

1-1 By: Eltife S.B. No. 1650
 1-2 (In the Senate - Filed March 13, 2015; March 23, 2015, read
 1-3 first time and referred to Committee on Business and Commerce;
 1-4 April 29, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 29, 2015,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1650 By: Eltife

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to credit services organizations and extensions of
 1-22 consumer credit, including extensions of consumer credit
 1-23 facilitated by credit services organizations.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 393.001, Finance Code, is amended by
 1-26 amending Subdivision (1) and adding Subdivisions (1-a), (2-a),
 1-27 (3-a), (4-a), (5), (6), (7), and (8) to read as follows:

1-28 (1) "Commissioner" means the consumer credit
 1-29 commissioner.

1-30 (1-a) "Consumer" means an individual who is solicited
 1-31 to purchase or who purchases the services of a credit services
 1-32 organization.

1-33 (2-a) "Credit access business" means a credit services
 1-34 organization that obtains for a consumer or assists a consumer in
 1-35 obtaining an extension of consumer credit.

1-36 (3-a) "Deferred presentment transaction" means a
 1-37 deferred presentment transaction under Section 341.001, in
 1-38 connection with which the consumer is not required to provide real
 1-39 or personal property as security.

1-40 (4-a) "Finance commission" means the Finance
 1-41 Commission of Texas.

1-42 (5) "Military borrower" includes a "covered member" or
 1-43 a "dependent" with respect to a covered member, as those terms are
 1-44 defined by 10 U.S.C. Section 987 or a successor statute.

1-45 (6) "Motor vehicle title loan" means a loan in which an
 1-46 unencumbered motor vehicle is given as the only security for the
 1-47 loan. The term does not include a retail installment transaction
 1-48 under Chapter 348 or another loan made to finance the purchase of a
 1-49 motor vehicle.

1-50 (7) "Office" means the Office of Consumer Credit
 1-51 Commissioner.

1-52 (8) "Service" means an act, conduct, or activity that
 1-53 is performed or to be performed for a consumer's benefit or that
 1-54 involves assisting a consumer in obtaining an extension of consumer
 1-55 credit, including:

1-56 (A) negotiating or closing a loan or other
 1-57 extension of consumer credit;

1-58 (B) issuing a guaranty, letter of credit, or
 1-59 other credit enhancement; and

1-60 (C) servicing an extension of consumer credit.

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

2-3 (b) In addition to the notice required by Section 393.202,
2-4 the contract must:

2-5 (1) contain the payment terms, including the total
2-6 payments to be made by the consumer, whether to the organization or
2-7 to another person;

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

2-13 (3) contain the address of the organization's
2-14 principal place of business; and

2-15 (4) contain the name and address of the organization's
2-16 agent in this state authorized to receive service of process.

2-17 (c) A contract with a credit access business ~~[, as defined by~~
2-18 ~~Section 393.601,~~] for the performance of services ~~[described by~~
2-19 ~~Section 393.602(a)]~~ must, in addition to the requirements of
2-20 Subsection (b) and Section 393.302:

2-21 (1) contain a statement that there is no prepayment
2-22 penalty;

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

2-27 (3) contain a statement that a person may not threaten
2-28 or pursue criminal charges against a consumer related to a check or
2-29 other debit authorization provided by the consumer as security for
2-30 a transaction in the absence of forgery, fraud, theft, or other
2-31 criminal conduct;

2-32 (4) contain a statement that a credit access business
2-33 must comply, to the extent applicable, with 10 U.S.C. Section 987
2-34 and any regulations adopted under that law with respect to an
2-35 extension of consumer credit ~~[described by Section 393.602(a)]~~;

2-36 (5) disclose to the consumer:

2-37 (A) the lender from whom the extension of
2-38 consumer credit is obtained;

2-39 (B) the interest paid or to be paid to the lender;
2-40 and

2-41 (C) the specific fees that will be paid to the
2-42 credit access business for the business's services and to any third
2-43 party; and

2-44 (6) contain the name and address of the office, the
2-45 office's website address, ~~[Office of Consumer Credit Commissioner]~~
2-46 and the telephone number of the office's consumer helpline.

