

By: Eltife

S.B. No. 1650

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to credit services organizations and extensions of  
3 consumer credit, including extensions of consumer credit  
4 facilitated by credit services organizations.

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

6 SECTION 1. Section 393.001, Finance Code, is amended by  
7 amending Subdivision (1) and adding Subdivisions (1-a), (2-a),  
8 (3-a), (4-a), (5), (6), (7), and (8) to read as follows:

9 (1) "Commissioner" means the consumer credit  
10 commissioner.

11 (1-a) "Consumer" means an individual who is solicited  
12 to purchase or who purchases the services of a credit services  
13 organization.

14 (2-a) "Credit access business" means a credit services  
15 organization that obtains for a consumer or assists a consumer in  
16 obtaining an extension of consumer credit.

17 (3-a) "Deferred presentment transaction" means a  
18 deferred presentment transaction under Section 341.001, in  
19 connection with which the consumer is not required to provide real  
20 or personal property as security.

21 (4-a) "Finance commission" means the Finance  
22 Commission of Texas.

23 (5) "Military borrower" includes a "covered member" or  
24 a "dependent" with respect to a covered member, as those terms are

1 defined by 10 U.S.C. Section 987 or a successor statute.

2 (6) "Motor vehicle title loan" means a loan in which an  
3 unencumbered motor vehicle is given as the only security for the  
4 loan. The term does not include a retail installment transaction  
5 under Chapter 348 or another loan made to finance the purchase of a  
6 motor vehicle.

7 (7) "Office" means the Office of Consumer Credit  
8 Commissioner.

9 (8) "Service" means an act, conduct, or activity that  
10 is performed or to be performed for a consumer's benefit or that  
11 involves assisting a consumer in obtaining an extension of consumer  
12 credit, including:

13 (A) negotiating or closing a loan or other  
14 extension of consumer credit;

15 (B) issuing a guaranty, letter of credit, or  
16 other credit enhancement; and

17 (C) servicing an extension of consumer credit.

18 SECTION 2. Sections 393.201(b) and (c), Finance Code, are  
19 amended to read as follows:

20 (b) In addition to the notice required by Section 393.202,  
21 the contract must:

22 (1) contain the payment terms, including the total  
23 payments to be made by the consumer, whether to the organization or  
24 to another person;

25 (2) fully describe the services the organization shall  
26 ~~[is to]~~ perform for the consumer, including each guarantee and each  
27 promise of a full or partial refund and the estimated period for

1 performing and completing all of the services, not to exceed 180  
2 days;

3 (3) contain the address of the organization's  
4 principal place of business; and

5 (4) contain the name and address of the organization's  
6 agent in this state authorized to receive service of process.

7 (c) A contract with a credit access business [~~as defined by~~  
8 ~~Section 393.601,~~] for the performance of services [~~described by~~  
9 ~~Section 393.602(a)~~] must, in addition to the requirements of  
10 Subsection (b) and Section 393.302:

11 (1) contain a statement that there is no prepayment  
12 penalty;

13 (2) contain a statement that a credit access business  
14 must comply with Chapter 392 and the federal Fair Debt Collection  
15 Practices Act (15 U.S.C. Section 1692 et seq.) with respect to an  
16 extension of consumer credit [~~described by Section 393.602(a)~~];

17 (3) contain a statement that a person may not threaten  
18 or pursue criminal charges against a consumer related to a check or  
19 other debit authorization provided by the consumer as security for  
20 a transaction in the absence of forgery, fraud, theft, or other  
21 criminal conduct;

22 (4) contain a statement that a credit access business  
23 must comply, to the extent applicable, with 10 U.S.C. Section 987  
24 and any regulations adopted under that law with respect to an  
25 extension of consumer credit [~~described by Section 393.602(a)~~];

26 (5) disclose to the consumer:

27 (A) the lender from whom the extension of

1 consumer credit is obtained;

2 (B) the interest paid or to be paid to the lender;

3 and

4 (C) the specific fees that will be paid to the  
5 credit access business for the business's services and to any third  
6 party; and

7 (6) contain the name and address of the office, the  
8 office's website address, [~~Office of Consumer Credit Commissioner~~]  
9 and the telephone number of the office's consumer helpline.

10 SECTION 3. Section 393.222(b), Finance Code, is amended to  
11 read as follows:

12 (b) The finance commission [~~Finance Commission of Texas~~]  
13 may adopt rules to implement this section.

