

By: Capriglione

H.B. No. 3824

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain short-term consumer loans;
imposing an assessment and fees; adding provisions subject to a
criminal penalty; requiring an occupational license.

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

SECTION 1. Subtitle B, Title 4, Finance Code, is amended by
adding Chapter 354 to read as follows:

CHAPTER 354. SHORT-TERM LOANS

SUBCHAPTER A. GENERAL PROVISIONS; APPLICABILITY OF CHAPTER

Sec. 354.001. DEFINITIONS. In this chapter:

(1) "Authorized lender" means a person licensed under
this chapter, a bank, or a savings association, notwithstanding
Section 341.001.

(2) "License holder" means a person who holds a
license issued under this chapter.

(3) "Motor vehicle title loan" means a loan in which an
unencumbered motor vehicle is given as security for the loan and in
which the lender accepts multiple installments and charges a
monitoring fee in connection with each installment. The term does
not include a retail installment transaction under Chapter 348 or
another loan made to finance the purchase of a motor vehicle.

(4) "Regular transaction" means a loan:

(A) that is payable in installments that are
consecutive, monthly or biweekly, and substantially equal in

1 amount; and

2 (B) the first scheduled installment of which is
3 due within one month and 15 days after the date of the loan.

4 Sec. 354.002. INTEREST COMPUTATION METHOD. (a) The
5 scheduled installment earnings method is a method to compute an
6 interest charge by applying a daily rate to the unpaid balance of
7 the principal amount as if each payment will be made on its
8 scheduled installment date. A payment received before or after the
9 due date does not affect the amount of the scheduled principal
10 reduction.

11 (b) For the purposes of Subsection (a), the daily rate is
12 1/365th of the equivalent contract rate.

13 (c) Interest under the scheduled installment earnings
14 method may not be compounded.

15 (d) Loans under this chapter must use the scheduled
16 installment earnings method to compute interest.

17 Sec. 354.003. APPLICABILITY OF CHAPTER. A loan is subject
18 to this chapter if the loan:

19 (1) provides for an effective rate of interest above
20 10 percent a year;

21 (2) is extended primarily for personal, family, or
22 household use;

23 (3) is made by a person engaged in the business of
24 making, arranging, or negotiating those types of loans; and

25 (4) is either:

26 (A) a multi-installment short-term loan secured
27 by a motor vehicle that includes a recurring monitoring fee; or

1 (B) a multi-installment unsecured short-term
2 loan that includes a recurring customary fee.

3 Sec. 354.004. ATTEMPT TO EVADE LAW. A person who is a party
4 to a loan subject to this chapter may not evade the application of
5 this chapter or a rule adopted under this chapter by use of any
6 device, subterfuge, or pretense.

7 SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

8 Sec. 354.051. LICENSE REQUIRED. (a) A person must hold a
9 license issued under this chapter to:

10 (1) engage in the business of making, transacting, or
11 negotiating loans subject to this chapter; or

12 (2) contract for, charge, or receive, directly or
13 indirectly, in connection with a loan subject to this chapter, a
14 charge, including interest, compensation, consideration, or
15 another expense, authorized under this chapter that in the
16 aggregate exceeds the charges authorized under other law, including
17 Subtitle A of this title and Chapter 342.

18 (b) A person may not use any device, subterfuge, or pretense
19 to evade the application of this section.

20 (c) A person is not required to obtain a license under
21 Subsection (a) if the person is a bank, savings bank, or savings and
22 loan association organized under the laws of the United States or
23 under the laws of the institution's state of domicile.

24 Sec. 354.052. ISSUANCE OF MORE THAN ONE LICENSE FOR A
25 PERSON. (a) The commissioner may issue more than one license to a
26 person in compliance with this chapter for each license.

27 (b) A person who is required to hold a license under this

1 chapter must hold a separate license for each office at which loans
2 are made, negotiated, serviced, held, or collected under this
3 chapter.

4 (c) A license is not required under this chapter for a place
5 of business:

- 6 (1) devoted to accounting or other recordkeeping; and
7 (2) at which loans are not made, negotiated, serviced,
8 held, or collected under this chapter.

9 SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

10 Sec. 354.101. APPLICATION FOR LICENSE. (a) An application
11 for a license under this chapter must:

- 12 (1) be under oath;
13 (2) give the approximate location from which the
14 business is to be conducted;
15 (3) identify the business's principal parties in
16 interest; and
17 (4) contain other relevant information that the
18 commissioner requires.

19 (b) On the filing of one or more license applications, the
20 applicant shall pay to the commissioner an investigation fee of
21 \$200. Except for good cause as determined by the finance
22 commission, a separate investigation fee is not required for
23 multiple license applications.