2-47 SECTION 3. Section 393.222(b), Finance Code, is amended to
2-48 read as follows:

2-49 (b) The finance commission ~~[Finance Commission of Texas]~~
2-50 may adopt rules to implement this section.

2-51 SECTION 4. Section 393.223(a), Finance Code, is amended to
2-52 read as follows:

2-53 (a) Before performing services described by Section
2-54 393.001(2-a) ~~[393.221(1)]~~, a credit access business must provide to
2-55 a consumer a disclosure adopted by rule of the finance commission
2-56 ~~[Finance Commission of Texas]~~ that discloses the following in a
2-57 form prescribed by the commission:

2-58 (1) the interest, fees, and annual percentage rates,
2-59 as applicable, to be charged on a deferred presentment transaction
2-60 or on a motor vehicle title loan, as applicable, in comparison to
2-61 interest, fees, and annual percentage rates to be charged on other
2-62 alternative forms of consumer debt;

2-63 (2) the amount of accumulated fees a consumer would
2-64 incur by renewing or refinancing a deferred presentment transaction
2-65 or motor vehicle title loan that remains outstanding for a period of
2-66 two weeks, one month, two months, and three months; ~~[and]~~

2-67 (3) information regarding the typical pattern of
2-68 repayment of deferred presentment transactions and motor vehicle
2-69 title loans; and

3-1 (4) the name of the credit access business and any
3-2 unique number assigned to the license issued to the business under
3-3 Subchapter G.

3-4 SECTION 5. Section 393.224, Finance Code, is amended to
3-5 read as follows:

3-6 Sec. 393.224. ADMINISTRATIVE PENALTY. The ~~[consumer~~
3-7 ~~credit]~~ commissioner, in accordance with rules adopted by the
3-8 finance commission [Finance Commission of Texas], may assess an
3-9 administrative penalty against a credit access business that
3-10 knowingly and wilfully violates this subchapter or a rule adopted
3-11 under this subchapter in the manner provided by Subchapter F,
3-12 Chapter 14.

3-13 SECTION 6. Subchapter D, Chapter 393, Finance Code, is
3-14 amended by adding Section 393.308 to read as follows:

3-15 Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN LOANS OR
3-16 EXTENSIONS OF CREDIT. (a) A credit services organization may not
3-17 obtain for a consumer or assist a consumer in obtaining an extension
3-18 of consumer credit that:

3-19 (1) is made by a lender that is affiliated with the
3-20 credit services organization or has any ownership, directors,
3-21 officers, members, or employees in common with the credit services
3-22 organization; or

3-23 (2) results in any portion of the fee charged by the
3-24 credit services organization being passed to a lender.

3-25 (b) A credit services organization may not charge or receive
3-26 from a consumer a fee or other valuable consideration in connection
3-27 with a loan or other extension of consumer credit that is prohibited
3-28 by Subsection (a).

3-29 (c) The finance commission may adopt rules to implement this
3-30 section.

3-31 SECTION 7. Section 393.602, Finance Code, is amended to
3-32 read as follows:

3-33 Sec. 393.602. APPLICABILITY. (a) This subchapter applies
3-34 only to a credit services organization that obtains for a consumer
3-35 or assists a consumer in obtaining an extension of consumer credit
3-36 ~~[in the form of:~~

3-37 ~~[(1) a deferred presentment transaction; or~~

3-38 ~~[(2) a motor vehicle title loan].~~

3-39 (b) A credit access business may assess fees as agreed to
3-40 between the parties for [its] services performed to obtain for a
3-41 consumer, assist a consumer in obtaining, or service an extension
3-42 of consumer credit in the form of a deferred presentment
3-43 transaction or motor vehicle title loan, including a new extension
3-44 of consumer credit [as agreed to between the parties]. A credit
3-45 access business fee may be calculated daily, biweekly, monthly, or
3-46 on another periodic basis. A credit access business is permitted to
3-47 charge amounts allowed by other laws, as applicable. A fee may not
3-48 be charged unless it is disclosed. A credit access business may not
3-49 charge any fee for an action performed after maturity of an
3-50 extension of consumer credit that the business obtains for a
3-51 consumer or assists a consumer in obtaining, except for a charge
3-52 authorized under Section 393.629.

