

By: Thompson of Harris

H.B. No. 3811

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to extensions of consumer credit in the form of a deferred  
3 presentment transaction that a credit access business obtains for a  
4 consumer or assists a consumer in obtaining; providing a civil  
5 penalty; adding a provision subject to a criminal penalty.

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

7 SECTION 1. Section 393.601, Finance Code, is amended by  
8 amending Subdivision (3) and adding Subdivisions (5-a) and (7) to  
9 read as follows:

10 (3) "Deferred presentment transaction" means a  
11 single-payment or multiple-payment transaction defined as a  
12 deferred presentment transaction [~~has the meaning assigned~~] by  
13 Section 341.001 in connection with which the consumer is not  
14 required to provide real or personal property as security. [~~For~~  
15 ~~purposes of this chapter, this definition does not preclude~~  
16 ~~repayment in more than one installment.~~]

17 (5-a) "Multiple-payment deferred presentment  
18 transaction" means a deferred presentment transaction that is not a  
19 single-payment deferred presentment transaction.

20 (7) "Single-payment deferred presentment transaction"  
21 means a deferred presentment transaction for which the entire cash  
22 advance, interest, and fees are required under the terms of the  
23 transaction to be payable in a single payment.

24 SECTION 2. Chapter 393, Finance Code, is amended by adding

1 Subchapter G-1 to read as follows:

2 SUBCHAPTER G-1. REGULATIONS IN CONNECTION WITH DEFERRED  
3 PRESENTMENT TRANSACTIONS

4 Sec. 393.701. DEFINITIONS. In this subchapter:

5 (1) "Deferred presentment transaction" has the  
6 meaning assigned by Section 393.601.

7 (2) "Finance commission" means the Finance Commission  
8 of Texas.

9 (3) "Military borrower" includes a "covered member" or  
10 a "dependent" with respect to a covered member, as those terms are  
11 defined by 10 U.S.C. Section 987 or a successor statute.

12 (4) "Multiple-payment deferred presentment  
13 transaction" has the meaning assigned by Section 393.601.

14 (5) "Refinance" means a rollover, renewal, or other  
15 type of transaction in which all or a portion of the principal,  
16 fees, or interest due under an outstanding deferred presentment  
17 transaction becomes due on a later date. The term does not include  
18 an extended payment plan described by Section 393.708. The term  
19 includes a new extension of consumer credit that:

20 (A) consists of debt arising from principal,  
21 fees, or interest that was not paid in full under an outstanding or  
22 previous extension of consumer credit; or

23 (B) is made on or before the fifth day after the  
24 date a previous extension of consumer credit that a credit access  
25 business obtained for a consumer or assisted a consumer in  
26 obtaining was paid in full.

27 (6) "Single-payment deferred presentment transaction"

1 has the meaning assigned by Section 393.601.

2 Sec. 393.702. PAYMENT METHOD. A credit access business  
3 shall accept a payment made in cash or by electronic transfer,  
4 cashier's check, teller's check, or money order offered by the  
5 consumer or another party, to retire or otherwise pay down debt  
6 incurred under an extension of consumer credit in the form of a  
7 single-payment deferred presentment transaction or a  
8 multiple-payment deferred presentment transaction that a credit  
9 access business obtained for a consumer or assisted a consumer in  
10 obtaining under this chapter.

11 Sec. 393.703. TERM OF LOAN FOR MILITARY BORROWERS. The term  
12 of an extension of consumer credit in the form of a deferred  
13 presentment transaction, including all refinances, obtained for a  
14 military borrower by a credit access business or that a credit  
15 access business assists a military borrower in obtaining may not  
16 exceed 90 days.

17 Sec. 393.704. LIMITATION ON OUTSTANDING DEBT. (a) At any  
18 one time, a consumer may have only one outstanding debt from a  
19 deferred presentment transaction that a credit access business  
20 obtained for the consumer or assisted the consumer in obtaining.