24 (c) On the filing of each license application, the applicant
25 shall pay to the commissioner for the license's year of issuance a
26 license fee in an amount determined as provided by Section 14.107.

27 Sec. 354.102. INVESTIGATION OF APPLICATION. On the filing

1 of an application and, if required, a bond, and on payment of the
2 required fees, the commissioner shall conduct an investigation to
3 determine whether to issue the license.

4 Sec. 354.103. APPROVAL OR DENIAL OF APPLICATION. (a) The
5 commissioner shall approve the application and issue to the
6 applicant a license to make loans under this chapter if the
7 commissioner finds that:

8 (1) the financial responsibility, experience,
9 character, and general fitness of the applicant are sufficient to:

10 (A) command the confidence of the public; and

11 (B) warrant the belief that the business will be
12 operated lawfully and fairly, within the purposes of this chapter;
13 and

14 (2) the applicant has net assets of at least \$25,000
15 available for the operation of the business or is able to post a
16 surety bond that provides the same protection as the net assets
17 described in this subdivision.

18 (b) If the commissioner does not find the eligibility
19 requirements of Subsection (a) have been met, the commissioner
20 shall notify the applicant.

21 (c) If an applicant requests a hearing on the application
22 not later than the 30th day after the date of notification under
23 Subsection (b), the applicant is entitled to a hearing not later
24 than the 60th day after the date of the request.

25 (d) The commissioner shall approve or deny the application
26 not later than the 60th day after the date of the filing of a
27 completed application with payment of the required fees, or if a

1 hearing is held, after the date of the completion of the hearing on
2 the application. The commissioner and the applicant may agree to a
3 later date in writing.

4 Sec. 354.104. DISPOSITION OF FEES ON DENIAL OF APPLICATION.

5 If the commissioner denies the application, the commissioner shall
6 retain the investigation fee and shall return to the applicant the
7 license fee submitted with the application.

8 SUBCHAPTER D. LICENSE

9 Sec. 354.151. NAME AND PLACE ON LICENSE. (a) A license
10 must state:

11 (1) the name of the license holder; and

12 (2) the address of the office from which the business
13 is to be conducted.

14 (b) A license holder may not conduct business under this
15 chapter under a name or at a place of business in this state other
16 than the name or office stated on the license.

17 Sec. 354.152. LICENSE DISPLAY. A license holder shall
18 display a copy of its license at the place of business stated on the
19 license.

20 Sec. 354.153. MINIMUM ASSETS OR BOND FOR LICENSE. (a)
21 Except as provided by Subsection (b), a license holder shall
22 maintain net assets used or readily available for use in conducting
23 the business of the offices for which licenses are held under this
24 chapter in an amount that is not less than the lesser of:

25 (1) \$25,000 for each office; or

26 (2) \$2,500,000 in the aggregate.

27 (b) A license holder is not required to maintain the net

1 assets described by Subsection (a) if, with the approval of the
2 commissioner, the license holder posts a surety bond that provides
3 the same protection as the net assets.

4 Sec. 354.154. ANNUAL LICENSE FEE. Not later than December
5 1, a license holder shall pay to the commissioner for each license
6 held an annual fee for the year beginning the next January 1, in an
7 amount determined as provided by Section 14.107.

8 Sec. 354.155. EXPIRATION OF LICENSE ON FAILURE TO PAY
9 ANNUAL FEE. If the annual fee for a license is not paid before the
10 16th day after the date on which a written notice of delinquency of
11 payment has been given to the license holder, the license expires on
12 the later of:

- 13 (1) the 16th day after the date the notice is given; or
14 (2) December 31 of the last year for which an annual
15 fee was paid.

16 Sec. 354.156. LICENSE SUSPENSION OR REVOCATION. After
17 notice and a hearing the commissioner may suspend or revoke a
18 license if the commissioner finds that:

19 (1) the license holder failed to pay the annual
20 license fee, an examination fee, an investigation fee, or another
21 charge imposed by the commissioner under this chapter;

22 (2) the license holder, knowingly or without the
23 exercise of due care, violated this chapter or a rule adopted or
24 order issued under this chapter; or

25 (3) a fact or condition exists that, if it had existed
26 or had been known to exist at the time of the original application
27 for the license, clearly would have justified the commissioner's

1 denial of the application.

2 Sec. 354.157. CORPORATE CHARTER FORFEITURE. (a) A license
3 holder that violates this chapter is subject to revocation of the
4 holder's license and, if the license holder is a corporation,
5 forfeiture of its charter.

6 (b) When the attorney general is notified of a violation of
7 this chapter and revocation of a license, the attorney general
8 shall file suit in a district court in Travis County, if the license
9 holder is a corporation, for forfeiture of the license holder's
10 charter.