14 SECTION 4. Section 393.223(a), Finance Code, is amended to  
15 read as follows:

16 (a) Before performing services described by Section  
17 393.001(2-a) [~~393.221(1)~~], a credit access business must provide to  
18 a consumer a disclosure adopted by rule of the finance commission  
19 [~~Finance Commission of Texas~~] that discloses the following in a  
20 form prescribed by the commission:

21 (1) the interest, fees, and annual percentage rates,  
22 as applicable, to be charged on a deferred presentment transaction  
23 or on a motor vehicle title loan, as applicable, in comparison to  
24 interest, fees, and annual percentage rates to be charged on other  
25 alternative forms of consumer debt;

26 (2) the amount of accumulated fees a consumer would  
27 incur by renewing or refinancing a deferred presentment transaction

1 or motor vehicle title loan that remains outstanding for a period of  
2 two weeks, one month, two months, and three months; ~~and~~

3 (3) information regarding the typical pattern of  
4 repayment of deferred presentment transactions and motor vehicle  
5 title loans; and

6 (4) the name of the credit access business and any  
7 unique number assigned to the license issued to the business under  
8 Subchapter G.

9 SECTION 5. Section 393.224, Finance Code, is amended to  
10 read as follows:

11 Sec. 393.224. ADMINISTRATIVE PENALTY. The ~~[consumer~~  
12 ~~credit]~~ commissioner, in accordance with rules adopted by the  
13 finance commission ~~[Finance Commission of Texas]~~, may assess an  
14 administrative penalty against a credit access business that  
15 knowingly and wilfully violates this subchapter or a rule adopted  
16 under this subchapter in the manner provided by Subchapter F,  
17 Chapter 14.

18 SECTION 6. Subchapter D, Chapter 393, Finance Code, is  
19 amended by adding Section 393.308 to read as follows:

20 Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN LOANS OR  
21 EXTENSIONS OF CREDIT. (a) A credit services organization may not  
22 obtain for a consumer or assist a consumer in obtaining an extension  
23 of consumer credit that:

24 (1) is made by a lender that is affiliated with the  
25 credit services organization or has any ownership, directors,  
26 officers, members, or employees in common with the credit services  
27 organization; or

1           (2) results in any portion of the fee charged by the  
2 credit services organization being passed to a lender.

3           (b) A credit services organization may not charge or receive  
4 from a consumer a fee or other valuable consideration in connection  
5 with a loan or other extension of consumer credit that is prohibited  
6 by Subsection (a).

7           (c) The finance commission may adopt rules to implement this  
8 section.

9           SECTION 7. Section 393.602, Finance Code, is amended to  
10 read as follows:

11           Sec. 393.602. APPLICABILITY. (a) This subchapter applies  
12 only to a credit services organization that obtains for a consumer  
13 or assists a consumer in obtaining an extension of consumer credit  
14 [~~in the form of:~~

15                   ~~[(1) a deferred presentment transaction; or~~

16                   ~~[(2) a motor vehicle title loan].~~

17           (b) A credit access business may assess fees as agreed to  
18 between the parties for [~~its~~] services performed to obtain for a  
19 consumer, assist a consumer in obtaining, or service an extension  
20 of consumer credit in the form of a deferred presentment  
21 transaction or motor vehicle title loan, including a new extension  
22 of consumer credit [~~as agreed to between the parties~~]. A credit  
23 access business fee may be calculated daily, biweekly, monthly, or  
24 on another periodic basis. A credit access business is permitted to  
25 charge amounts allowed by other laws, as applicable. A fee may not  
26 be charged unless it is disclosed. A credit access business may not  
27 charge any fee for an action performed after maturity of an

1 extension of consumer credit that the business obtains for a  
2 consumer or assists a consumer in obtaining, except for a charge  
3 authorized under Section 393.629.

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

11 (c) A person may not use a device, subterfuge, or pretense  
12 to evade the application of the provisions of this chapter that  
13 apply to a credit access business [~~subchapter~~]. A lawful  
14 transaction governed under another statute, including Title 1,  
15 Business & Commerce Code, does not violate this subsection and may  
16 not be considered a device, subterfuge, or pretense to evade the  
17 application of this chapter [~~subchapter~~].