21 (b) To obtain an extension of consumer credit in the form of  
22 a deferred presentment transaction facilitated through the  
23 services of a credit access business, a consumer must sign a written  
24 certification on a form adopted by finance commission rule stating  
25 that the consumer has no other outstanding debt from an extension of  
26 consumer credit in the form of a deferred presentment transaction.

27 (c) A credit access business may not obtain for a consumer

1 or assist a consumer in obtaining an extension of consumer credit in  
2 the form of a deferred presentment transaction if the consumer  
3 fails to provide the written certification required by Subsection  
4 (b) or if the business has evidence in its possession indicating  
5 that the consumer has an outstanding extension of consumer credit  
6 in the form of a deferred presentment transaction that the credit  
7 access business previously obtained for the consumer or assisted  
8 the consumer in obtaining. This subsection does not prohibit a  
9 credit access business from advancing additional funds under a  
10 refinance otherwise permitted under this chapter.

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

14 Sec. 393.705. ESTABLISHMENT OF CONSUMER'S INCOME;  
15 REFERENCE AMOUNT. (a) A credit access business must require  
16 documentation to establish a consumer's income for purposes of this  
17 subchapter. Acceptable forms of documentation include paper,  
18 facsimile, or electronic copies of:

19 (1) a payroll document;

20 (2) a paycheck;

21 (3) a bank statement;

22 (4) a report from a nationally or regionally  
23 recognized credit and data reporting company;

24 (5) Internal Revenue Service Form W-2 from the  
25 preceding year;

26 (6) the income tax return from the preceding tax year;

27 (7) a signed letter from the consumer's employer at the

1 time the single-payment deferred presentment transaction or  
2 multiple-payment deferred presentment transaction is sought;

3 (8) an executed certification on a form adopted by  
4 finance commission rule that attests to the consumer's monthly or  
5 annual income; or

6 (9) any other document approved by finance commission  
7 rule.

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

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

18 (d) A credit access business that obtains for a consumer or  
19 assists a consumer in obtaining an extension of consumer credit in  
20 the form of a single-payment deferred presentment transaction or a  
21 multiple-payment deferred presentment transaction through the  
22 Internet or other electronic means may rely on nationally or  
23 regionally recognized database reporting systems and may maintain a  
24 record of the database reporting system results used to comply with  
25 Subsections (a) and (b).

26 (e) For purposes of this subchapter, \$28,000 is the initial  
27 reference amount with respect to a consumer's income, and the

1 consumer credit commissioner shall adjust this amount annually in  
2 accordance with the Consumer Price Index.

3 Sec. 393.706. SINGLE-PAYMENT DEFERRED PRESENTMENT  
4 TRANSACTION. (a) The amount advanced to a consumer under an  
5 extension of consumer credit in the form of a single-payment  
6 deferred presentment transaction that a credit access business  
7 obtains for a consumer or assists a consumer in obtaining,  
8 excluding fees, may not exceed:

9 (1) 25 percent of the consumer's gross monthly income,  
10 if the consumer's gross annual income is less than the reference  
11 amount; or

12 (2) 35 percent of the consumer's gross monthly income,  
13 if the consumer is not described by Subdivision (1) and is not a  
14 military borrower to whom a different limit applies under federal  
15 law.

16 (b) The term of an original or refinanced extension of  
17 consumer credit in the form of a single-payment deferred  
18 presentment transaction that a credit access business obtains for a  
19 consumer or assists a consumer in obtaining may not be less than 10  
20 days or longer than 35 days.

21 (c) An extension of consumer credit in the form of a  
22 single-payment deferred presentment transaction that a credit  
23 access business obtains for a consumer or assists a consumer in  
24 obtaining may not be refinanced more than four times, subject to  
25 Section 393.703.