11 Sec. 354.158. LICENSE SUSPENSION OR REVOCATION FILED WITH
12 PUBLIC RECORDS. The decision of the commissioner on the suspension
13 or revocation of a license and the evidence considered by the
14 commissioner in making the decision shall be filed in the public
15 records of the commissioner.

16 Sec. 354.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE
17 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a
18 suspended license or issue a new license on application to a person
19 whose license has been revoked if at the time of the reinstatement
20 or issuance no fact or condition exists that clearly would have
21 justified the commissioner's denial of an original application for
22 the license.

23 Sec. 354.160. SURRENDER OF LICENSE. (a) A license holder
24 may surrender a license issued under this chapter by delivering to
25 the commissioner:

26 (1) the license; and

27 (2) a written notice of the license's surrender.

1 (b) If an enforcement action has been initiated against a
2 license holder, the license may be surrendered only with the
3 written authorization of the general counsel of the finance
4 commission.

5 Sec. 354.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR
6 SURRENDER. (a) The suspension, revocation, or surrender of a
7 license issued under this chapter does not affect the obligation of
8 a contract between the license holder and a borrower entered into
9 before the suspension, revocation, or surrender.

10 (b) Surrender of a license does not affect the license
11 holder's civil or criminal liability for an act committed before
12 surrender.

13 Sec. 354.162. MOVING AN OFFICE. A license holder shall give
14 written notice to the commissioner before the 30th day preceding
15 the date the license holder moves an office from the location
16 provided on the license. The commissioner shall amend a license
17 holder's license accordingly.

18 Sec. 354.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license
19 may be transferred or assigned only with the approval of the
20 commissioner. The commissioner shall approve or deny a transfer or
21 assignment of a license not later than the 60th day after the date
22 of the filing of a completed application for the transfer or
23 assignment with payment of the required fees, or if a hearing is
24 held, after the date of the completion of the hearing on the
25 application. The commissioner and the applicant may agree to a
26 later date in writing.

1 SUBCHAPTER E. INTEREST CHARGES ON SECURED LOANS

2 Sec. 354.201. MAXIMUM INTEREST CHARGE. (a) A loan contract
3 for a regular transaction that is secured by a lien on a motor
4 vehicle may provide for an interest charge on the cash advance that
5 does not exceed 12 percent a year if the term of the loan does not
6 exceed one year.

7 (b) A loan contract under this subchapter may provide for
8 automatic debits to the borrower's bank account in compliance with
9 state and federal law, including the Electronic Fund Transfer Act
10 (15 U.S.C. Section 1693 et seq.) and 12 C.F.R. Part 1005 (Regulation
11 E).

12 Sec. 354.202. MONITORING FEE. (a) A loan contract under
13 this subchapter may provide for a monitoring fee to defray the
14 ordinary costs of operating, administering, and terminating a loan,
15 including costs associated with:

- 16 (1) maintaining loan information;
17 (2) offering electronic and telephone access to loan
18 records;
19 (3) processing payments;
20 (4) responding to borrower inquiries;
21 (5) providing periodic billing statements;
22 (6) inspecting and verifying the collateral and
23 establishing, perfecting, and releasing the security interest; and
24 (7) verifying of insurance, registration, and annual
25 vehicle inspection requirements of the collateral.

26 (b) The monitoring fee may not be considered interest for
27 any purpose of law, must be agreed on by the parties, and may not

1 exceed a daily rate of seven-tenths of one percent of the original
2 principal balance of the loan.

3 (c) The total number and total amount of monitoring fees
4 must be disclosed in the loan contract.

5 (d) The monitoring fee is not interest and the authorized
6 lender may not charge interest on the monitoring fee.

7 (e) An authorized lender may not charge a monitoring fee if
8 the motor vehicle is repossessed or the balance of the account is
9 accelerated, unless the loan is reinstated.

10 Sec. 354.203. REFUND. (a) If a loan under this subchapter
11 is prepaid in full, including payment in cash or by a new loan or
12 renewal of the loan, the authorized lender earns interest for the
13 period beginning on the date of the loan and ending on the date of
14 the prepayment or demand.

15 (b) If prepayment in full or demand for payment in full
16 occurs during an installment period, the authorized lender may
17 retain, in addition to interest that accrued during any elapsed
18 installment periods, an amount computed by:

19 (1) multiplying the simple annual interest rate under
20 the contract by the unpaid principal balance of the loan determined
21 according to the schedule of payments to be outstanding on the
22 preceding installment due date;

23 (2) dividing 365 into the product obtained under
24 Subdivision (1); and

25 (3) multiplying the number of days in the period
26 beginning on the day after the installment due date and ending on
27 the date of the prepayment or demand, as appropriate, by the result

1 obtained under Subdivision (2).

2 (c) An authorized lender may not earn interest on any
3 addition to principal added to the loan after the date of the loan
4 contract, including the monitoring fee.

