

By: Eltife

S.B. No. 1650

A BILL TO BE ENTITLED

AN ACT

relating to credit services organizations and extensions of  
consumer credit facilitated by credit services organizations.

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

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

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

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

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

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

(A) improving a consumer's credit history or  
rating;

(B) obtaining an extension of consumer credit for  
a consumer in the form of a deferred presentment transaction or a  
motor vehicle title loan; or

1 (C) providing advice or assistance to a consumer  
2 with regard to Paragraph (A) or (B).

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

7 (4-a) "Finance commission" means the Finance  
8 Commission of Texas.

9 (5) "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 (6) "Motor vehicle title loan" means a loan in which an  
13 unencumbered motor vehicle is given as the only security for the  
14 loan. The term does not include a retail installment transaction  
15 under Chapter 348 or another loan made to finance the purchase of a  
16 motor vehicle.

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

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

23 (A) negotiating or closing a loan or other  
24 extension of consumer credit;

25 (B) issuing a guaranty, letter of credit, or  
26 other credit enhancement; and

27 (C) servicing an extension of consumer credit.

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

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

5 (1) contain the payment terms, including the total  
6 payments to be made by the consumer, whether to the organization or  
7 to another person;

8 (2) fully describe the services the organization shall  
9 ~~[is to]~~ perform for the consumer, including each guarantee and each  
10 promise of a full or partial refund and the estimated period for  
11 performing and completing all of the services, not to exceed 180  
12 days;

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

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

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

21 (1) contain a statement that there is no prepayment  
22 penalty;

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

27 (3) contain a statement that a person may not threaten

1 or pursue criminal charges against a consumer related to a check or  
2 other debit authorization provided by the consumer as security for  
3 a transaction in the absence of forgery, fraud, theft, or other  
4 criminal conduct;

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

9 (5) disclose to the consumer:

10 (A) the lender from whom the extension of  
11 consumer credit is obtained;

12 (B) the interest paid or to be paid to the lender;  
13 and

14 (C) the specific fees that will be paid to the  
15 credit access business for the business's services and to any third  
16 party; and

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

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

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

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

26 (a) Before performing services described by Section  
27 393.001(2-a) [~~393.221(1)~~], a credit access business must provide to

1 a consumer a disclosure adopted by rule of the finance commission  
2 [~~Finance Commission of Texas~~] that discloses the following in a  
3 form prescribed by the commission:

4 (1) the interest, fees, and annual percentage rates,  
5 as applicable, to be charged on a deferred presentment transaction  
6 or on a motor vehicle title loan, as applicable, in comparison to  
7 interest, fees, and annual percentage rates to be charged on other  
8 alternative forms of consumer debt;

9 (2) the amount of accumulated fees a consumer would  
10 incur by renewing or refinancing a deferred presentment transaction  
11 or motor vehicle title loan that remains outstanding for a period of  
12 two weeks, one month, two months, and three months; [~~and~~]

13 (3) information regarding the typical pattern of  
14 repayment of deferred presentment transactions and motor vehicle  
15 title loans; and

16 (4) the name of the credit access business and any  
17 unique number assigned to the license issued to the business under  
18 Subchapter G.

19 SECTION 5. Section 393.224, Finance Code, is amended to  
20 read as follows:

21 Sec. 393.224. ADMINISTRATIVE PENALTY. The [~~consumer~~  
22 ~~credit~~] commissioner, in accordance with rules adopted by the  
23 finance commission [~~Finance Commission of Texas~~], may assess an  
24 administrative penalty against a credit access business that  
25 knowingly and wilfully violates this subchapter or a rule adopted  
26 under this subchapter in the manner provided by Subchapter F,  
27 Chapter 14.

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

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

7 (1) is made by a lender that is affiliated with the  
8 credit services organization or has any ownership, directors,  
9 officers, members, or employees in common with the credit services  
10 organization; or

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

13 (b) A credit services organization may not charge or receive  
14 from a consumer a fee or other valuable consideration in connection  
15 with a loan or other extension of consumer credit that is prohibited  
16 by Subsection (a).

17 (c) The finance commission may adopt rules to implement this  
18 section.

19 SECTION 7. Section 393.602, Finance Code, is amended to  
20 read as follows:

21 Sec. 393.602. APPLICABILITY. (a) This subchapter applies  
22 only to a credit services organization that obtains for a consumer  
23 or assists a consumer in obtaining an extension of consumer credit  
24 [~~in the form of:~~

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

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

27 (b) A credit access business may assess fees as agreed to

1 between the parties for [its] services performed to obtain for a  
2 consumer, assist a consumer in obtaining, or service an extension  
3 of consumer credit in the form of a deferred presentment  
4 transaction or motor vehicle title loan, including a new extension  
5 of consumer credit [as agreed to between the parties]. A credit  
6 access business fee may be calculated daily, biweekly, monthly, or  
7 on another periodic basis. A credit access business is permitted to  
8 charge amounts allowed by other laws, as applicable. A fee may not  
9 be charged unless it is disclosed. A credit access business may not  
10 charge any fee for an action performed after maturity of an  
11 extension of consumer credit that the business obtains for a  
12 consumer or assists a consumer in obtaining, except for a charge  
13 authorized under Section 393.629.