26 (d) If a consumer who has not entered into an extended  
27 payment plan with the credit access business in the preceding 12

1 months refinances a single-payment deferred presentment  
2 transaction for the last time allowed under this subchapter:

3 (1) the credit access business must offer at least one  
4 extended payment plan to the consumer before initiating any debt  
5 collection activities;

6 (2) the consumer may request, prior to the offer  
7 required by Subdivision (1) being made, an extended payment plan at  
8 any time on or after the date the consumer refinances the deferred  
9 presentment transaction for the last time allowed under this  
10 subchapter and on or before the fifth day after the date on which  
11 that refinance must be repaid in full;

12 (3) to comply with the requirement of Subdivision (1),  
13 the credit access business shall send a written notice to the  
14 consumer disclosing the following:

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

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

20 (C) the date by which the consumer must accept  
21 the extended payment plan in writing, which date shall be at least  
22 five days after the date the written notice is sent;

23 (4) the credit access business may not initiate debt  
24 collection activities unless:

25 (A) the consumer fails to accept the extended  
26 payment plan in writing on or before the deadline contained in the  
27 notice required by Subdivision (3);

1                   (B) the consumer declines the extended payment  
2 plan; or

3                   (C) the consumer fails to make a payment required  
4 by an extended payment plan that the consumer accepted; and

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

9                   (e) An extended payment plan required to be offered under  
10 Subsection (d) must comply with Section 393.708.

11                   (f) A credit access business may offer a consumer an  
12 extended payment plan that provides the consumer with additional  
13 time to repay the debts obtained through a single-payment deferred  
14 presentment transaction, either before or after the consumer  
15 refinances the single-payment deferred presentment transaction for  
16 the fourth time, more than once in a 12-month period only if the  
17 credit access business does not assess additional fees under the  
18 extended payment plan and the credit access business fully  
19 describes the terms of the extended payment plan, including all due  
20 dates and the amount due on each due date, to the consumer before  
21 the consumer enters into the extended payment plan. An extended  
22 payment plan offered under this subsection is not required to  
23 comply with Section 393.708.

24                   Sec. 393.707. MULTIPLE-PAYMENT DEFERRED PRESENTMENT  
25 TRANSACTION. (a) The sum of all fees, principal, interest, and  
26 other amounts due under any scheduled payment of an extension of  
27 consumer credit in the form of a multiple-payment deferred



1 presentment transaction that a credit access business obtains for a  
2 consumer or assists a consumer in obtaining may not exceed:

3 (1) 10 percent of the consumer's gross monthly income,  
4 if the consumer's gross annual income is less than the reference  
5 amount; or

6 (2) 15 percent of the consumer's gross monthly income,  
7 if the consumer is not described by Subdivision (1) and is not a  
8 military borrower to whom a different limit applies under federal  
9 law.

10 (b) An extension of consumer credit in the form of a  
11 multiple-payment deferred presentment transaction that a credit  
12 access business obtains for a consumer or assists a consumer in  
13 obtaining may not be payable by the consumer in more than 12  
14 installments or have an original term of more than 180 days, and the  
15 loan agreement must specify the number, date, and total amount due  
16 with regard to each installment.

17 (c) An original or refinanced extension of consumer credit  
18 in the form of a multiple-payment deferred presentment transaction  
19 that a credit access business obtains for a consumer or assists a  
20 consumer in obtaining must be payable on a fully amortizing,  
21 declining-principal-balance basis with substantially equal  
22 payments. If a credit access business precomputes its fees under a  
23 multiple-payment deferred presentment transaction and a consumer  
24 prepays in full the extension of consumer credit in that form, the  
25 credit access business shall refund any unearned fees to the  
26 consumer.

27 (d) The first installment of an extension of consumer credit

1 in the form of a multiple-payment deferred presentment transaction  
2 that a credit access business obtains for a consumer or assists a  
3 consumer in obtaining may not be due before the 10th day after the  
4 date the consumer enters into the loan agreement. An installment  
5 may not be due before the 14th day or after the 31st day after the  
6 date a previous installment is due.

7 (e) An extension of consumer credit in the form of a  
8 multiple-payment deferred presentment transaction that a credit  
9 access business obtains for a consumer or assists a consumer in  
10 obtaining may be refinanced only one time, and the combined terms of  
11 the original extension of consumer credit and the refinanced  
12 extension of consumer credit may not exceed 365 days or include more  
13 than 24 installments.