5 (d) An authorized lender is prohibited from using any other
6 refunding method for a loan subject to this subchapter.

7 SUBCHAPTER F. INTEREST CHARGES ON UNSECURED LOANS

8 Sec. 354.251. MAXIMUM INTEREST CHARGE. (a) A loan contract
9 for an unsecured regular transaction may provide for an interest
10 charge on the cash advance that does not exceed 12 percent a year if
11 the term of the loan does not exceed six months.

12 (b) A loan contract under this subchapter may provide for
13 automatic debits to the borrower's bank account in compliance with
14 state and federal law, including the Electronic Fund Transfer Act
15 (15 U.S.C. Section 1693 et seq.) and 12 C.F.R. Part 1005 (Regulation
16 E).

17 Sec. 354.252. CUSTOMARY FEE. (a) A loan contract under
18 this subchapter may provide for a customary fee to defray the
19 ordinary costs of operating, administering, and terminating a loan,
20 including costs associated with:

21 (1) maintaining loan information;

22 (2) offering electronic and telephone access to loan
23 records;

24 (3) processing payments;

25 (4) responding to borrower inquiries;

26 (5) providing periodic billing statements; and

27 (6) verifying of continued employment.

1 (b) The customary fee may not be considered interest for any
2 purpose of law, must be agreed on by the parties, and may not exceed
3 a daily rate of 1.4 percent of the original principal balance of the
4 loan.

5 (c) The total number and total amount of customary fees must
6 be disclosed in the loan contract.

7 (d) The customary fee is not interest and the authorized
8 lender may not charge interest on the customary fee.

9 (e) An authorized lender may not charge a customary fee if
10 the balance of the account is accelerated, unless the loan is
11 reinstated.

12 Sec. 354.253. REFUND. (a) If a loan under this subchapter
13 is prepaid in full, including payment in cash or by a new loan or
14 renewal of the loan, the authorized lender earns interest for the
15 period beginning on the date of the loan and ending on the date of
16 the prepayment or demand.

17 (b) If prepayment in full or demand for payment in full
18 occurs during an installment period, the authorized lender may
19 retain, in addition to interest that accrued during any elapsed
20 installment periods, an amount computed by:

21 (1) multiplying the simple annual interest rate under
22 the contract by the unpaid principal balance of the loan determined
23 according to the schedule of payments to be outstanding on the
24 preceding installment due date;

25 (2) dividing 365 into the product obtained under
26 Subdivision (1); and

27 (3) multiplying the number of days in the period

1 beginning on the day after the installment due date and ending on
2 the date of the prepayment or demand, as appropriate, by the result
3 obtained under Subdivision (2).

4 (c) An authorized lender may not earn interest on any
5 addition to principal added to the loan after the date of the loan
6 contract, including the customary fee.

7 (d) An authorized lender is prohibited from using any other
8 refunding method for a loan subject to this subchapter.

9 SUBCHAPTER G. INSURANCE

10 Sec. 354.301. REQUIRED PROPERTY INSURANCE. (a) On a loan
11 secured by a motor vehicle that is subject to this chapter, an
12 authorized lender may require a borrower to insure the motor
13 vehicle offered as security for the loan.

14 (b) The insurance coverage and the premiums or charges for
15 the coverage must bear a reasonable relationship to:

- 16 (1) the amount, term, and conditions of the loan;
17 (2) the value of the collateral; and
18 (3) the existing hazards or risk of loss, damage, or
19 destruction.

20 (c) The insurance may not:

- 21 (1) cover unusual or exceptional risks; or
22 (2) provide coverage not ordinarily included in
23 policies issued to the public.

24 (d) An authorized lender may not require the purchase of
25 duplicate insurance if the authorized lender has knowledge that the
26 borrower:

- 27 (1) has valid and collectible insurance covering the

1 motor vehicle; and

2 (2) has provided a loss payable endorsement sufficient
3 to protect the authorized lender.

4 Sec. 354.302. AGENT OR BROKER PROHIBITED. An authorized
5 lender may not by any direct or indirect method require the purchase
6 of insurance from an agent or broker designated by the authorized
7 lender. An authorized lender or an agent of an authorized lender
8 may not sell or contract to sell to a borrower any insurance in
9 connection with a loan. An authorized lender may not own or
10 partially own an insurance company or an insurance agency that
11 provides insurance products in connection with a loan subject to
12 this chapter.

13 Sec. 354.303. DECLINATION OF EQUAL INSURANCE COVERAGE
14 PROHIBITED. An authorized lender may not decline at any time
15 existing insurance coverage providing substantially equal benefits
16 that comply with this subchapter.