18 SECTION 8. Section 393.604(a), Finance Code, is amended to  
19 read as follows:

20 (a) An application for a license under this subchapter must:

- 21 (1) be under oath;
- 22 (2) give the approximate location from which the  
23 business is to be conducted;
- 24 (3) identify the business's principal parties in  
25 interest;
- 26 (4) contain the name, physical address, and telephone  
27 number of all third-party lender organizations:

1            (A) with which the business contracts to provide  
2 services; ~~[described by Section 393.602(a)]~~ or

3            (B) from which the business arranges extensions  
4 of consumer credit ~~[described by Section 393.602(a)]~~; and

5            (5) contain other relevant information that the  
6 commissioner requires for the findings required under Section  
7 393.607.

8            SECTION 9. Section 393.622, Finance Code, is amended to  
9 read as follows:

10            Sec. 393.622. RULES. (a) The finance commission may:

11            (1) adopt rules necessary to enforce and administer  
12 this subchapter;

13            (2) adopt rules with respect to reports of summary  
14 business information required to be submitted ~~[the quarterly~~  
15 ~~reporting]~~ by a licensed credit access business under Section  
16 393.627 ~~[licensed under this subchapter of summary business~~  
17 ~~information relating to extensions of consumer credit described by~~  
18 ~~Section 393.602(a)]~~; and

19            (3) adopt rules with respect to periodic examination  
20 by the office relating to extensions of consumer credit the  
21 business obtained for a consumer or assisted a consumer in  
22 obtaining ~~[described by Section 393.602(a)]~~, including rules  
23 related to charges for defraying the reasonable cost of conducting  
24 the examinations.

25            (b) The finance commission may adopt rules under this  
26 section to allow the commissioner to review, as part of a periodic  
27 examination, any relevant contracts between the credit access



1 business and the third-party lender organizations with which the  
2 credit access business contracts to provide services [~~described by~~  
3 ~~Section 393.602(a)~~] or from which the business arranges extensions  
4 of consumer credit [~~described by Section 393.602(a)~~]. A contract  
5 or information obtained by the commissioner under this section is  
6 considered proprietary and confidential to the respective parties  
7 to the contract, and is not subject to disclosure under Chapter 552,  
8 Government Code.

9 (c) Nothing in Section 393.201(c) or Sections  
10 393.602-393.628 [~~393.601-393.628~~] grants authority to the finance  
11 commission or the office [~~Office of Consumer Credit Commissioner~~]  
12 to establish a limit on the fees charged by a credit access  
13 business.

14 SECTION 10. Subchapter G, Chapter 393, Finance Code, is  
15 amended by adding Sections 393.6221 and 393.6222 to read as  
16 follows:

17 Sec. 393.6221. EXAMINATION OR INVESTIGATION BY  
18 COMMISSIONER; OATHS. (a) At the times the commissioner considers  
19 necessary, the commissioner or the commissioner's representative  
20 shall:

21 (1) examine each place of business of each credit  
22 access business; and

23 (2) investigate the credit access business's  
24 transactions and records, including books, accounts, papers, and  
25 correspondence, to the extent the transactions and records pertain  
26 to business regulated under this chapter.

27 (b) The credit access business shall:

1           (1) give the commissioner or the commissioner's  
2 representative free access to the credit access business's office,  
3 place of business, files, safes, and vaults; and

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

7           (c) During an examination or an investigation, the  
8 commissioner or the commissioner's representative may administer  
9 oaths and examine a person under oath on a subject pertinent to a  
10 matter that the commissioner is authorized or required to consider,  
11 investigate, or secure information about under this chapter.

12           Sec. 393.6222. CREDIT ACCESS BUSINESS'S RECORDS; DOCUMENT  
13 RETENTION REQUIREMENTS. (a) A credit access business shall  
14 maintain a record of each extension of consumer credit that the  
15 business obtains for a consumer or assists a consumer in obtaining  
16 under this chapter as is necessary to enable the commissioner to  
17 determine whether the credit access business is complying with this  
18 chapter.

19           (b) A credit access business shall keep the record until the  
20 later of:

21           (1) the fourth anniversary of the date of the contract  
22 described by Section 393.201; or

23           (2) the second anniversary of the date on which the  
24 final entry is made in the record.

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

27           (d) The commissioner shall accept a credit access

1 business's system of records if the system discloses the  
2 information reasonably required under Subsection (a).