3-53 (b-1) Notwithstanding Subsection (a) or (b), a credit
3-54 services organization that is not obtaining for a consumer or
3-55 assisting a consumer in obtaining an extension of consumer credit
3-56 may also charge or receive from a consumer a fee or other valuable
3-57 consideration in connection with advice, assistance, or other
3-58 services that the credit services organization provides to improve
3-59 a consumer's credit history or rating.

3-60 (c) A person may not use a device, subterfuge, or pretense
3-61 to evade the application of the provisions of this chapter that
3-62 apply to a credit access business [subchapter]. A lawful
3-63 transaction governed under another statute, including Title 1,
3-64 Business & Commerce Code, does not violate this subsection and may
3-65 not be considered a device, subterfuge, or pretense to evade the
3-66 application of this chapter [subchapter].

3-67 SECTION 8. Section 393.604(a), Finance Code, is amended to
3-68 read as follows:

3-69 (a) An application for a license under this subchapter must:

- 4-1 (1) be under oath;
- 4-2 (2) give the approximate location from which the
- 4-3 business is to be conducted;
- 4-4 (3) identify the business's principal parties in
- 4-5 interest;
- 4-6 (4) contain the name, physical address, and telephone
- 4-7 number of all third-party lender organizations:
- 4-8 (A) with which the business contracts to provide
- 4-9 services; [~~described by Section 393.602(a)~~] or
- 4-10 (B) from which the business arranges extensions
- 4-11 of consumer credit [~~described by Section 393.602(a)~~]; and
- 4-12 (5) contain other relevant information that the
- 4-13 commissioner requires for the findings required under Section
- 4-14 393.607.

4-15 SECTION 9. Section 393.622, Finance Code, is amended to
 4-16 read as follows:

4-17 Sec. 393.622. RULES. (a) The finance commission may:

4-18 (1) adopt rules necessary to enforce and administer
 4-19 this subchapter;

4-20 (2) adopt rules with respect to reports of summary
 4-21 business information required to be submitted [~~the quarterly~~
 4-22 ~~reporting~~] by a licensed credit access business under Section
 4-23 393.627 [~~licensed under this subchapter of summary business~~
 4-24 ~~information relating to extensions of consumer credit described by~~
 4-25 ~~Section 393.602(a)~~]; and

4-26 (3) adopt rules with respect to periodic examination
 4-27 by the office relating to extensions of consumer credit the
 4-28 business obtained for a consumer or assisted a consumer in
 4-29 obtaining [~~described by Section 393.602(a)~~], including rules
 4-30 related to charges for defraying the reasonable cost of conducting
 4-31 the examinations.

4-32 (b) The finance commission may adopt rules under this
 4-33 section to allow the commissioner to review, as part of a periodic
 4-34 examination, any relevant contracts between the credit access
 4-35 business and the third-party lender organizations with which the
 4-36 credit access business contracts to provide services [~~described by~~
 4-37 ~~Section 393.602(a)~~] or from which the business arranges extensions
 4-38 of consumer credit [~~described by Section 393.602(a)~~]. A contract
 4-39 or information obtained by the commissioner under this section is
 4-40 considered proprietary and confidential to the respective parties
 4-41 to the contract, and is not subject to disclosure under Chapter 552,
 4-42 Government Code.

4-43 (c) Nothing in Section 393.201(c) or Sections
 4-44 393.602-393.628 [~~393.601-393.628~~] grants authority to the finance
 4-45 commission or the office [~~Office of Consumer Credit Commissioner~~]
 4-46 to establish a limit on the fees charged by a credit access
 4-47 business.