17 Sec. 354.304. NONFILING INSURANCE. An authorized lender
18 may not include in a loan contract a charge for a nonfiling
19 insurance premium.

20 SUBCHAPTER H. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

21 Sec. 354.401. DELIVERY OF INFORMATION TO BORROWER. (a)
22 When a loan is made under this chapter, the authorized lender shall
23 deliver to the borrower, or to one borrower if there is more than
24 one, a copy of each document signed by the borrower, including the
25 note or loan contract, and a written statement in English that
26 contains the names and addresses of the borrower and the authorized
27 lender.

1 (b) If the note or loan contract shows the information
2 required by Subsection (a), the written statement is not required.

3 Sec. 354.402. RECEIPT FOR CASH PAYMENT. An authorized
4 lender shall give a receipt to a person making a cash payment on a
5 loan.

6 Sec. 354.403. ACCEPTANCE OF PREPAYMENT. At any time during
7 regular business hours, the authorized lender shall accept partial
8 prepayment or prepayment of a loan in full. An authorized lender
9 shall accept any amount from a borrower in partial prepayment of an
10 installment or loan.

11 Sec. 354.404. CANCELLATION OF FUTURE PAYMENTS. A borrower
12 is entitled to cancel all payments under a loan contract before the
13 fourth business day after the date of the loan contract. In order
14 to cancel all payments, the borrower must return the amount of the
15 cash advance to the authorized lender or the authorized lender's
16 agent with a statement signed by the borrower.

17 Sec. 354.405. ADMINISTRATIVE CHARGE. An authorized lender
18 may charge a borrower an administrative charge on a loan under this
19 chapter in an amount to be negotiated by the parties but not to
20 exceed the lesser of 10 percent of the original principal or \$100.
21 An administrative charge is considered earned when a loan is made or
22 refinanced and is not subject to refund but is not required to be
23 repaid if the loan is rescinded. An administrative charge is not
24 interest, and an authorized lender may not charge interest on an
25 administrative charge.

26 Sec. 354.406. POSTING OF INTEREST RATES AND FEES. An
27 authorized lender shall conspicuously post at each office at which

1 loans are made, negotiated, serviced, held, or collected under this
2 chapter the interest rates charged for those loans and the amount of
3 any fees related to the loans, including any monitoring or
4 customary fees.

5 Sec. 354.407. FINANCIAL LITERACY FUND. (a) As part of the
6 licensing fees and procedures described under this chapter, each
7 license holder shall pay to the commissioner an annual assessment
8 to improve consumer credit, financial education, and
9 asset-building opportunities in this state. The annual assessment
10 may not exceed \$200 for each license as specified by the finance
11 commission.

12 (b) The commissioner shall remit to the comptroller amounts
13 received under Subsection (a) for deposit in an interest-bearing
14 deposit account in the Texas Treasury Safekeeping Trust Company.
15 Money in the account may be spent by the finance commission only for
16 the purposes provided by this section. Amounts in the account may
17 be invested and reinvested in the same manner as funds of the
18 Employees Retirement System of Texas, and the interest from those
19 investments and reinvestments shall be deposited to the credit of
20 the account.

21 (c) The Financial Literacy Fund shall be administered by the
22 finance commission to support statewide financial education and
23 consumer credit-building activities and programs, including:

24 (1) production and dissemination of approved
25 financial education materials at licensed locations;

26 (2) advertising, marketing, and public awareness
27 campaigns to improve the credit profiles and credit scores of

1 consumers in this state;

2 (3) school- and youth-based financial literacy and
3 capability;

4 (4) credit building and credit repair;

5 (5) financial coaching and consumer counseling;

6 (6) bank account enrollment and incentives for
7 personal savings; and

8 (7) other consumer financial education and
9 asset-building initiatives as considered appropriate by the
10 finance commission.

11 (d) In implementing this section, the finance commission
12 may solicit gifts, grants, and donations.

13 (e) The finance commission may partner with other state
14 agencies and entities to implement this section.

15 (f) The finance commission shall adopt rules to administer
16 this section.

17 Sec. 354.408. DATABASE. The commissioner shall create a
18 database for each license holder to use to submit information to the
19 commissioner. Each license holder shall provide the commissioner
20 with the interest rates and fees that the license holder charges for
21 each type of loan under this chapter. Each license holder shall pay
22 to the commissioner a fee for the creation and operation of the
23 database. License holders shall update information submitted to
24 the database at least once every six months. The commissioner shall
25 post the database on the commissioner's website for the benefit of
26 the public.

1 SUBCHAPTER I. LIMITATIONS ON AUTHORIZED LENDER

2 Sec. 354.451. OBLIGATION UNDER MORE THAN ONE CONTRACT. An
3 authorized lender may not induce or permit a person or a husband and
4 wife to be directly or indirectly obligated under more than one loan
5 contract at any time for the purpose or with the effect of obtaining
6 an amount of interest or fees greater than the amount of interest or
7 fees otherwise authorized under this chapter.

