

## **BILL ANALYSIS**

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C.S.S.B. 121  
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Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Legislation passed into law in 2001 authorized deferred presentment transactions, better known as payday loans or auto title loans under Chapter 342 (Consumer Loans), Finance Code. Under Chapter 342, interest charged to obtain an extension of credit cannot exceed 10 percent. Chapter 393 of the Finance Code also authorizes credit service organizations (CSO). These businesses can offer assistance in improving a consumer's credit and can also assist a consumer in obtaining an extension of credit for a fee. State law does not limit the amount of the fees charged by a CSO to assist a consumer in obtaining an extension of credit.

A credit access business (CAB) is a CSO that can assist a consumer in obtaining a loan or extension of credit. CABs arrange short-term, deferred presentment transactions, or "payday loans," and motor vehicle title loans, or "auto title loans." These loans are financed by a third-party lender who collects the permitted interest. Payday loans are made to borrowers who would not qualify to borrow at a conventional bank due to poor credit history, insufficient documentation and/or inability to repay the loan.

In many instances, consumers cannot pay in full the original loan amount and associated fees when due. When this occurs, the borrower is offered the option of refinancing the loan. At that time, another fee is charged by the CAB/CSO. Reports generated by the Consumer Credit Commission show that most borrowers refinance loans obtained several times before they are paid in full. Under current state law, fees charged to refinance a loan are not applied to the amount borrowed. The result is that many borrowers refinance loans over the course of several months without any payments going toward the principal.

This has been called the "cycle of debt" by consumer advocates. When this takes place, the total amount of fees charged often exceeds the amount borrowed. If these costs were calculated as interest rates, studies say they would exceed 500 percent to 600 percent. Current state law does not limit the number of times a loan can be refinanced. Neither does state law limit the number of loans a borrower can have outstanding at one time. In addition, thousands of Texans each year lose their automobiles when they cannot satisfy the terms agreed to under an auto title loan.

S.B. 121 establishes separate, income-based, allowable loan amounts for each of the four types of CAB loans: single-payment deferred presentment, multiple-payment deferred presentment, single-payment auto title, and multiple-payment auto title loans. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 121 amends current law relating to credit services organizations and extensions of consumer credit facilitated by credit service organizations and providing civil and administrative penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 342.607, Finance Code), SECTION 4 (Section 393.201, Finance Code), SECTION 6 (Section 393.223, Finance Code) SECTION 7 (Section 393.308, Finance Code), SECTION 10 (Section 393.622, Finance Code) and SECTION 15 (Section 393.629 and 393.640, Finance Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter M, Chapter 342, Finance Code, by adding Section 342.607, as follows:

Sec. 342.607. DEFERRED PRESENTMENT TRANSACTION DATA COLLECTION SYSTEM. (a) Defines "credit access business."

(b) Requires the consumer credit commissioner (commissioner) to establish and implement a database for the compilation of information relating to deferred presentment transactions that allows the commissioner or persons who offer, service, or broker the transactions, including a credit access business, to determine:

(1) whether an individual seeking to enter into a deferred presentment transaction with the person has any outstanding deferred presentment transactions entered into with other persons;

(2) the total number of outstanding deferred presentment transactions entered into by the individual described by Subdivision (1) with other persons; and

(3) whether the person is in compliance with this section and other provisions of law governing deferred presentment transactions.

(c) Requires the commissioner to contract with a third-party vendor to operate the database required by this section. Requires the commissioner, in selecting the vendor, to consider the vendor's ability to meet the requirements of this section; consider the cost of the vendor's services; give strong consideration to the vendor's ability to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions; give strong consideration to whether the vendor operates a similar database in another state; and give strong consideration to whether the vendor's operation of the database would facilitate the enforcement of laws governing deferred presentment transactions and the persons who offer, service, or broker those transactions.

(d) Requires the commissioner to ensure that:

(1) the third-party vendor operating the database operates the database in accordance with this section and rules adopted by the Finance Commission of Texas (finance commission) under this section; and

(2) the database established under this section:

(A) allows persons required to submit information to the database to submit and access the required information from any location in this state;

(B) provides real-time access by the commissioner to information contained in the database from any location in this state; and

(C) contains safeguards to ensure that information contained in the database may not be accessed by an unauthorized person.

(e) Requires a person who offers, services, or brokers a deferred presentment transaction, including a credit access business, to submit to the database at the time the transaction is entered into data relating to the transaction that the commissioner, by rule of the finance commission, determines necessary.