3 SECTION 11. Section 393.625, Finance Code, is amended to  
4 read as follows:

5 Sec. 393.625. MILITARY BORROWERS. An extension of consumer  
6 credit [~~described by Section 393.602(a)~~] that is obtained by a  
7 credit access business for a military borrower [~~member of the~~  
8 ~~United States military or a dependent of a member of the United~~  
9 ~~States military~~] or that the business assisted a military borrower  
10 [~~that person~~] in obtaining must comply with 10 U.S.C. Section 987  
11 and any regulations adopted under that law, to the extent  
12 applicable.

13 SECTION 12. Section 393.626, Finance Code, is amended to  
14 read as follows:

15 Sec. 393.626. DEBT COLLECTION PRACTICES. (a) A violation  
16 of Chapter 392 by a credit access business with respect to an  
17 extension of consumer credit [~~described by Section 393.602(a)~~]  
18 constitutes a violation of this subchapter.

19 (b) With respect to an extension of consumer credit, a  
20 credit access business must comply with all provisions of the Fair  
21 Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.) that  
22 apply to a debt collector as defined by 15 U.S.C. Section 1692a. A  
23 violation of those provisions is a violation of this subchapter.

24 SECTION 13. Section 393.627, Finance Code, is amended to  
25 read as follows:

26 Sec. 393.627. REPORTS [~~QUARTERLY REPORT~~] TO COMMISSIONER.  
27 (a) A credit access business shall file a quarterly report with

1 the commissioner on a form prescribed by the commissioner that  
2 provides the following information relating to extensions of  
3 consumer credit [~~described by Section 393.602(a)~~] during the  
4 preceding quarter:

5 (1) the number of consumers for whom the business  
6 obtained or assisted in obtaining those extensions of consumer  
7 credit;

8 (2) the number of those extensions of consumer credit  
9 obtained by the business or that the business assisted consumers in  
10 obtaining;

11 (3) the number of refinancing transactions of the  
12 extensions of consumer credit described by Subdivision (2);

13 (4) the number of consumers refinancing the extensions  
14 of consumer credit described by Subdivision (2);

15 (5) the number of consumers refinancing more than once  
16 the extensions of consumer credit described by Subdivision (2);

17 (6) the average amount of the extensions of consumer  
18 credit described by Subdivision (2);

19 (7) the total amount of fees charged by the business  
20 for the activities described by Subdivision (1);

21 (8) the number of vehicles surrendered or repossessed  
22 under the terms of an extension of consumer credit in the form of a  
23 motor vehicle title loan obtained by the business or that the  
24 business assisted a consumer in obtaining; and

25 (9) [~~the mean, median, and mode of the number of~~  
26 ~~extensions of consumer credit obtained by consumers as a result of~~  
27 ~~entering into the extensions of consumer credit described by~~

1 ~~Subdivision (2), and~~

2 [~~10~~] any related information the commissioner  
3 determines necessary.

4 (b) A credit access business shall file with the  
5 commissioner an annual report for each licensed location on a form  
6 prescribed by the commissioner that provides the following  
7 information relating to extensions of consumer credit during the  
8 preceding year:

9 (1) the number of extensions of consumer credit paid  
10 in full or otherwise closed for a reduced payoff;

11 (2) the number of refinancing transactions of  
12 extensions of consumer credit that occurred before the extension of  
13 consumer credit was paid in full or otherwise closed for a reduced  
14 payoff;

15 (3) the total amount of fees charged by the business in  
16 connection with extensions of consumer credit;

17 (4) the number of consumers for whom the business  
18 obtained or assisted in obtaining an extension of consumer credit;

19 (5) the total dollar amount of extensions of consumer  
20 credit that the business obtained for or assisted consumers in  
21 obtaining; and

22 (6) any related information the commissioner  
23 determines necessary.

24 (c) All information submitted by a credit access business to  
25 the commissioner for inclusion in a report under this section is  
26 confidential.

27 (d) The commissioner shall publish a statewide consolidated

1 analysis and recapitulation of reports filed under this section,  
2 including an analysis of the 15 largest metropolitan statistical  
3 areas and the five largest counties of this state.

4 SECTION 14. Subchapter G, Chapter 393, Finance Code, is  
5 amended by adding Section 393.6271 to read as follows:

6 Sec. 393.6271. REPORT ON HIGH-COST LENDING. (a) Not later  
7 than December 31 of each year, the commissioner shall study and  
8 publish on the office's Internet website a report on high-cost  
9 lending to consumers, including the availability and prices of  
10 financial services to individual consumers in this state.