8 Sec. 354.452. AMOUNT AUTHORIZED. (a) An authorized lender
9 may not knowingly directly or indirectly charge, contract for, or
10 receive an amount that is not authorized under this chapter in
11 connection with a loan to which this chapter applies, including any
12 fee, compensation, bonus, commission, brokerage, discount, and
13 expense, and any other charge of any nature, whether or not listed
14 by this subsection.

15 (b) On a loan subject to this chapter, an authorized lender
16 may assess and collect from the borrower an amount incurred by the
17 authorized lender for:

18 (1) court costs and attorney's fees assessed by a court
19 only if the borrower is found to have committed forgery, fraud, or
20 theft in connection with the loan;

21 (2) a fee authorized by law for filing, recording, or
22 releasing in a public office a security for a loan; or

23 (3) a fee for recording a lien on or transferring a
24 certificate of title to a motor vehicle offered as security for a
25 loan made under this chapter.

26 (c) On a loan subject to this chapter an authorized lender
27 may assess and collect a fee that does not exceed the amount

1 prescribed by Section 3.506, Business & Commerce Code, for the
2 return by a depository institution of a dishonored check,
3 negotiable order of withdrawal, or share draft offered in full or
4 partial payment of a loan.

5 Sec. 354.453. CONFESSION OF JUDGMENT; POWER OF ATTORNEY.
6 An authorized lender may not take a confession of judgment or a
7 power of attorney authorizing the authorized lender or a third
8 person to confess judgment or to appear for a borrower in a judicial
9 proceeding.

10 Sec. 354.454. DISCLOSURE OF AMOUNT FINANCED AND SCHEDULE OF
11 PAYMENTS. An authorized lender may not take, or require a borrower
12 to sign, a promise to pay or loan obligation that does not disclose
13 the amount financed and the schedule of payments.

14 Sec. 354.455. INSTRUMENT WITH BLANK PROHIBITED. An
15 authorized lender may not take, or require a borrower to sign, an
16 instrument in which a blank is left to be filled in after the loan is
17 made.

18 Sec. 354.456. WAIVER OF BORROWER'S RIGHT PROHIBITED. A
19 borrower may not waive any right accruing to the borrower under this
20 chapter.

21 Sec. 354.457. MOTOR VEHICLE LOANS NONRECOURSE. A loan
22 secured by a motor vehicle made under this chapter is a nonrecourse
23 loan, unless the borrower is proven in court to have committed
24 fraud, forgery, or theft in connection with the loan.

25 Sec. 354.458. COMPLIANCE WITH UNIFORM COMMERCIAL CODE. An
26 authorized lender must comply with Chapter 9, Business & Commerce
27 Code, in the repossession and redemption of a motor vehicle. If the

1 borrower fails to redeem a motor vehicle legally repossessed by an
2 authorized lender, the authorized lender may accept the motor
3 vehicle in full satisfaction of the debt or the authorized lender
4 may dispose of the motor vehicle in compliance with Chapter 9.

5 Sec. 354.459. PROHIBITION AGAINST PREPAYMENT PENALTY. A
6 borrower may not be required to pay a prepayment penalty in
7 connection with a loan subject to this chapter.

8 Sec. 354.460. RESTRICTIONS ON OFF-SITE ADVERTISING. (a) A
9 license holder may not advertise a loan subject to this chapter on
10 the premises of a nursing facility, assisted living facility, group
11 home, intermediate care facility for persons with intellectual or
12 developmental disabilities, or other similar facility subject to
13 regulation by the Department of Aging and Disability Services.

14 (b) The finance commission may adopt rules to implement this
15 section.

16 Sec. 354.461. ANCILLARY PRODUCTS. A borrower may not
17 purchase any ancillary product or service in conjunction with a
18 loan not specifically authorized by this chapter. An authorized
19 lender may not finance the purchase of any ancillary product or
20 service in conjunction with a loan.

21 Sec. 354.462. PROHIBITION AGAINST CRIMINAL PROSECUTION. A
22 person may not threaten or pursue criminal charges against a person
23 who seeks a benefit from an authorized lender for a loan subject to
24 this chapter in the absence of forgery, fraud, theft, or other
25 criminal conduct.

26 Sec. 354.463. FAIR DEBT COLLECTION. An authorized lender
27 must comply with Chapter 392 and the Fair Debt Collection Practices

1 Act (15 U.S.C. Section 1692 et seq.).

2 Sec. 354.464. POSTING OF INTEREST AND FEES. An authorized
3 lender shall post, in a conspicuous location accessible to
4 consumers, in an area of each office where loans are made and on any
5 Internet website, including a social media site, maintained by the
6 authorized lender:

7 (1) a schedule of all interest rates and fees to be
8 charged in connection with a loan made under this chapter; and

9 (2) a notice of the name and address of the Office of
10 Consumer Credit Commissioner and the telephone number of the
11 office's consumer helpline.