(f) Provides that information in the database is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(g) Requires the finance commission to adopt rules as necessary to implement this section, including rules:

(1) relating to the form and content of information to be submitted to the database;

(2) prescribing a fee to be paid by persons required to submit information to be included in the database under Subsection (e); and

(3) establishing requirements for the retention, archiving, and deletion of information entered into or stored in the database.

(h) Requires a third-party vendor to charge a person who offers, services, or brokers a deferred presentment transaction a fee to access or use the database under this section. Authorizes the fee to be charged on a per-transaction basis and requires that the fee be used only to pay the costs associated with the maintenance of the database under this section. Requires the finance commission by rule to approve the amount of the fee, which may not exceed \$1 per deferred presentment transaction.

(i) Requires a person who ceases to offer, service, or broker deferred presentment transactions to continue to submit information required by this section for any transactions that are outstanding and with respect to which the person continues collection efforts. Requires the person to submit to the commissioner for approval, not later than the 10th day after the date the person ceases to offer deferred presentment transactions, a plan for continuing compliance with this section. Requires the commissioner to promptly approve or disapprove the plan. Authorizes the commissioner to require a person to whom this subsection applies to submit a new or modified plan.

SECTION 2. Amends Section 392.301(a), Finance Code, as follows:

(a) Prohibits a debt collector, in debt collection, from using threats, coercion, or attempts to coerce that employ any of the following practices:

(1)-(7) Makes no change to these subdivisions;

(8) referencing a certification signed by the consumer as required by Section 393.630(b) or any penalties associated with a violation of that section; or

(9) Redesignates existing Subdivision (8) as Subdivision (9).

SECTION 3. Amends Section 393.001, Finance Code, by amending Subdivisions (1) and (3) to define "commissioner" and redefine "credit services organization," and adding Subdivisions (1-a), (2-a), (3-a), (4-a), (5), (6), (7), (8), (9), (10), (11), (12), and (13), to define "consumer," "credit access business," "deferred presentment transaction," "finance commission," "military borrower," "motor vehicle title loan," "multiple-payment deferred presentment transaction," "multiple-payment motor vehicle title loan," "office," "refinance," "service," "single-payment deferred presentment transaction," and "single-payment motor vehicle title loan," accordingly.

SECTION 4. Amends Section 393.201, Finance Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires that the contract, in addition to the notice required by Section 393.202 (Notice of Cancellation), fully describe the services the organization is required to perform, rather than is to perform, for the consumer or on behalf of a third party, including each guarantee and each promise of a full or partial refund and the estimated

period for performing and completing all of the services, not to exceed 180 days or the period permitted under an extended payment plan authorized by Subchapter G (Licensing and Regulation of Certain Credit Services Organizations);

(c) Requires that a contract with a credit access business for the performance of services, in addition to the requirements of Subsection (b) and Section 393.302 (Charge or Receipt of Consideration Before Completion of Services), rather than requires that a contract with a credit access business, as defined by Section 393.601 (Definitions), for the performance of services described by Section 393.602(a) (relating to the extension of consumer credit), in addition to the requirements of Subsection (b) and Section 393.302:

- (1) Makes no change to this subdivision;
- (2) Deletes a reference to Section 393.602(a);
- (3) Makes no change to this subdivision;
- (4) Makes a conforming change;
- (5) disclose to the consumer the specific fees that will be paid to the credit access business for the business's services and to any third party;
- (6) contain the name and address of the Office of Consumer Credit Commissioner (OCCC), the office's website address, rather than the name and address of the office, and the telephone number of the office's consumer helpline; and
- (7) use model contract clauses adopted by rule of the commission.

(d) Requires the commission to adopt rules to implement this section.

SECTION 5. Amends Section 393.222, Finance Code, by adding Subsection (a-1), to require a credit access business to post, in the same manner as a notice required under Subsection (a) (requiring a credit access business to post a schedule of all fees and the name and address of OCCC), and provide as a separate document to a consumer, a notice prescribed by the finance commission regarding the availability of extended payment plans that describes the basic features of the plans.

SECTION 6. Amends Section 393.223(a), Finance Code, as follows:

(a) Requires a credit access business, before performing services described by Section 393.001(2-a), rather than Section 393.221(1) (defining "credit access business"), to provide to a consumer a disclosure adopted by rule of the commission that discloses the following in a form prescribed by the finance commission:

- (1) Makes no change to this subdivision;
- (2) and (3) Makes nonsubstantive changes to these subdivisions;
- (4) the name of the credit access business and any unique number assigned to the license issued to the business under Subchapter G (Licensing and Regulation of Certain Credit Services Organizations).