14 (f) Notwithstanding Subsection (e), a credit access  
15 business may offer a consumer an extended payment plan in which the  
16 extension of consumer credit is extended beyond 365 days if the  
17 extended payment plan complies with Section 393.708 and if the  
18 credit access business fully describes the terms of the extended  
19 payment plan, including all due dates and the amount due on each due  
20 date, to the consumer before the consumer enters into the extended  
21 repayment plan.

22 Sec. 393.708. EXTENDED PAYMENT PLAN REQUIREMENTS. (a)  
23 This section applies to extended payment plans required to be  
24 offered under Sections 393.706(d) and 393.707.

25 (b) An extended payment plan must provide for payment in at  
26 least:

27 (1) four substantially equal installments, after

1 which the outstanding balance will be paid in full, with respect to  
2 a single-payment deferred presentment transaction; or

3 (2) two substantially equal installments added to the  
4 original and refinanced term of the extension of consumer credit,  
5 after which the outstanding balance, including only the fees that  
6 would have been due under the original extension of consumer  
7 credit, will be paid in full, with respect to a multiple-payment  
8 deferred presentment transaction.

9 (c) The period between installment payments on an extended  
10 payment plan may not be shorter than:

11 (1) 10 days, with respect to a single-payment deferred  
12 presentment transaction; or

13 (2) 30 days, with respect to a multiple-payment  
14 deferred presentment transaction.

15 (d) The first payment owed under an extended payment plan  
16 may not be due before the 10th day after the date the consumer  
17 requests an extended payment plan.

18 (e) A credit access business may not assess additional fees  
19 or assist a consumer in obtaining additional extensions of consumer  
20 credit if the consumer is paying an extension of credit under an  
21 extended payment plan.

22 (f) A consumer may pay in full a debt subject to an extended  
23 payment plan at any time without prepayment penalties.

24 (g) A person may not engage in debt collection for a debt  
25 subject to an extended payment plan if the consumer is in compliance  
26 with the extended payment plan.

27 (h) A person may not use a device, subterfuge, or pretense

1 to evade the extended payment plan requirements and limitations  
2 imposed on a credit access business under this subchapter.

3 Sec. 393.709. REFINANCES. (a) Any refinance of an  
4 extension of consumer credit in the form of a single-payment  
5 deferred presentment transaction or multiple-payment deferred  
6 presentment transaction that a credit access business obtains for a  
7 consumer or assists a consumer in obtaining:

8 (1) must be authorized under this subchapter;

9 (2) must be in the same form as the original extension  
10 of consumer credit; and

11 (3) must meet all the requirements applicable to the  
12 original extension of consumer credit, including the duration,  
13 transaction, and extended payment plan requirements under this  
14 subchapter, including the applicable income-based limitations  
15 under Section 393.706(a) or 393.707(a), except as otherwise  
16 provided by this chapter.

17 (b) The terms of a refinanced extension of consumer credit  
18 may be the same as or different from the terms of the original  
19 extension of consumer credit.

20 (c) A person may not use a device, subterfuge, or pretense  
21 to evade the refinance requirements and limitations imposed on a  
22 credit access business with respect to a single-payment deferred  
23 presentment transaction or multiple-payment deferred presentment  
24 transaction under this subchapter.

25 Sec. 393.710. RULES. The finance commission shall adopt  
26 any rules necessary to implement this subchapter.

27 SECTION 3. The changes in law made by this Act apply only to

1 an extension of consumer credit made on or after the effective date  
2 of this Act. An extension of consumer credit made before the  
3 effective date of this Act is governed by the law in effect on the  
4 date the extension of consumer credit was made, and the former law  
5 is continued in effect for that purpose. For purposes of this  
6 section, a refinance of an extension of consumer credit is  
7 considered made on the date the extension of consumer credit being  
8 refinanced was made.

9 SECTION 4. This Act takes effect September 1, 2015.