12 Sec. 354.465. DISCLOSURE OF FINANCIAL TERMS IN LOAN. (a)
13 An authorized lender shall provide a separate written disclosure to
14 the borrower or borrowers for each loan plainly and conspicuously
15 stating the following:

16 (1) the amount of the loan;

17 (2) the interest rate;

18 (3) a description of any fee charged;

19 (4) the amount of the payment;

20 (5) the number of payments; and

21 (6) the total of all of the payments.

22 (b) An authorized lender may require the borrower to sign an
23 acknowledgement for the receipt of the financial information.

24 (c) The finance commission by rule shall adopt and the
25 commissioner shall provide a standard disclosure form that may be
26 used by authorized lenders.

27 Sec. 354.466. ARBITRATION. (a) An authorized lender may

1 not include in a loan agreement a mandatory arbitration clause that
2 is oppressive, unfair, unconscionable, or substantially in
3 derogation of the rights of consumers. Any agreement to arbitrate
4 disputes must be conspicuous, in type that is boldfaced,
5 capitalized, underlined, or otherwise distinguished from
6 surrounding written material, if any, provided to the borrower.
7 The time and location of any potential hearing must be reasonable
8 for the borrower to attend. The method of selecting the arbitrator
9 or arbitrators and the rules to be used by the arbitrators must be
10 identified in the agreement.

11 (b) The cost of filing, selecting the arbitrator, and the
12 first full day of the arbitration must be paid by the authorized
13 lender. Additional arbitration expenses after the first day must
14 be split between the parties, except that the borrower's total
15 liability for the arbitrator's expense may not exceed \$200.

16 Sec. 354.467. CREDIT COUNSELORS. An authorized lender
17 shall provide each potential borrower a list of credit counselors
18 before the potential borrower submits a credit application. The
19 list must include counselors who are members of, accredited by, or
20 certified by the National Foundation for Consumer Credit, the
21 Council on Accreditation, or the United States Department of
22 Housing and Urban Development or another organization that the
23 authorized lender believes will provide quality service. This
24 information must be conspicuous and must be provided separately
25 from any other information.

26 SUBCHAPTER J. ADMINISTRATION OF CHAPTER

27 Sec. 354.501. ADOPTION OF RULES. (a) The finance

1 commission may adopt rules to enforce this chapter.

2 (b) The commissioner shall recommend proposed rules to the
3 finance commission.

4 Sec. 354.502. EXAMINATION; ACCESS TO RECORDS. (a) The
5 commissioner or the commissioner's representative shall, at the
6 times the commissioner considers necessary:

7 (1) examine each place of business of each license
8 holder; and

9 (2) investigate the license holder's transactions,
10 including loans, and records, including books, accounts, papers,
11 and correspondence, to the extent the transactions and records
12 pertain to the business regulated under this chapter.

13 (b) The license holder shall:

14 (1) give the commissioner or the commissioner's
15 representative free access to the license holder's office, place of
16 business, files, safes, and vaults; and

17 (2) allow the commissioner or the commissioner's
18 representative to make a copy of an item that may be investigated
19 under Subsection (a)(2).

20 (c) During an examination the commissioner or the
21 commissioner's representative may administer oaths and examine any
22 person under oath on any subject pertinent to a matter that the
23 commissioner is authorized or required to consider, investigate, or
24 secure information about under this chapter.

25 (d) Information obtained under this section is
26 confidential.

27 (e) A license holder's violation of Subsection (b) is a

1 ground for the suspension or revocation of the license holder's
2 license.

3 Sec. 354.503. GENERAL INVESTIGATION. (a) To discover a
4 violation of this chapter or to obtain information required under
5 this chapter, the commissioner or the commissioner's
6 representative may investigate the records, including books,
7 accounts, papers, and correspondence, of a person, including an
8 authorized lender, who the commissioner has reasonable cause to
9 believe is violating this chapter, regardless of whether the person
10 claims to not be subject to this chapter. The commissioner or the
11 commissioner's representative may administer oaths and take sworn
12 statements on any subject pertinent to a matter that the
13 commissioner is authorized or required to consider, investigate, or
14 secure information about under this chapter.

15 (b) For the purposes of this section, a person who
16 advertises, solicits, or otherwise represents that the person is
17 willing to make a loan secured by a motor vehicle with multiple
18 installments and a monitoring fee is presumed to be engaged in
19 licensed activity under this chapter.