SECTION 7. Amends Subchapter D, Chapter 393, Finance Code, by adding Sections 393.308 and 393.309, as follows:

Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN LOANS OR EXTENSIONS OF CREDIT. (a) Prohibits a credit services organization from obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in any form other than in the form of a single-payment deferred presentment transaction, a

multiple-payment deferred presentment transaction, a single-payment motor vehicle title loan, or a multiple-payment motor vehicle title loan.

(b) Authorizes a credit services organization to obtain for a consumer or assist a consumer in obtaining a loan or other extension of consumer credit only if the loan or extension of consumer credit is in the form of a deferred presentment transaction or motor vehicle title loan described by Subsection (a) made by a third-party lender that is unaffiliated with the credit services organization and does not have any ownership, directors, officers, members, or employees in common with the credit services organization.

(c) Prohibits a credit services organization from charging or receiving from a consumer a fee or other valuable consideration in connection with a loan or other extension of consumer credit that is not a deferred presentment transaction or motor vehicle title loan described by Subsection (b).

(d) Authorizes the finance commission to adopt rules to implement this section.

(e) Authorizes the commissioner, notwithstanding Section 14.252 (Amount of Penalty), to assess an administrative penalty in an amount not to exceed \$2,000 for each violation against a credit access business that violates this section, regardless of whether the violation is knowing or wilful.

(f) Authorizes a consumer to maintain an action under this section for any violation of this section. Authorizes a consumer, in any suit filed under this section, to recover damages in an amount not to exceed \$10,000 for each violation and court costs and reasonable and necessary attorney's fees.

**Sec. 393.309. RESTRICTION ON AMOUNT CHARGED IN CONNECTION WITH EXTENSION OF CONSUMER CREDIT.** Prohibits total charges in connection with an extension of consumer credit that a credit services organization obtains for a consumer or assists the consumer in obtaining, including interest, lender charges, and any valuable consideration received by the credit services organization, from exceeding the permissible interest and fee and other charges for a similar type of consumer loan under Subchapter F (Alternate Charges for Certain loans), Chapter 342 (Consumer Loans).

**SECTION 8.** Amends Section 393.602, Finance Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Provides that this subchapter applies only to a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit.

(b) Authorizes a credit access business to assess fees, subject to Section 393.309, as agreed to between the parties for services performed to obtain an extension of consumer credit for a consumer or assist a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle title loan or a refinance of such an extension of consumer credit. Authorizes a credit access business fee to be calculated daily, biweekly, monthly, or on another periodic basis. Provides that a credit access business is permitted to charge amounts allowed by other laws, as applicable. Prohibits a fee from being charged unless it is disclosed.

(b-1) Authorizes a credit services organization, notwithstanding Subsection (a) or (b), that is not obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit to also charge or receive from a consumer a fee or other valuable consideration in connection with advice, assistance, or other services that the credit services organization provides to improve a consumer's credit history or rating.

Makes nonsubstantive changes.

SECTION 9. Amends Section 393.604, Finance Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires that an application for a license under this subchapter:

(1)-(3) Makes no change to these subdivisions;

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

(5) include a copy of each agreement between the business and a third-party lender organization with which the business contracts to provide services or from which the business arranges extensions of consumer credit; and

(6) creates this subsection from existing text and makes no further changes to this subsection.

(d) Provides that information provided by an applicant under this section is public information for the purposes of Chapter 552 (Public Information), Government Code.

SECTION 10. Amends Sections 393.622(a) and (b), Finance Code, as follows:

(a) Authorizes the finance commission to:

(1) Makes no change to this subdivision;

(2) adopt rules with respect to reports of summary business information required to be submitted, rather than with respect to the quarterly reporting, by a licensed credit access business under Section 393.627 (Quarterly Report to Commissioner), rather than a credit access business licensed under this subchapter of summary business information relating to extensions of consumer credit described by Section 393.602(a);

(3) adopt rules with respect to periodic examination by OCCC relating to extensions of consumer credit the business obtained for a consumer or assisted a consumer in obtaining, including rules related to charges for defraying the reasonable cost of conducting the examinations; and

(4) adopt rules identifying extensions of consumer credit that are refinances.

(b) Authorizes the finance commission to adopt rules under this section to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services or from which the business arranges extensions of consumer credit. Provides that a contract or information obtained by the commissioner under this section is considered proprietary and confidential to the respective parties to the contract, and is not subject to disclosure under Chapter 552, Government Code.