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

21 (c) A person may not use a device, subterfuge, or pretense  
22 to evade the application of the provisions of this chapter that  
23 apply to a credit access business [subchapter]. A lawful  
24 transaction governed under another statute, including Title 1,  
25 Business & Commerce Code, does not violate this subsection and may  
26 not be considered a device, subterfuge, or pretense to evade the  
27 application of this chapter [subchapter].

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

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

4 (1) be under oath;

5 (2) give the approximate location from which the  
6 business is to be conducted;

7 (3) identify the business's principal parties in  
8 interest;

9 (4) contain the name, physical address, and telephone  
10 number of all third-party lender organizations:

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

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

15 (5) contain other relevant information that the  
16 commissioner requires for the findings required under Section  
17 393.607.

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

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

21 (1) adopt rules necessary to enforce and administer  
22 this subchapter;

23 (2) adopt rules with respect to reports of summary  
24 business information required to be submitted [~~the quarterly~~

25 ~~reporting~~] by a licensed credit access business under Section  
26 393.627 [~~licensed under this subchapter of summary business~~

27 ~~information relating to extensions of consumer credit described by~~



1 ~~Section 393.602(a)~~]; and

2 (3) adopt rules with respect to periodic examination  
3 by the office relating to extensions of consumer credit the  
4 business obtained for a consumer or assisted a consumer in  
5 obtaining [~~described by Section 393.602(a)~~], including rules  
6 related to charges for defraying the reasonable cost of conducting  
7 the examinations.

8 (b) The finance commission may adopt rules under this  
9 section to allow the commissioner to review, as part of a periodic  
10 examination, any relevant contracts between the credit access  
11 business and the third-party lender organizations with which the  
12 credit access business contracts to provide services [~~described by~~  
13 ~~Section 393.602(a)~~] or from which the business arranges extensions  
14 of consumer credit [~~described by Section 393.602(a)~~]. A contract  
15 or information obtained by the commissioner under this section is  
16 considered proprietary and confidential to the respective parties  
17 to the contract, and is not subject to disclosure under Chapter 552,  
18 Government Code.

19 (c) Nothing in Section 393.201(c) or Sections  
20 393.601-393.628 grants authority to the finance commission or the  
21 office [~~Office of Consumer Credit Commissioner~~] to establish a  
22 limit on the fees charged by a credit access business.

23 SECTION 10. Subchapter G, Chapter 393, Finance Code, is  
24 amended by adding Sections 393.6221 and 393.6222 to read as  
25 follows:

26 Sec. 393.6221. EXAMINATION OR INVESTIGATION BY  
27 COMMISSIONER; OATHS. (a) At the times the commissioner considers

1 necessary, the commissioner or the commissioner's representative  
2 shall:

3 (1) examine each place of business of each credit  
4 access business; and

5 (2) investigate the credit access business's  
6 transactions and records, including books, accounts, papers, and  
7 correspondence, to the extent the transactions and records pertain  
8 to business regulated under this chapter.

9 (b) The credit access business shall:

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

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

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

21 Sec. 393.6222. CREDIT ACCESS BUSINESS'S RECORDS; DOCUMENT  
22 RETENTION REQUIREMENTS. (a) A credit access business shall  
23 maintain a record of each extension of consumer credit that the  
24 business obtains for a consumer or assists a consumer in obtaining  
25 under this chapter as is necessary to enable the commissioner to  
26 determine whether the credit access business is complying with this  
27 chapter.

1        (b) A credit access business shall keep the record until the  
2 later of:

3            (1) the fourth anniversary of the date of the contract  
4 described by Section 393.201; or

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

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

9        (d) The commissioner shall accept a credit access  
10 business's system of records if the system discloses the  
11 information reasonably required under Subsection (a).

12        SECTION 11. Section 393.625, Finance Code, is amended to  
13 read as follows:

14        Sec. 393.625. MILITARY BORROWERS. An extension of consumer  
15 credit [~~described by Section 393.602(a)~~] that is obtained by a  
16 credit access business for a military borrower [~~member of the~~  
17 ~~United States military or a dependent of a member of the United~~  
18 ~~States military~~] or that the business assisted a military borrower  
19 [~~that person~~] in obtaining must comply with 10 U.S.C. Section 987  
20 and any regulations adopted under that law, to the extent  
21 applicable.

