle for an amount that  
 4-31 exceeds the amount owed to the lender by the borrower, the borrower  
 4-32 is entitled to the excess amount. A lender may assess and collect  
 4-33 reasonable fees to recover the costs of taking possession of and  
 4-34 selling a motor vehicle under this section.

4-35 (d) The lender shall retain physical possession of the  
 4-36 certificate of title for the entire term of the auto title loan  
 4-37 agreement but is not required to retain physical possession of the  
 4-38 motor vehicle at any time.

4-39 (e) A lender may only hold unencumbered certificates of  
 4-40 title for pledge.

4-41 Sec. 342.658. NO CRIMINAL PROSECUTION. A person may not  
 4-42 threaten or pursue criminal charges against a borrower simply  
 4-43 because the borrower defaulted on the loan. This information must  
 4-44 be disclosed in the contract with the borrower, immediately above  
 4-45 the place where the borrower signs the contract, in at least  
 4-46 12-point, bold, and underlined type as follows:

4-47 "YOU CANNOT BE PROSECUTED IN ANY CRIMINAL ACTION SIMPLY FOR  
 4-48 THE COLLECTION OF THIS TRANSACTION. IT IS NOT A CRIMINAL OFFENSE TO  
 4-49 DEFAULT ON THIS AUTO TITLE LOAN."

4-50 Sec. 342.659. CONSIDERATION OF BORROWER'S ABILITY TO REPAY.  
 4-51 When making or negotiating an auto title loan, the lender must  
 4-52 consider, in determining the size, duration, and schedule of  
 4-53 installments of the loan, the financial ability of the borrower to  
 4-54 repay the loan, and specifically evaluate whether the borrower will  
 4-55 be reasonably able to pay the loan in cash at the time and in the  
 4-56 manner provided in the auto title loan agreement.

4-57 Sec. 342.660. CONSUMER INFORMATION. The finance commission  
 4-58 by rule may require a lender to provide to a borrower materials  
 4-59 approved by the commissioner that are designed to:

4-60 (1) inform the borrower of the duties, rights, and  
 4-61 responsibilities of the parties to an auto title loan transaction;  
 4-62 and

4-63 (2) educate a borrower about matters of financial  
 4-64 literacy.

4-65 Sec. 342.661. INFORMATION REQUIRED FOR ANNUAL REPORT.

4-66 (a) As part of the annual report required under Section 342.559, a  
 4-67 lender that engages in auto title loans shall submit the following  
 4-68 information to the commissioner covering the preceding calendar  
 4-69 year:

- 5-1 (1) the amount of cash advanced under each auto title
- 5-2 loan made, serviced, or brokered by the lender;
- 5-3 (2) the total number of auto title loans made,
- 5-4 serviced, or brokered by the lender;
- 5-5 (3) data regarding extended payment plans and
- 5-6 alternative payment arrangements offered by the lender;
- 5-7 (4) the gross monthly income reported by an individual
- 5-8 to whom a cash advance was made under an auto title loan, if the
- 5-9 lender collects that information from individuals;
- 5-10 (5) the total amount of interest, fees, or charges
- 5-11 collected by the lender for making, servicing, or brokering auto
- 5-12 title loans;
- 5-13 (6) the total number of vehicles repossessed by the
- 5-14 lender; and
- 5-15 (7) any other information required by the
- 5-16 commissioner.

5-17 (b) For purposes of Subsection (a)(4), a lender is not  
 5-18 responsible for an individual borrower's failure to provide  
 5-19 accurate information relating to the borrower's income.

5-20 Sec. 342.662. ATTEMPT TO EVADE LAW. This subchapter  
 5-21 applies to a person who offers, makes, or brokers an auto title  
 5-22 loan, who assists a consumer in this state in obtaining an auto  
 5-23 title loan, or who wholly or partly arranges an auto title loan for  
 5-24 a third party, regardless of whether the third party is exempt from  
 5-25 licensing under this subtitle or whether approval, acceptance, or  
 5-26 ratification by the third party is necessary to create a legal  
 5-27 obligation for the third party through any communication method,  
 5-28 including mail, telephone, the Internet, or other electronic means.

5-29 SECTION 6. Subdivision (3), Section 393.001, Finance Code,  
 5-30 is amended to read as follows:

5-31 (3) "Credit services organization" means a person who  
 5-32 provides, or represents that the person can or will provide, for the  
 5-33 payment of valuable consideration any of the following services  
 5-34 with respect to the extension of consumer credit by others:

5-35 (A) improving a consumer's credit history or  
 5-36 rating; or

5-37 (B) ~~obtaining an extension of consumer credit~~  
 5-38 ~~for a consumer; or~~

5-39 ~~[(C)] providing advice or assistance to a~~  
 5-40 ~~consumer with regard to Paragraph (A) ~~or (B)~~.~~

5-41 SECTION 7. Subchapter D, Chapter 393, Finance Code, is  
 5-42 amended by adding Section 393.308 to read as follows:

5-43 Sec. 393.308. OBTAINING EXTENSIONS OF CONSUMER CREDIT  
 5-44 PROHIBITED. A credit services organization may not obtain an  
 5-45 extension of consumer credit for a consumer or assist a consumer in  
 5-46 obtaining an extension of consumer credit.

5-47 SECTION 8. (a) The consumer credit commissioner shall  
 5-48 prepare and publish a report not later than December 1, 2012,  
 5-49 regarding the use of deferred presentment transactions in this  
 5-50 state. In preparing the report, the commissioner shall study the  
 5-51 need for comprehensive data reporting and the value and feasibility  
 5-52 of a real-time statewide database system to provide data for policy  
 5-53 development and to enhance a lender's evaluation of a borrower's  
 5-54 ability to repay a deferred presentment transaction. In reviewing  
 5-55 the value and feasibility of a real-time statewide database system,  
 5-56 as part of the study, the commissioner should consider the use of a  
 5-57 database verification fee collected from the borrower to recover  
 5-58 the actual costs of the system. The commissioner shall also study  
 5-59 the appropriateness of the rate structure provided by Section  
 5-60 342.606, Finance Code, as added by this Act, in regard to the manner  
 5-61 in which the deferred presentment transactions are used, and assess  
 5-62 whether the protections included in that section are effectively  
 5-63 addressing the cycle of ongoing debt that can be caused by high-cost  
 5-64 single-payment loans.

5-65 (b) The consumer credit commissioner shall prepare and  
 5-66 publish a report not later than December 1, 2012, regarding the use  
 5-67 of auto title loans in this state. In preparing the report, the  
 5-68 commissioner shall study the need for comprehensive data reporting  
 5-69 and the value and feasibility of a real-time statewide database

6-1 system to provide data for policy development and to enhance a  
6-2 lender's evaluation of a borrower's ability to repay an auto title  
6-3 loan. In reviewing the value and feasibility of a real-time  
6-4 statewide database system, as part of the study, the commissioner  
6-5 should consider the use of a database verification fee collected  
6-6 from the borrower to recover the actual costs of the system. The  
6-7 commissioner shall also study the appropriateness of the rate  
6-8 structure provided by Section 342.654, Finance Code, as added by  
6-9 this Act, in regard to the manner in which the auto title loans are  
6-10 used, and assess whether the protections included in that section  
6-11 are effectively addressing the cycle of ongoing debt that can be  
6-12 caused by high-cost single-payment transactions.

6-13 SECTION 9. This Act takes effect September 1, 2011.

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