Deletes references to Section 393.602(a).

SECTION 11. Amends Subchapter G, Chapter 393, Finance Code, by adding Section 393.6221, as follows:

Sec. 393.6221. EXAMINATION OR INVESTIGATION BY COMMISSIONER; OATHS. Authorizes the commissioner or the commissioner's representative, during an examination or an investigation, to administer oaths and examine a person under oath on

a subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

SECTION 12. Amends Section 393.625, Finance Code, as follows:

Sec. 393.625. **MILITARY BORROWERS.** (a) Creates this subsection from existing text. Requires that an extension of consumer credit that is obtained by a credit access business for a military borrower, rather than a member of the United States military or a dependent of a member of the United States military, or that the business assisted a military borrower in obtaining to comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable. Deletes reference to Section 393.625(a).

(b) Prohibits the term of an extension of consumer credit, including all renewals and refinances, obtained for a military borrower by a credit access business or that a credit access business assists a military borrower in obtaining from exceeding:

(1) 90 days, if the debt is a deferred presentment transaction; or

(2) 180 days, if the debt is a motor vehicle title loan.

(c) Requires the finance commission to adopt a disclosure relating to the provisions of state and federal law applicable to a military borrower who obtains an extension of consumer credit from or with the assistance of a credit access business. Requires a credit access business to provide this disclosure to military borrowers for whom the credit access business seeks to obtain an extension of consumer credit.

(d) Authorizes the commissioner, notwithstanding Section 14.252 (Amount of Penalty), to assess an administrative penalty in an amount not to exceed \$5,000 for each violation against a credit access business that violates this section, regardless of whether the violation is knowing or wilful.

SECTION 13. Amends Section 393.626, Finance Code, as follows:

Sec. 393.626. **DEBT COLLECTION PRACTICES.** Provides that a violation of Chapter 392 (Debt Collection) by a credit access business with respect to obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit constitutes a violation of this subchapter. Deletes a reference to Section 393.602(a) and makes nonsubstantive changes.

SECTION 14. Amends Section 393.627, Finance Code, as follows:

Sec. 393.627. **New heading: REPORTS TO COMMISSIONER.** (a) Creates this subsection from existing text. Requires a credit access business to file quarterly and annual reports with the commissioner on forms prescribed by the commissioner that provide the following information relating to extensions of consumer credit during the preceding quarter or year, as applicable:

(1)-(8) makes no change to these subdivisions;

(9) the number of extended payment plans offered by the credit access business and entered into by consumers, for each product, rather than the mean, median, and mode of the number of extensions of consumer credit obtained by consumers as a result of entering into the extensions of consumer credit described by Subdivision (2); and

(10) makes no change to this subdivision.

(b) Provides that all information submitted by a credit access business to the commissioner for inclusion in a report under this section is confidential.

(c) Requires the commissioner to publish a statewide consolidated analysis and recapitulation of reports filed under this section. Authorizes the commissioner to also publish a consolidated analysis and recapitulation of the reports that provides an analysis of the 15 largest metropolitan statistical areas and the five largest counties of this state.

Deletes a reference to Section 393.602(a) in Subsection (a).

SECTION 15. Amends Subchapter G, Chapter 393, Finance Code, by adding Sections 393.629 through 393.640, as follows:

Sec. 393.629. GENERAL LIMITATIONS ON EXTENSIONS OF CONSUMER CREDIT; LANGUAGE REQUIREMENTS; PAYMENT METHOD. (a) Provides that the provisions of this chapter applicable to a credit access business apply to any consumer physically located in this state at the time the extension of consumer credit is made, regardless of whether the extension of consumer credit was made in person in this state.

(b) Requires the finance commission by rule to adopt Spanish versions of the model contract clauses and all notices that a credit access business is required to give to a consumer under this chapter. Requires a credit access business to provide to the consumer a contract that uses the adopted Spanish clauses and notices to the consumer if in the process of obtaining an extension of consumer credit the consumer requests that the documents be provided in Spanish or if the contract is negotiated in Spanish. Requires that the executed contract and any other binding and controlling document between the credit access business and the consumer be written in English.

(c) Requires a credit access business to accept a payment made in cash or by electronic transfer, cashier's check, teller's check, or money order offered by the consumer or another party, to retire or otherwise pay down debt incurred under an extension of consumer credit that a credit access business obtained for a consumer or assisted a consumer in obtaining under this chapter. Authorizes a consumer to also grant a security interest in an authorized debit of a bank account for a motor vehicle title loan.