11 (b) In coordination with the finance commission's  
12 administration of the Texas Financial Education Endowment, the  
13 commissioner may contract with public and private entities to carry  
14 out research for the report required by this section.

15 (c) Not later than December 31 of each year, the  
16 commissioner shall provide the report to the legislature.

17 SECTION 15. Section 393.628, Finance Code, is amended by  
18 amending Subsection (b) and adding Subsection (b-1) to read as  
19 follows:

20 (b) The commissioner shall remit to the comptroller amounts  
21 received under Subsection (a) for deposit in an interest-bearing  
22 deposit account in the Texas Treasury Safekeeping Trust Company.  
23 Money in the account may be spent by the finance commission only for  
24 the purposes provided by this section. Amounts in the account may  
25 be invested and reinvested in any kind of investment that prudent  
26 investors, exercising reasonable care, skill, and caution, would  
27 acquire or retain in light of the purposes, terms, distribution

1 requirements, and other circumstances then prevailing, taking into  
2 consideration the investment of all the assets of the account  
3 rather than a single investment [~~the same manner as funds of the~~  
4 ~~Employees Retirement System of Texas~~], and the interest from those  
5 investments shall be deposited to the credit of the account.

6 (b-1) The expenses of managing the investments shall be paid  
7 from the account.

8 SECTION 16. Subchapter G, Chapter 393, Finance Code, is  
9 amended by adding Sections 393.629 through 393.632 to read as  
10 follows:

11 Sec. 393.629. CHARGES FOR COLLECTING DEBT. A contract  
12 between a consumer and a credit access business may provide for the  
13 payment of:

14 (1) reasonable attorney's fees if the contract is  
15 referred for collection to an attorney who is not a salaried  
16 employee of the credit access business or the third-party lender;

17 (2) court costs and disbursements; and

18 (3) for a motor vehicle title loan, reasonable  
19 expenses incurred in connection with the repossession,  
20 sequestration, holding, or disposition of the motor vehicle that do  
21 not exceed the amount actually paid by the credit access business or  
22 the lender to a third party for the repossession, sequestration,  
23 holding, or disposition of the motor vehicle.

24 Sec. 393.630. FILING A CRIMINAL CHARGE AGAINST A CONSUMER.  
25 A credit access business may not threaten or pursue a criminal  
26 charge against a consumer related to an extension of consumer  
27 credit unless the credit access business possesses evidence that is

1 sufficient to prove that the consumer violated a criminal law. For  
2 purposes of this section, in a deferred presentment transaction, a  
3 person does not violate a criminal law solely by issuing a check or  
4 authorization on an account with insufficient funds.

5 Sec. 393.631. REQUIREMENTS APPLICABLE TO EACH EXTENSION OF  
6 CONSUMER CREDIT. (a) Each extension of consumer credit that a  
7 credit access business obtains for a consumer or assists a consumer  
8 in obtaining must meet all the requirements applicable to the  
9 original extension of consumer credit, including the disclosure and  
10 contract requirements described by Sections 393.105, 393.201,  
11 393.202, 393.203, and 393.223.

12 (b) An extension of consumer credit under Subsection (a)  
13 includes:

- 14 (1) an original extension of consumer credit;  
15 (2) any type of transaction in which all or a portion  
16 of the principal, fees, or interest due under an outstanding  
17 extension of consumer credit becomes due on a later date; and  
18 (3) an extension of consumer credit that consists of  
19 debt arising from principal, fees, or interest that was not paid in  
20 full under an outstanding or previous extension of consumer credit.

21 Sec. 393.632. RULES. The finance commission shall adopt  
22 any rules necessary to implement Sections 393.629-393.631.

23 SECTION 17. Sections 393.221 and 393.601, Finance Code, are  
24 repealed.

25 SECTION 18. The changes in law made by this Act apply only  
26 to an extension of consumer credit, including an extension of  
27 consumer credit described by Section 393.631, Finance Code, as



1 added by this Act, made on or after the effective date of this Act.  
2 An extension of consumer credit made before the effective date of  
3 this Act is governed by the law in effect on the date the extension  
4 of consumer credit was made, and the former law is continued in  
5 effect for that purpose.

6 SECTION 19. This Act takes effect September 1, 2015.