4-48 SECTION 10. Subchapter G, Chapter 393, Finance Code, is
 4-49 amended by adding Sections 393.6221 and 393.6222 to read as
 4-50 follows:

4-51 Sec. 393.6221. EXAMINATION OR INVESTIGATION BY
 4-52 COMMISSIONER; OATHS. (a) At the times the commissioner considers
 4-53 necessary, the commissioner or the commissioner's representative
 4-54 shall:

4-55 (1) examine each place of business of each credit
 4-56 access business; and

4-57 (2) investigate the credit access business's
 4-58 transactions and records, including books, accounts, papers, and
 4-59 correspondence, to the extent the transactions and records pertain
 4-60 to business regulated under this chapter.

4-61 (b) The credit access business shall:

4-62 (1) give the commissioner or the commissioner's
 4-63 representative free access to the credit access business's office,
 4-64 place of business, files, safes, and vaults; and

4-65 (2) allow the commissioner or the commissioner's
 4-66 representative to make a copy of an item that may be investigated
 4-67 under Subsection (a)(2).

4-68 (c) During an examination or an investigation, the
 4-69 commissioner or the commissioner's representative may administer

5-1 oaths and examine a person under oath on a subject pertinent to a
5-2 matter that the commissioner is authorized or required to consider,
5-3 investigate, or secure information about under this chapter.

5-4 Sec. 393.6222. CREDIT ACCESS BUSINESS'S RECORDS; DOCUMENT
5-5 RETENTION REQUIREMENTS. (a) A credit access business shall
5-6 maintain a record of each extension of consumer credit that the
5-7 business obtains for a consumer or assists a consumer in obtaining
5-8 under this chapter as is necessary to enable the commissioner to
5-9 determine whether the credit access business is complying with this
5-10 chapter.

5-11 (b) A credit access business shall keep the record until the
5-12 later of:

5-13 (1) the fourth anniversary of the date of the contract
5-14 described by Section 393.201; or

5-15 (2) the second anniversary of the date on which the
5-16 final entry is made in the record.

5-17 (c) A record described by Subsection (a) must be prepared in
5-18 accordance with accepted accounting practices.

5-19 (d) The commissioner shall accept a credit access
5-20 business's system of records if the system discloses the
5-21 information reasonably required under Subsection (a).

5-22 SECTION 11. Section 393.625, Finance Code, is amended to
5-23 read as follows:

5-24 Sec. 393.625. MILITARY BORROWERS. An extension of consumer
5-25 credit [~~described by Section 393.602(a)~~] that is obtained by a
5-26 credit access business for a military borrower [~~member of the~~
5-27 ~~United States military or a dependent of a member of the United~~
5-28 ~~States military~~] or that the business assisted a military borrower
5-29 [~~that person~~] in obtaining must comply with 10 U.S.C. Section 987
5-30 and any regulations adopted under that law, to the extent
5-31 applicable.

5-32 SECTION 12. Section 393.626, Finance Code, is amended to
5-33 read as follows:

5-34 Sec. 393.626. DEBT COLLECTION PRACTICES. (a) A violation
5-35 of Chapter 392 by a credit access business with respect to an
5-36 extension of consumer credit [~~described by Section 393.602(a)~~]
5-37 constitutes a violation of this subchapter.

5-38 (b) With respect to an extension of consumer credit, a
5-39 credit access business must comply with all provisions of the Fair
5-40 Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.) that
5-41 apply to a debt collector as defined by 15 U.S.C. Section 1692a. A
5-42 violation of those provisions is a violation of this subchapter.

5-43 SECTION 13. Section 393.627, Finance Code, is amended to
5-44 read as follows:

5-45 Sec. 393.627. REPORTS [~~QUARTERLY REPORT~~] TO COMMISSIONER.