(d) Prohibits the term of an extension of consumer credit obtained for a consumer by a credit access business or that a credit access business assists a consumer in obtaining from exceeding 180 days. Provides that, if a term of less than 180 days for an extension of consumer credit is specified under this chapter, the shorter term applies.

Sec. 393.630. LIMITATION ON OUTSTANDING DEBT. (a) Authorizes a consumer, at any one time, to have only one outstanding debt from a deferred presentment transaction that a credit access business obtained for the consumer or assisted the consumer in obtaining and one outstanding debt from a motor vehicle title loan that a credit access business obtained for the consumer or assisted the consumer in obtaining.

(b) Requires a consumer to sign a written certification on a form adopted by finance commission rule stating that the consumer has no other outstanding debt from an extension of consumer credit in the form of a deferred presentment transaction in order to obtain an extension of consumer credit in the form of a deferred presentment transaction facilitated through the services of a credit access business.

(c) Requires a credit access business to in good faith verify that a consumer is not falsifying the certification required by Subsection (b), to the best knowledge and ability of the person acting on behalf of the credit access business for that transaction. Provides that a person acting on behalf of a credit access business has satisfied this requirement if the person considers all information that the consumer shares with the person in negotiating the transaction and if the person makes a



reasonable effort to verify the consumer's representations with any records that the credit access business typically consults in the normal course of its business.

(d) Provides that a credit access business that violates this section is subject to a civil penalty in an amount not to exceed \$1,000 for each violation.

**Sec. 393.631. LIMITATIONS RELATING TO MOTOR VEHICLE SECURING DEBT.**

(a) Requires that the proceeds of the sale of a repossessed motor vehicle that secured a motor vehicle title loan satisfy all outstanding and unpaid indebtedness under that extension of consumer credit, and provides that the consumer is not liable for any deficiency resulting from the sale unless the consumer has committed fraud or has committed a wilful act of misconduct that damages or impairs the value of the motor vehicle.

(b) Requires that any fee charged to a consumer for the repossession of a motor vehicle given as security for a motor vehicle title loan be reasonable and prohibits any fee from exceeding the amount actually paid by the credit access business or the lender to a third party for the repossession.

(c) Requires that a repossession under this chapter comply with Chapter 9 (Secured Transactions), Business and Commerce Code, except as otherwise provided by this section.

**Sec. 393.632. ESTABLISHMENT OF INCOME OR VALUE; REFERENCE**

**AMOUNT.** (a) Requires a credit access business to require documentation to establish a consumer's income for purposes of this subchapter. Provides that acceptable forms of documentation include paper, facsimile, or electronic copies of a payroll document, a paycheck, a bank statement, a report from a nationally or regionally recognized credit and data reporting company, Internal Revenue Service Form W-2 from the preceding year, the income tax return from the preceding tax year, a signed letter from the consumer's employer at the time the extension of consumer credit is sought, or any other document approved by finance commission rule.

(b) Requires a credit access business to retain a copy of the documentation used to establish a consumer's income under Subsection (a) according to the business's standard records retention policy and any applicable rule or regulation establishing a record retention period.

(c) Provides that a credit access business that relies in good faith on a document presented by the consumer under Subsection (a) to establish a consumer's income has complied with this section to the extent the income established under that document meets the applicable requirements under this chapter.

(d) Authorizes a credit access business that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit through the Internet or other electronic means to rely on nationally or regionally recognized database reporting systems and to maintain a record of the database reporting system results used to comply with Subsections (a) and (b).

(e) Requires a credit access business, to establish the retail value of a motor vehicle for purposes of this subchapter, to:

- (1) rely on a nationally or regionally recognized vehicle appraisal guide or agree in good faith with the consumer to the vehicle's retail value; and
- (2) record the recognized or agreed-on value.

(f) Requires the commissioner to adjust the initial \$28,000 reference amount annually with respect to a consumer's income in accordance with the Consumer Price Index for purposes of this chapter.

Sec. 393.633. CERTAIN LOCAL ORDINANCES NOT PREEMPTED. Provides that this chapter does not preempt a local ordinance regulating a credit access business or an extension of consumer credit obtained for a consumer by a credit access business or that a credit access business assists a consumer in obtaining, if the ordinance is compatible with and equal to or more stringent than a requirement prescribed by this chapter.

Sec. 393.634. SINGLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION.

(a) Prohibits the sum of all fees, principal, interest, and other amounts due under an extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining, excluding fees, from exceeding 25 percent of the consumer's gross monthly income, if the consumer's gross annual income is less than the reference amount, or 35 percent of the consumer's gross monthly income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(b) Prohibits the term of an original or refinanced extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining from being less than 10 days or longer than 35 days.