20 (c) For the purposes of this section, a person who
21 advertises, solicits, or otherwise represents that the person is
22 willing to make an unsecured loan with multiple installments and
23 interest contracted for and calculated in a manner substantially
24 similar to Subchapter F is presumed to be engaged in licensed
25 activity under this chapter.

26 Sec. 354.504. CERTIFICATE; CERTIFIED DOCUMENT. On
27 application by any person and on payment of any associated cost, the

1 commissioner shall furnish under the commissioner's seal and signed
2 by the commissioner or an assistant of the commissioner:

3 (1) a certificate of good standing; or

4 (2) a certified copy of a license, rule, or order.

5 Sec. 354.505. TRANSCRIPT OF HEARING: PUBLIC. The
6 transcript of a hearing held by the commissioner under this chapter
7 is a public record.

8 Sec. 354.506. APPOINTMENT OF AGENT. (a) A license holder
9 shall maintain on file with the commissioner a written appointment
10 of a resident of this state as the license holder's agent for
11 service of all judicial or other process or legal notice, unless the
12 license holder has appointed an agent under another statute of this
13 state.

14 (b) If a license holder does not comply with this section,
15 service of all judicial or other process or legal notice may be made
16 on the commissioner.

17 Sec. 354.507. PAYMENT OF EXAMINATION COSTS AND
18 ADMINISTRATION EXPENSES. A license holder shall pay to the
19 commissioner an amount assessed by the commissioner to cover the
20 direct and indirect cost of an examination of the license holder
21 under Section 354.502 and a proportionate share of general
22 administrative expenses.

23 Sec. 354.508. RECORD RETENTION. (a) A license holder shall
24 maintain a record of each loan made under this chapter as is
25 necessary to enable the commissioner to determine whether the
26 license holder is complying with this chapter.

27 (b) A license holder shall maintain and make available in

1 this state, or, if the license holder makes, transacts, or
2 negotiates loans principally by mail, maintain and make available
3 at the license holder's principal place of business, a record of
4 each loan made under this chapter until the later of:

- 5 (1) the fourth anniversary of the date of the loan; or
6 (2) the second anniversary of the date on which the
7 final entry is made in the record.

8 (c) A record described by Subsection (a) must be prepared in
9 accordance with accepted accounting practices.

10 (d) The commissioner shall accept a license holder's system
11 of records if the system discloses the information reasonably
12 required under Subsection (a).

13 (e) A license holder shall keep each obligation signed by a
14 borrower at an office in this state designated by the license holder
15 unless the obligation is transferred under an agreement that gives
16 the commissioner access to the obligation.

17 Sec. 354.509. ANNUAL REPORT. (a) Each year, not later than
18 May 1 or a later date set by the commissioner, a license holder
19 shall file with the commissioner a report that contains relevant
20 information required by the commissioner concerning the license
21 holder's business and operations during the preceding calendar year
22 for each office of the license holder in this state where business
23 is conducted under this chapter.

24 (b) A report under this section must be:

- 25 (1) under oath; and
26 (2) in the form prescribed by the commissioner.

27 (c) A report and information provided in a report under this

1 section are confidential.

2 (d) Annually the commissioner shall prepare and publish a
3 consolidated analysis and recapitulation of reports filed under
4 this section.

5 (e) The following information must be included in a report
6 under this section and stated separately for each quarter:

7 (1) the number of borrowers with whom the license
8 holder entered into a loan subject to this chapter;

9 (2) the number of loans made by the license holder;

10 (3) the number of loan refinancing transactions made
11 by the license holder;

12 (4) the number of borrowers refinancing loans made by
13 the license holder;

14 (5) the number of borrowers refinancing more than one
15 loan made by the license holder;

16 (6) the average amount of loans made by the license
17 holder;

18 (7) the total amount of fees charged by the license
19 holder;

20 (8) the number of vehicles surrendered or repossessed
21 under the terms of a loan made by the license holder;

22 (9) the mean, median, and mode of the number of loans
23 obtained by each borrower as a result of entering into a loan made
24 by the license holder; and

25 (10) any related information the commissioner
26 determines necessary.

27 (f) The commissioner will verify information provided in

1 the annual report during routine examinations and investigations.

2 Sec. 354.510. CONDUCTING ASSOCIATED BUSINESS. A license
3 holder may conduct business under this chapter in an office, office
4 suite, room, or place of business in which any other business is
5 conducted or in combination with any other business unless the
6 commissioner:

7 (1) finds after a hearing that the license holder's
8 conducting of the other business in that office, office suite,
9 room, or place of business has concealed or perpetrated an evasion
10 of this chapter; and

11 (2) orders the license holder in writing to desist
12 from that conduct in that office, office suite, room, or place of
13 business.

14 SECTION 2. This Act takes effect September 1, 2015.