5-46 (a) A credit access business shall file a quarterly report with the
5-47 commissioner on a form prescribed by the commissioner that provides
5-48 the following information relating to extensions of consumer credit
5-49 [~~described by Section 393.602(a)~~] during the preceding quarter:

5-50 (1) the number of consumers for whom the business
5-51 obtained or assisted in obtaining those extensions of consumer
5-52 credit;

5-53 (2) the number of those extensions of consumer credit
5-54 obtained by the business or that the business assisted consumers in
5-55 obtaining;

5-56 (3) the number of refinancing transactions of the
5-57 extensions of consumer credit described by Subdivision (2);

5-58 (4) the number of consumers refinancing the extensions
5-59 of consumer credit described by Subdivision (2);

5-60 (5) the number of consumers refinancing more than once
5-61 the extensions of consumer credit described by Subdivision (2);

5-62 (6) the average amount of the extensions of consumer
5-63 credit described by Subdivision (2);

5-64 (7) the total amount of fees charged by the business
5-65 for the activities described by Subdivision (1);

5-66 (8) the number of vehicles surrendered or repossessed
5-67 under the terms of an extension of consumer credit in the form of a
5-68 motor vehicle title loan obtained by the business or that the
5-69 business assisted a consumer in obtaining; and

6-1 (9) ~~[the mean, median, and mode of the number of~~
 6-2 ~~extensions of consumer credit obtained by consumers as a result of~~
 6-3 ~~entering into the extensions of consumer credit described by~~
 6-4 ~~Subdivision (2), and~~

6-5 ~~[(10)] any related information the commissioner~~
 6-6 ~~determines necessary.~~

6-7 (b) A credit access business shall file with the
 6-8 commissioner an annual report for each licensed location on a form
 6-9 prescribed by the commissioner that provides the following
 6-10 information relating to extensions of consumer credit during the
 6-11 preceding year:

6-12 (1) the number of extensions of consumer credit paid
 6-13 in full or otherwise closed for a reduced payoff;

6-14 (2) the number of refinancing transactions of
 6-15 extensions of consumer credit that occurred before the extension of
 6-16 consumer credit was paid in full or otherwise closed for a reduced
 6-17 payoff;

6-18 (3) the total amount of fees charged by the business in
 6-19 connection with extensions of consumer credit;

6-20 (4) the number of consumers for whom the business
 6-21 obtained or assisted in obtaining an extension of consumer credit;

6-22 (5) the total dollar amount of extensions of consumer
 6-23 credit that the business obtained for or assisted consumers in
 6-24 obtaining; and

6-25 (6) any related information the commissioner
 6-26 determines necessary.

6-27 (c) All information submitted by a credit access business to
 6-28 the commissioner for inclusion in a report under this section is
 6-29 confidential.

6-30 (d) The commissioner shall publish a statewide consolidated
 6-31 analysis and recapitulation of reports filed under this section,
 6-32 including an analysis of the 15 largest metropolitan statistical
 6-33 areas and the five largest counties of this state.

6-34 SECTION 14. Subchapter G, Chapter 393, Finance Code, is
 6-35 amended by adding Section 393.6271 to read as follows:

6-36 Sec. 393.6271. REPORT ON HIGH-COST LENDING. (a) Not later
 6-37 than December 31 of each year, the commissioner shall study and
 6-38 publish on the office's Internet website a report on high-cost
 6-39 lending to consumers, including the availability and prices of
 6-40 financial services to individual consumers in this state.

6-41 (b) In coordination with the finance commission's
 6-42 administration of the Texas Financial Education Endowment, the
 6-43 commissioner may contract with public and private entities to carry
 6-44 out research for the report required by this section.

6-45 (c) Not later than December 31 of each year, the
 6-46 commissioner shall provide the report to the legislature.