22        SECTION 12. Section 393.626, Finance Code, is amended to  
23 read as follows:

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

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

6        SECTION 13. Section 393.627, Finance Code, is amended to  
7 read as follows:

8        Sec. 393.627. REPORTS [~~QUARTERLY REPORT~~] TO COMMISSIONER.

9        (a) A credit access business shall file a quarterly report with the  
10 commissioner on a form prescribed by the commissioner that provides  
11 the following information relating to extensions of consumer credit  
12 [~~described by Section 393.602(a)~~] during the preceding quarter:

13                (1) the number of consumers for whom the business  
14 obtained or assisted in obtaining those extensions of consumer  
15 credit;

16                (2) the number of those extensions of consumer credit  
17 obtained by the business or that the business assisted consumers in  
18 obtaining;

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

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

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

25                (6) the average amount of the extensions of consumer  
26 credit described by Subdivision (2);

27                (7) the total amount of fees charged by the business

1 for the activities described by Subdivision (1);

2 (8) the number of vehicles surrendered or repossessed  
3 under the terms of an extension of consumer credit in the form of a  
4 motor vehicle title loan obtained by the business or that the  
5 business assisted a consumer in obtaining; and

6 ~~(9) [the mean, median, and mode of the number of~~  
7 ~~extensions of consumer credit obtained by consumers as a result of~~  
8 ~~entering into the extensions of consumer credit described by~~  
9 ~~Subdivision (2); and~~

10 [~~(10)~~] any related information the commissioner  
11 determines necessary.

12 (b) A credit access business shall file with the  
13 commissioner an annual report for each licensed location on a form  
14 prescribed by the commissioner that provides the following  
15 information relating to extensions of consumer credit during the  
16 preceding year:

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

19 (2) the number of refinancing transactions of  
20 extensions of consumer credit that occurred before the extension of  
21 consumer credit was paid in full or otherwise closed for a reduced  
22 payoff;

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

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

27 (5) the total dollar amount of extensions of consumer

1 credit that the business obtained for or assisted consumers in  
2 obtaining; and

3 (6) any related information the commissioner  
4 determines necessary.

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

8 (d) The commissioner shall publish a statewide consolidated  
9 analysis and recapitulation of reports filed under this section.  
10 The commissioner may also publish a consolidated analysis and  
11 recapitulation of the reports that provides an analysis of the 15  
12 largest metropolitan statistical areas and the five largest  
13 counties of this state.

14 SECTION 14. Section 393.628, Finance Code, is amended by  
15 amending Subsection (b) and adding Subsection (b-1) to read as  
16 follows:

17 (b) The commissioner shall remit to the comptroller amounts  
18 received under Subsection (a) for deposit in an interest-bearing  
19 deposit account in the Texas Treasury Safekeeping Trust Company.  
20 Money in the account may be spent by the finance commission only for  
21 the purposes provided by this section. Amounts in the account may  
22 be invested and reinvested in any kind of investment that prudent  
23 investors, exercising reasonable care, skill, and caution, would  
24 acquire or retain in light of the purposes, terms, distribution  
25 requirements, and other circumstances then prevailing, taking into  
26 consideration the investment of all the assets of the account  
27 rather than a single investment [~~the same manner as funds of the~~

1 ~~Employees Retirement System of Texas]~~, and the interest from those  
2 investments shall be deposited to the credit of the account.

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

5 SECTION 15. Subchapter G, Chapter 393, Finance Code, is  
6 amended by adding Sections 393.629 through 393.632 to read as  
7 follows:

8 Sec. 393.629. CHARGES FOR COLLECTING DEBT. A contract  
9 between a consumer and a credit access business may provide for the  
10 payment of:

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

14 (2) court costs and disbursements; and

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

21 Sec. 393.630. FILING A CRIMINAL CHARGE AGAINST A CONSUMER.  
22 A credit access business may not threaten or pursue a criminal  
23 charge against a consumer related to an extension of consumer  
24 credit unless the credit access business possesses evidence that is  
25 sufficient to prove that the consumer violated a criminal law.

26 Sec. 393.631. NEW EXTENSION OF CONSUMER CREDIT. (a) Each  
27 new extension of consumer credit that a credit access business

1 obtains for a consumer or assists a consumer in obtaining must meet  
2 all the requirements applicable to the original extension of  
3 consumer credit, including the disclosure and contract  
4 requirements described by Sections 393.105, 393.201, 393.202,  
5 393.203, and 393.222.

6 (b) In this section, "new extension of consumer credit"  
7 includes:

8 (1) a refinance, rollover, renewal, or any other type  
9 of transaction in which all or a portion of the principal, fees, or  
10 interest due under an outstanding extension of consumer credit  
11 becomes due on a later date; and

12 (2) an extension of consumer credit that consists of  
13 debt arising from principal, fees, or interest that was not paid in  
14 full under an outstanding or previous extension of consumer credit.

15 Sec. 393.632. RULES. The finance commission shall adopt  
16 any rules necessary to implement Sections 393.629-393.632.

17 SECTION 16. Sections 393.221 and 393.601, Finance Code, are  
18 repealed.

19 SECTION 17. The changes in law made by this Act apply only  
20 to an extension of consumer credit, including a new extension of  
21 consumer credit as defined by Section 393.631, Finance Code, as  
22 added by this Act, made on or after the effective date of this Act.  
23 An extension of consumer credit made before the effective date of  
24 this Act is governed by the law in effect on the date the extension  
25 of consumer credit was made, and the former law is continued in  
26 effect for that purpose.

27 SECTION 18. This Act takes effect September 1, 2015.