86R17328 TYPED

By:  Capriglione H.B. No. 4146

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain short-term consumer loans; imposing an assessment and fees; requiring an occupational license; authorizing fees.

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

SECTION 1.  Chapter 393, Finance Code, is amended by adding Subchapter H to read as follows:

Subchapter H. Regulation of Certain Credit Access Business Transactions

Sec. 393.701.  DEFINITIONS. In this Subchapter:

(1)  "Regular transaction" means a loan:

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

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

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

Sec. 393.702.  INTEREST COMPUTATION METHODS. (a) The scheduled installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled principal reduction.

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

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

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

(e)  A loan may include a late charge in compliance with Section 302.001(d).

Sec. 393.703.  APPLICABILITY OF SUBCHAPTER. (a) A loan will be exclusively subject to this subchapter if a credit access business obtains or assists in obtaining a loan that:

(1)  provides for an effective rate of interest 10% per annum, or less;

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

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

(4)  is either:

(A)  a multi-installment non-recourse term loan secured by a first lien on a motor vehicle that includes an administrative fee; or

(B)  a multi-installment unsecured term loan that includes an administrative fee.

(b)  The loan must also comply with any rule promulgated by the Consumer Financial Protection Bureau that regulates payday installment loans either secured by motor vehicle or unsecured.

(c)  A loan under this chapter may provide for an administrative charge in an amount to be negotiated by the parties.

(d)  A loan may not contract or provide for a single payment under this subchapter.

Sec. 393.704.  ADMINISTRATIVE FEE. (a) A Credit Access Business may charge an administrative fee for services provided to obtain or assist in obtaining a loan subject to this subchapter. A loan contract under this subchapter may include the administrative fee. The administrative fee may compensate the Credit Access Business to defray the ordinary costs of administering a loan, including, costs associated with:

(1)  maintaining loan information;

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

(3)  processing payments;

(4)  responding to customer inquiries;

(5)  providing periodic billing statements;

(6)  inspection and verification of the collateral and establishment, perfection, and release of the security interest; and

(7)  verification of insurance, registration and annual vehicle inspection requirements of the collateral

(b)  the administrative fee shall not be deemed interest for any purpose of law and shall be agreed upon by the parties.

(c)  The total amount of the administrative fee will be disclosed in the loan agreement and in the Credit Access Agreement.

(d)  The administrative fee is not interest.

(e)  The administrative fee will be considered earned when the loan is closed and may be included in the principal balance of the loan. If the loan is prepaid in full, the borrower will be entitled to a refund from the credit access business based on a straight-line amortization of the administrative fee.

Sec. 393.705.  ATTEMPT TO EVADE LAW. A person who is a party to a loan subject to this subchapter or the Credit Access Business who obtained the loan or assisted in obtaining the loan, may not evade the application of this subtitle or a rule adopted under this subchapter by use of any device, subterfuge, or pretense. The Commissioner alone shall regulate any activity conducted under this subchapter.

Sec. 393.706.  LICENSE REQUIRED. (a) A person must hold a Credit Access Business license issued under this chapter to engage in the business of obtaining or assisting in obtaining an extension of consumer credit that is subject to this subchapter.

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

Sec. 393.707.  SECURED LOAN. (a) A credit access business may only obtain or assist in obtaining a secured loan contract under this subchapter that is a regular transaction and secured by a first lien on a motor vehicle.

(b)  The credit access business must only obtain or assist in obtaining a loan that complies with Subtitle A of Title 4, Texas Finance Code.

(c)  The term of the secured loan under this subchapter may not be greater than 180 days.

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

Sec. 393.708.  UNSECURED LOAN. (a) A credit access business may only obtain or assist in obtaining an unsecured loan contract under this subchapter that is a regular transaction.

(b)  The credit access business must only obtain or assist in obtaining a loan that complies with Subtitle A of Title 4, Texas Finance Code.

(c)  The term of the unsecured loan under this subchapter may not be greater than 180 days.

(d)  A loan contract under this subchapter may provide for automatic debits to the borrower's bank account and complies with state and federal law, including the Electronic Fund Transfer Act (15 U.S.C. § 1693) and Regulation E (12 C.F.R. Part 1005).

Sec. 393.709.  REFUND. (a) If the loan under this subchapter is prepaid in full, including payment in cash or by a new loan or renewal of the loan, the lender earns interest for the period beginning on the date of the loan and ending on the date of the prepayment or demand for payment in full.

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

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

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

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

(c)  A loan may not earn interest on any addition to principal added to the loan after the date of the loan contract.

(d)  A loan may not use any other refunding method.

Sec. 393.710.  REQUIRED PROPERTY INSURANCE. (a) A loan secured by a motor vehicle that is subject to this subchapter, may require a borrower to insure the motor vehicle offered as security for the loan.

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

(1)  the amount, term, and conditions of the loan;

(2)  the value of the collateral; and

(3)  the existing hazards or risk of loss, damage, or destruction.

(c)  The insurance may not:

(1)  cover unusual or exceptional risks; or

(2)  provide coverage not ordinarily included in policies issued to the general public.

(d)  A lender may not require the purchase of duplicate property insurance if the creditor has knowledge that the borrower:

(1)  has valid and collectible insurance covering the property; and

(2)  has provided a loss payable endorsement sufficient to protect the creditor.