(c) Prohibits an extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining from being refinanced more than four times.

(d) Provides that, if a consumer who has not entered into an extended payment plan with the credit access business in the preceding 12 months refinances a single-payment deferred presentment transaction for the fourth time:

(1) the credit access business is required to offer at least one extended payment plan to the consumer before initiating any debt collection activities;

(2) the consumer is authorized to request, prior to the offer required by Subdivision (1) being made, an extended payment plan at any time on or after the date the consumer refinances the deferred presentment transaction for the fourth time and on or before the fifth day after the date on which the fourth refinance must be repaid in full;

(3) the credit access business is required, to comply with the requirement of Subdivision (1), to send a written notice to the consumer disclosing the following:

(A) the amount due under the current terms of the extension of consumer credit if the consumer declines an extended payment plan;

(B) the amounts due on each of the installment dates of an extended payment plan; and

(C) the date by which the consumer must accept the extended payment plan in writing, which date shall be at least five days after the date of such notice;

(4) the credit access business is prohibited from initiating debt collection activities unless the consumer fails to accept the extended payment plan in writing on or before the deadline contained in the notice required by Subdivision (3), the consumer declines the extended payment plan, or the

consumer fails to make a payment required by an extended payment plan that the consumer accepted; and

(5) the consumer is required to sign an extended payment plan waiver on a form prescribed by the finance commission if the consumer declines an extended payment plan that a credit access business is required to offer under Subdivision (1).

(e) Requires that an extended payment plan required to be offered under Subsection (d) comply with Section 393.638.

(f) Authorizes a credit access business to offer a consumer an extended payment plan that provides the consumer with additional time to repay the debts obtained through a single-payment deferred presentment transaction, either before or after the consumer refinances the single-payment deferred presentment transaction for the third time, more than once in a 12-month period so long as the credit access business does not assess additional fees under the extended payment plan and the credit access business fully describes the terms of the extended payment plan, including all due dates and the amount due on each due date, to the consumer before the consumer enters into the extended payment plan. Provides that an extended payment plan offered under this subsection is not required to comply with Section 393.638.

(g) Requires a credit access business to accept a partial payment that complies with Section 393.629(c) paid by a consumer or on behalf of a consumer to pay down outstanding principal owed under a single-payment deferred presentment transaction that the credit access business obtained for the consumer or assisted the consumer in obtaining.

**Sec. 393.635. MULTIPLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION.** (a) Prohibits the sum of all fees, principal, interest, and other amounts due under any scheduled payment of an extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining from exceeding 10 percent of the consumer's gross monthly income, if the consumer's gross annual income is less than the reference amount, or 15 percent of the consumer's gross monthly income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(b) Prohibits an extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining from being payable by the consumer in more than 12 installments or have an original term of more than 180 days, and requires that the loan agreement specify the number, date, and total amount due with regard to each installment.

(c) Requires that an original or refinanced extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining be payable on a fully amortizing, declining-principal-balance basis with substantially equal payments. Requires a credit access business, if a credit access business precomputes its fees under a multiple-payment deferred presentment transaction and a consumer prepays in full the extension of consumer credit in that form, to refund any unearned fees to the consumer.

(d) Prohibits the first installment of an extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining from being due before the 10th day after the date the consumer enters into the loan agreement. Prohibits

an installment from being due before the 14th day or after the 31st day after the date a previous installment is due.

(e) Prohibits an extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining from being refinanced, including more than 12 installments, and from having a term that exceeds 180 days, excluding an extended payment plan offered in compliance with Section 393.638.

(f) Authorizes a credit access business to offer a consumer an extended payment plan if the extended payment plan complies with Section 393.638 and if the credit access business fully describes the terms of the extended payment plan, including all due dates and the amount due on each due date, to the consumer before the consumer enters into the extended repayment plan.

Sec. 393.636. SINGLE-PAYMENT MOTOR VEHICLE TITLE LOAN.

(a) Prohibits the sum of all fees, principal, interest, and other amounts due under an extension of consumer credit in the form of a single-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining, excluding fees, from exceeding the lesser of:

(1) six percent of the consumer's gross annual income, if the consumer's gross annual income is less than the reference amount;

(2) eight percent of the consumer's gross annual income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law; or

(3) 70 percent of the retail value of the motor vehicle securing the debt.

