

By: Craddick

H.B. No. 1258

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to credit services organizations and extensions of  
3 consumer credit facilitated by credit services organizations;  
4 increasing a criminal penalty.

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 (3) and adding Subdivisions (2-a), (3-a), (5),  
8 (6), (7), (8), (9), and (10) to read as follows:

9 (2-a) "Credit access business" means a credit services  
10 organization that obtains for a consumer or assists a consumer in  
11 obtaining an extension of consumer credit.

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

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

18 (B) obtaining an extension of consumer credit for  
19 a consumer in the form of a single-payment deferred presentment  
20 transaction, a multiple-payment deferred presentment transaction,  
21 a single-payment motor vehicle title loan, or a multiple-payment  
22 motor vehicle title loan; or

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

1           (3-a) "Deferred presentment transaction" means a  
2 single-payment or multiple-payment transaction defined as a  
3 deferred presentment transaction by Section 341.001 in connection  
4 with which the consumer is not required to provide real or personal  
5 property as security.

6           (5) "Motor vehicle title loan" means a single-payment  
7 or multiple-payment loan in which an unencumbered motor vehicle is  
8 given as the only security for the loan. The term does not include a  
9 retail installment transaction under Chapter 348 or another loan  
10 made to finance the purchase of a motor vehicle.

11           (6) "Multiple-payment deferred presentment  
12 transaction" means a deferred presentment transaction that is not a  
13 single-payment deferred presentment transaction.

14           (7) "Multiple-payment motor vehicle title loan" means  
15 a motor vehicle title loan that is not a single-payment motor  
16 vehicle title loan.

17           (8) "Refinance" means a rollover, renewal, or other  
18 type of transaction in which all or a portion of the principal,  
19 fees, or interest due under an outstanding extension of consumer  
20 credit becomes due on a later date. The term includes a new  
21 extension of consumer credit that:

22                   (A) consists of debt arising from principal,  
23 fees, or interest that was not paid in full under an outstanding or  
24 previous extension of consumer credit; or

25                   (B) is made on or before the seventh day after the  
26 date a previous extension of consumer credit that a credit access  
27 business obtained for a consumer or assisted a consumer in

1 obtaining was paid in full.

2 (9) "Single-payment deferred presentment transaction"  
3 means a deferred presentment transaction for which the entire cash  
4 advance, interest, and fees are required under the terms of the  
5 transaction to be payable in a single payment.

6 (10) "Single-payment motor vehicle title loan" means a  
7 motor vehicle title loan for which the entire principal, interest,  
8 and fees are required under the terms of the loan to be payable in a  
9 single payment.

10 SECTION 2. Subchapter A, Chapter 393, Finance Code, is  
11 amended by adding Section 393.004 to read as follows:

12 Sec. 393.004. EFFECT ON MUNICIPAL ORDINANCES. (a) This  
13 chapter does not preempt a municipal ordinance regulating a credit  
14 access business or any form of an extension of consumer credit that  
15 a credit access business is authorized to obtain for a consumer or  
16 assist a consumer in obtaining as provided by Section 393.308.

17 (b) If a municipal ordinance described by Subsection (a)  
18 conflicts with a provision of this chapter regulating a credit  
19 access business or an extension of consumer credit described by  
20 Subsection (a), the more stringent regulation controls to the  
21 extent of the conflict.

22 SECTION 3. Section 393.201(c), Finance Code, is amended to  
23 read as follows:

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

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

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

7           (3) contain a statement that a person may not threaten  
8 or pursue criminal charges against a consumer related to a check or  
9 other debit authorization provided by the consumer as security for  
10 a transaction in the absence of forgery, fraud, theft, or other  
11 criminal conduct;

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

16           (5) disclose to the consumer:

17                   (A) the lender from whom the extension of  
18 consumer credit is obtained;

19                   (B) the interest paid or to be paid to the lender;  
20 and

21                   (C) the specific fees that will be paid to the  
22 credit access business for the business's services; and

23           (6) contain the name and address of the Office of  
24 Consumer Credit Commissioner and the telephone number of the  
25 office's consumer helpline.

26           SECTION 4. Section 393.203, Finance Code, is amended to  
27 read as follows:

Sec. 393.203. ISSUANCE OF CONTRACT AND OTHER DOCUMENTS.

(a) A credit services organization shall give to the consumer, when the document is signed, a copy of the completed contract and any other document the organization requires the consumer to sign.

(b) The contract and other documents provided by a credit access business to a consumer under this section in relation to an extension of consumer credit must be:

(1) provided before signing wholly written:

(A) in English; and

(B) if the contract negotiations are not conducted in English, in the language in which the contract is negotiated; and

(2) before signing, read in their entirety in the language in which the contract is negotiated to any consumer who cannot read.

SECTION 5. Section 393.223, Finance Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) Before performing services described by Section 393.602(a) [~~393.221(1)~~], a credit access business must provide to a consumer a written disclosure adopted by rule of the Finance Commission of Texas [~~that discloses the following~~] in a form prescribed by the commission that:

(1) discloses the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage

1 rates to be charged on other alternative forms of consumer debt;

2 (2) discloses the amount of accumulated fees a  
3 consumer would incur by renewing or refinancing a deferred  
4 presentment transaction or motor vehicle title loan that remains  
5 outstanding for a period of two weeks, one month, two months, and  
6 three months; ~~and~~

7 (3) provides information regarding the typical  
8 pattern of repayment of deferred presentment transactions and motor  
9 vehicle title loans; and

10 (4) references nonprofit agencies that provide  
11 financial education and training or cash assistance to borrowers.