Sec. 393.711.  DECLINATION OF EQUAL INSURANCE COVERAGE PROHIBITED. A lender may not decline at any time existing insurance coverage providing substantially equal benefits that comply with this subchapter.

Sec. 393.712.  NONFILING INSURANCE. A loan may not contract for a charge for a non-filing insurance premium.

Sec. 393.713.  DELIVERY OF INFORMATION TO BORROWER. (a) A borrower must receive a copy of each document signed by the borrower. If the names and addresses of the borrower, lender, and Credit Access Business are not in the loan agreement, then the borrower must receive a written statement in English that contains the names and addresses of the borrower, lender, and credit access business.

Sec. 393.714.  RECEIPT FOR CASH PAYMENT. A lender or the credit access business shall give a receipt to a person who makes a cash payment on a loan.

Sec. 393.715.  ACCEPTANCE OF PREPAYMENT. At any time during regular business hours, the lender or credit access business shall accept partial prepayment or prepayment of a loan in full. A lender shall accept any amount from a borrower in partial prepayment of an installment or loan subject to this chapter. Monies received will first be applied to reducing interest and then to principal.

Sec. 393.716.  AMOUNT AUTHORIZED. (a) A loan subject to this subchapter may not directly or indirectly charge or contract for an amount that is not authorized under this subchapter in connection with a loan to which this chapter applies, including any fee, compensation, bonus, commission, brokerage, discount, expense, and any other charge of any nature.

(b)  A loan subject to this subchapter, may only contract for an amount incurred by the lender for:

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

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

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

(4)  reasonable costs actually incurred by the lender for repossession and sale of the security.

(c)  On a loan subject to this chapter a lender may assess and collect a fee that does not exceed the amount prescribed by Section 3.506, Business & Commerce Code, for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft offered in full or partial payment of a loan.

Sec. 393.717.  SECURITY FOR LOAN. (a) A borrower may not grant as security for a loan made under this subchapter an assignment of wages.

(b)  A lender may not take as security for a loan a lien on real property other than a lien created by law on the recording of an abstract of judgment.

Sec. 393.718.  CONFESSION OF JUDGMENT; POWER OF ATTORNEY. A loan may not contract for a confession of judgment or a power of attorney authorizing the lender or a third person to confess judgment or to appear for a borrower in a judicial proceeding. A credit access business may not require or request a confession of judgment or a power of attorney authorizing the credit access business to appear for the borrower in a judicial proceeding.

Sec. 393.719.  DISCLOSURE OF AMOUNT FINANCED AND SCHEDULE OF PAYMENTS. A borrower may not sign a promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

Sec. 393.720.  INSTRUMENT WITH BLANK PROHIBITED. A borrower may not sign an instrument in which a blank is left to be filled in after the loan is made.

Sec. 393.721.  WAIVER OF BORROWER'S RIGHT PROHIBITED. A borrower may not waive any right accruing under this chapter.

Sec. 393.722.  MOTOR VEHICLE LOANS NON-RECOURSE. Unless the borrower is proven in court to have committed fraud, forgery, or theft in connection with the loan, a borrower shall not be personally liable for any deficiency where the sale of the security for the loan does not satisfy the indebtedness.

Sec. 393.723.  COMPLIANCE WITH UNIFORM COMMERICAL CODE. A lender must comply with Chapter 9, Uniform Commercial Code in the repossession and redemption of a motor vehicle. If the borrower fails to redeem a motor vehicle legally repossessed by a lender, the lender may accept the motor vehicle in full satisfaction of the debt or the lender may depose of the motor vehicle in compliance with Chapter 9, Uniform Commercial Code.

Sec. 393.724.  PROHIBITION AGAINST PREPAYMENT PENALTY. A borrower may not pay a prepayment penalty in connection with a loan subject to this chapter.

Sec. 393.725.  ANCILLARY PRODUCTS. A borrower may not purchase any product or service not specifically authorized by this chapter. A credit access business may not obtain or assist in obtaining financing for the purchase of any ancillary product or service not specifically authorized by this subchapter.

Sec. 393.726.  PROHIBITION AGAINST CRIMINAL PROSECUTION. A person may not threaten or pursue criminal charges against a person who seeks a benefit from a credit access business for an extension of consumer credit subject to this chapter in the absence of forgery, fraud, theft, or other criminal conduct.

Sec. 393.727.  FAIR DEBT COLLECTION. A credit access business must comply with Chapter 392 and the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.).

Sec. 393.728.  ARBITRATION. A credit access business may not obtain an extension of credit that includes in a loan agreement a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. Any agreement to arbitrate disputes must be conspicuous, in type that is boldfaced, capitalized, underlined, or otherwise distinguished from surrounding written material, if any, provided to the borrower. The time and location of any potential hearing must reasonable for the borrower to attend. The method of selecting the arbitrator or arbitrators, and the rules to be used by the arbitrators must be identified in the agreement. The cost of filing, picking the arbitrator and the first full day of the arbitration will be paid by the lender or the credit access business. Additional arbitration expenses after the first day will be split between the parties, with the borrower's total liability for the arbitrator's expense being capped at $200.

Sec. 393.729.  COMPLIANCE WITH CHAPTER. A Credit Access Business must comply with Chapter 393 unless this subchapter conflicts with the provision.

SECTION 2.  This Act takes effect September 1, 2019.