(b) Prohibits the term of an original or refinanced extension of consumer credit in the form of a single-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining from being less than 30 days or longer than 35 days.

(c) Prohibits an extension of consumer credit in the form of a single-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining from being refinanced more than six times. Prohibits the combined terms of the original extension of consumer credit and any refinanced extensions of consumer credit, excluding an extended payment plan offered in compliance with Subsection (f) or Section 393.638, from exceeding 180 days. Requires the credit access business to fully describe the terms of an extended payment plan, including all due dates and the amount due on each due date, to the consumer before the consumer enters into the extended payment plan.

(d) Provides that, if a consumer who has not entered into an extended payment plan with the credit access business in the preceding 12 months refinances a single-payment motor vehicle title loan for the sixth time:

(1) the credit access business is required to offer at least one extended payment plan to the consumer before initiating any activities to repossess the vehicle securing the debt;

(2) the consumer is authorized to request, prior to the offer required by Subdivision (1) being made, an extended payment plan at any time on or after the date the consumer refinances the motor vehicle title loan for the sixth time and on or before the fifth day after the date on which the sixth refinance must be repaid in full;

(3) the credit access business is required to comply with the requirement of Subdivision (1), to send a written notice to the consumer disclosing the following:

(A) the amount due under the current terms of the extension of consumer credit if the consumer declines an extended payment plan;

(B) the amounts due on each of the installment dates of an extended payment plan; and

(C) the date by which the consumer must accept the extended payment plan in writing, which date shall be at least five days after the date of such notice;

(4) the credit access business is prohibited from repossessing the vehicle securing the debt unless the consumer fails to accept the extended payment plan in writing on or before the deadline contained in the notice required by Subdivision (3), declines the extended payment plan or fails to make a payment required by an extended payment plan that the consumer accepted; and

(5) the consumer is required to sign an extended payment plan waiver on a form prescribed by the finance commission if the consumer declines an extended payment plan that a credit access business is required to offer under Subdivision (1).

(e) Requires that an extended payment plan required to be offered under Subsection (d) to comply with Section 393.638.

(f) Authorizes a credit access business to offer a consumer an extended payment plan that provides the consumer with additional time to repay the debts obtained through a single-payment motor vehicle title loan, either before or after the consumer refinances the single-payment motor vehicle title loan for the sixth time, more than once in a 12-month period so long as the credit access business does not assess additional fees under the extended payment plan and the credit access business fully describes the terms of the extended payment plan, including all due dates and the amount due on each due date, to the consumer before the consumer enters into the extended payment plan. Provides that an extended payment plan offered under this subsection is not required to comply with Section 393.638.

(g) Requires a credit access business to accept a partial payment that complies with Section 393.629(c) paid by a consumer or on behalf of a consumer to pay down outstanding principal owed under a single-payment motor vehicle title loan that the credit access business obtained for the consumer or assisted the consumer in obtaining.

#### Sec. 393.637. MULTIPLE-PAYMENT MOTOR VEHICLE TITLE LOAN.

(a) Prohibits the amount advanced to a consumer under an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining, excluding fees, from exceeding 70 percent of the retail value of the motor vehicle securing the debt.

(b) Prohibits the sum of all fees, principal, interest, and other amounts due under any scheduled payment of an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining from exceeding 20 percent of the consumer's gross monthly income, if the consumer's gross annual income is less than the reference amount, or 30 percent of the consumer's gross monthly income,

if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(c) Requires that an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining be payable on a fully amortizing, declining-principal-balance basis with substantially equal payments. Requires a credit access business, if a credit access business precomputes its fees under a multiple-payment motor vehicle title loan and a consumer prepays the loan in full, to refund any unearned fees to the consumer.

(d) Prohibits an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining from being payable by the consumer in more than six installments, and requires that the loan agreement specify the number, date, and total amount due with regard to each installment.

(e) Prohibits the first installment of an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining from being due before the 10th day after the date the consumer enters into the loan agreement. Prohibits a subsequent installment from being due before the 28th day after the date the previous installment of the loan is due.

(f) Prohibits an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining from being refinanced and prohibits the loan term from exceeding 180 days, except as provided by Subsection (g).

(g) Prohibits a credit access business from initiating any activities to repossess the vehicle securing the debt under a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining before offering the consumer at least one extended payment plan. Authorizes an extended payment plan to cause the extension of consumer credit to extend beyond 180 days so long as the extended payment plan complies with Section 393.638 and the credit access business fully describes the terms of the extended payment plan, including all due dates and the amount due on each due date, to the consumer before the consumer enters into the extended payment plan.