6-47 SECTION 15. Section 393.628, Finance Code, is amended by
 6-48 amending Subsection (b) and adding Subsection (b-1) to read as
 6-49 follows:

6-50 (b) The commissioner shall remit to the comptroller amounts
 6-51 received under Subsection (a) for deposit in an interest-bearing
 6-52 deposit account in the Texas Treasury Safekeeping Trust Company.
 6-53 Money in the account may be spent by the finance commission only for
 6-54 the purposes provided by this section. Amounts in the account may
 6-55 be invested and reinvested in any kind of investment that prudent
 6-56 investors, exercising reasonable care, skill, and caution, would
 6-57 acquire or retain in light of the purposes, terms, distribution
 6-58 requirements, and other circumstances then prevailing, taking into
 6-59 consideration the investment of all the assets of the account
 6-60 rather than a single investment [the same manner as funds of the
 6-61 Employees Retirement System of Texas], and the interest from those
 6-62 investments shall be deposited to the credit of the account.

6-63 (b-1) The expenses of managing the investments shall be paid
 6-64 from the account.

6-65 SECTION 16. Subchapter G, Chapter 393, Finance Code, is
 6-66 amended by adding Sections 393.629 through 393.632 to read as
 6-67 follows:

6-68 Sec. 393.629. CHARGES FOR COLLECTING DEBT. A contract
 6-69 between a consumer and a credit access business may provide for the

7-1 payment of:
 7-2 (1) reasonable attorney's fees if the contract is
 7-3 referred for collection to an attorney who is not a salaried
 7-4 employee of the credit access business or the third-party lender;
 7-5 (2) court costs and disbursements; and
 7-6 (3) for a motor vehicle title loan, reasonable
 7-7 expenses incurred in connection with the repossession,
 7-8 sequestration, holding, or disposition of the motor vehicle that do
 7-9 not exceed the amount actually paid by the credit access business or
 7-10 the lender to a third party for the repossession, sequestration,
 7-11 holding, or disposition of the motor vehicle.

7-12 Sec. 393.630. FILING A CRIMINAL CHARGE AGAINST A CONSUMER.
 7-13 A credit access business may not threaten or pursue a criminal
 7-14 charge against a consumer related to an extension of consumer
 7-15 credit unless the credit access business possesses evidence that is
 7-16 sufficient to prove that the consumer violated a criminal law. For
 7-17 purposes of this section, in a deferred presentment transaction, a
 7-18 person does not violate a criminal law solely by issuing a check or
 7-19 authorization on an account with insufficient funds.

7-20 Sec. 393.631. REQUIREMENTS APPLICABLE TO EACH EXTENSION OF
 7-21 CONSUMER CREDIT. (a) Each extension of consumer credit that a
 7-22 credit access business obtains for a consumer or assists a consumer
 7-23 in obtaining must meet all the requirements applicable to the
 7-24 original extension of consumer credit, including the disclosure and
 7-25 contract requirements described by Sections 393.105, 393.201,
 7-26 393.202, 393.203, and 393.223.

7-27 (b) An extension of consumer credit under Subsection (a)
 7-28 includes:

- 7-29 (1) an original extension of consumer credit;
- 7-30 (2) any type of transaction in which all or a portion
 7-31 of the principal, fees, or interest due under an outstanding
 7-32 extension of consumer credit becomes due on a later date; and
- 7-33 (3) an extension of consumer credit that consists of
 7-34 debt arising from principal, fees, or interest that was not paid in
 7-35 full under an outstanding or previous extension of consumer credit.

7-36 Sec. 393.632. RULES. The finance commission shall adopt
 7-37 any rules necessary to implement Sections 393.629-393.631.

7-38 SECTION 17. Sections 393.221 and 393.601, Finance Code, are
 7-39 repealed.

7-40 SECTION 18. The changes in law made by this Act apply only
 7-41 to an extension of consumer credit, including an extension of
 7-42 consumer credit described by Section 393.631, Finance Code, as
 7-43 added by this Act, made on or after the effective date of this Act.
 7-44 An extension of consumer credit made before the effective date of
 7-45 this Act is governed by the law in effect on the date the extension
 7-46 of consumer credit was made, and the former law is continued in
 7-47 effect for that purpose.

7-48 SECTION 19. This Act takes effect September 1, 2015.

7-49 * * * * *