(h) Requires the credit access business, if the credit access business is required to offer a consumer an extended payment plan under Subsection (g), to send a written notice to the consumer disclosing the amount due under the current terms of the extension of consumer credit if the consumer declines an extended payment plan, the amounts due on each of the installment dates of an extended payment plan, and the date by which the consumer must accept the extended payment plan in writing, which date shall be at least five days after the date of such notice.

(i) Prohibits the credit access business from repossessing the vehicle securing the debt unless the consumer fails to accept the extended payment plan in writing on or before the deadline contained in the notice required by Subsection (h)(3), the consumer declines the extended payment plan, or the consumer fails to make a payment required by an extended payment plan that the consumer accepted.

(j) Requires the consumer, if they decline the extended payment plan, to sign an extended payment plan waiver on a form prescribed by the finance commission.

Sec. 393.638. EXTENDED PAYMENT PLAN REQUIREMENTS. (a) Provides that this section applies to extended payment plans required to be offered under Sections 393.634, 393.635, 393.636, and 393.637.

- (b) Requires that an extended payment plan provide for payment in at least:
- (1) four substantially equal installments, after which the outstanding balance will be paid in full, with respect to a single-payment deferred presentment transaction or single-payment motor vehicle title loan; or
  - (2) two substantially equal installments added to the original and refinanced term of the extension of consumer credit, after which the outstanding balance, including only the fees that would have been due under the original extension of consumer credit, will be paid in full, with respect to a multiple-payment deferred presentment transaction or multiple-payment motor vehicle title loan.
- (c) Prohibits the period between installment payments on an extended payment plan from being shorter than 10 days, with respect to a single-payment deferred presentment transaction, or 30 days, with respect to a multiple-payment deferred presentment transaction, a single-payment motor vehicle title loan, or a multiple-payment motor vehicle title loan.
- (d) Prohibits the first payment owed under an extended payment plan from being due before the 10th day after the date the consumer requests an extended payment plan.
- (e) Prohibits a credit access business from assessing additional fees or assisting a consumer in obtaining additional extensions of consumer credit if the consumer is paying an extension of credit under an extended payment plan.
- (f) Authorizes a consumer to pay in full a debt subject to an extended payment plan at any time without prepayment penalties.
- (g) Prohibits a person from engaging in debt collection or vehicle repossession activities for a debt subject to an extended payment plan if the consumer is in compliance with the extended payment plan.
- (h) Prohibits a person from using a device, subterfuge, or pretense to evade the extended payment plan requirements and limitations imposed on a credit access business under this subchapter.

Sec. 393.639. REFINANCES. (a) Provides that any refinance of an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining is required to be authorized under this subchapter, be in the same form as the original extension of consumer credit; and meet all the requirements applicable to the original extension of consumer credit, including the duration, transaction, and extended payment plan requirements under this subchapter, including the applicable income-based or vehicle value-based limitations under Section 393.634(a), 393.635(a), 393.636(a), or 393.637(b), except as otherwise provided by this chapter.

- (b) Authorizes a credit access business, for purposes of this section, to obtain or assist a customer in obtaining the following different forms of extensions of customer credit: single-payment deferred presentment transaction, a multiple-payment deferred presentment transaction, a single-payment motor vehicle title loan, and a multiple-payment motor vehicle title loan.
- (c) Authorizes the terms of a refinanced extension of consumer credit to be the same as or different from the terms of the original extension of consumer credit.
- (d) Prohibits a person from using a device, subterfuge, or pretense to evade the refinance requirements and limitations imposed on a credit access business under this subchapter.

Sec. 393.640. RULES. Requires the finance commission to adopt any rules necessary to implement Sections 393.629-393.639.

SECTION 16. Amends Section 411.095, Government Code, to include Chapter 393 (Credit Services Organizations), Finance Code, in the existing list of chapters entitling the consumer credit commissioner to obtain from the Department of Public Safety of the State of Texas information that related to a person who is an applicant for or holder of a license.

SECTION 17. Repealers: Sections 393.221 (Definitions) and 393.601 (Definitions), Finance Code.

SECTION 18. Requires the commissioner to establish and implement the database under Section 342.607, Finance Code, as added by this Act, not later than January 1, 2016, and requires the commissioner to prescribe the date by which a person who offers, services, or brokers a deferred presentment transaction to begin submitting data as provided by that section.

SECTION 19. Makes application of this Act prospective.

SECTION 20. Effective date: September 1, 2015.