12 (b-1) The disclosure and notice required by this section  
13 must be:

14 (1) available in English and Spanish at each location  
15 at which the credit access business performs services described by  
16 Section 393.602(a); and

17 (2) provided to a consumer wholly written, and read in  
18 their entirety at the time provided to any consumer who cannot read,  
19 in the language in which the contract is negotiated.

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

22 Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN EXTENSIONS  
23 OF CONSUMER CREDIT. A credit services organization may not obtain  
24 for a consumer or assist a consumer in obtaining an extension of  
25 consumer credit in any form other than in the form of a  
26 single-payment deferred presentment transaction, a  
27 multiple-payment deferred presentment transaction, a

1 single-payment motor vehicle title loan, or a multiple-payment  
2 motor vehicle title loan.

3 SECTION 7. Section 393.501, Finance Code, is amended by  
4 adding Subsection (c) to read as follows:

5 (c) Each day of a continuing violation of a provision of  
6 Subchapter C-1 or G constitutes a separate offense.

7 SECTION 8. Section 393.602(a), Finance Code, is amended to  
8 read as follows:

9 (a) This subchapter applies only to a credit services  
10 organization that obtains for a consumer or assists a consumer in  
11 obtaining an extension of consumer credit [~~in the form of:~~

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

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

14 SECTION 9. Section 393.604(a), Finance Code, is amended to  
15 read as follows:

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

17 (1) be under oath;

18 (2) give the approximate location from which the  
19 business is to be conducted;

20 (3) identify the business's principal parties in  
21 interest;

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

24 (A) with which the business contracts to provide  
25 services described by Section 393.602(a); or

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

1           (5) contain other relevant information that the  
2 commissioner requires for the findings required under Section  
3 393.607; and

4           (6) contain the applicant's name and the street  
5 address, mailing address, facsimile number, and telephone number of  
6 the applicant at the location for which the license is sought.

7           SECTION 10. Section 393.620, Finance Code, is amended to  
8 read as follows:

9           Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED.  
10 A license may not be transferred or assigned [~~only with the approval~~  
11 ~~of the commissioner~~].

12           SECTION 11. Sections 393.622(a) and (b), Finance Code, are  
13 amended to read as follows:

14           (a) The finance commission may:

15                 (1) adopt rules necessary to enforce and administer  
16 this subchapter;

17                 (2) adopt rules with respect to the quarterly  
18 reporting by a credit access business licensed under this  
19 subchapter of summary business information relating to extensions  
20 of consumer credit the business obtained for a consumer or assisted  
21 a consumer in obtaining [~~described by Section 393.602(a)~~]; and

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

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

12 SECTION 12. Sections 393.625, 393.626, and 393.627, Finance  
13 Code, are amended to 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 member of the United States military or  
17 a dependent of a member of the United States military or that the  
18 business assisted that person in obtaining must comply with 10  
19 U.S.C. Section 987 and any regulations adopted under that law, to  
20 the extent applicable.

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

25 Sec. 393.627. QUARTERLY REPORT TO COMMISSIONER. A credit  
26 access business shall file a quarterly report with the commissioner  
27 on a form prescribed by the commissioner that provides the

1 following information relating to extensions of consumer credit  
2 [~~described by Section 393.602(a)~~] during the preceding quarter:

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

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

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

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

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

15 (6) the average amount of the extensions of consumer  
16 credit described by Subdivision (2);

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

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

23 (9) the mean, median, and mode of the number of  
24 extensions of consumer credit obtained by consumers as a result of  
25 entering into the extensions of consumer credit described by  
26 Subdivision (2); and

27 (10) any related information the commissioner

1 determines necessary.

2 SECTION 13. Subchapter G, Chapter 393, Finance Code, is  
3 amended by adding Sections 393.629 through 393.637 to read as  
4 follows:

5 Sec. 393.629. GENERAL LIMITATIONS ON EXTENSIONS OF CONSUMER  
6 CREDIT; PAYMENT METHOD. (a) The provisions of this chapter  
7 applicable to a credit access business apply to any consumer  
8 physically located in this state at the time the extension of  
9 consumer credit is made, regardless of whether the extension of  
10 consumer credit was made in person in this state.

11 (b) A credit access business shall accept a payment made in  
12 cash or by electronic transfer, cashier's check, teller's check, or  
13 money order offered by the consumer or another party, to retire or  
14 otherwise pay down debt incurred under an extension of consumer  
15 credit that a credit access business obtained for a consumer or  
16 assisted a consumer in obtaining under this chapter.

17 Sec. 393.630. ESTABLISHMENT OF INCOME. A credit access  
18 business must require documentation to establish a consumer's  
19 income for purposes of this subchapter. The only acceptable forms  
20 of documentation are paper, facsimile, or electronic copies of:

21 (1) a payroll document;

22 (2) a paycheck;

23 (3) a bank, credit union, debit card, or other account  
24 statement;

25 (4) a report from a nationally or regionally  
26 recognized credit and data reporting company;

27 (5) Internal Revenue Service Form W-2 from the

1 preceding year;

2 (6) the income tax return from the preceding tax year;

3 or

4 (7) a signed letter from the consumer's employer at the  
5 time the extension of consumer credit is sought.

6 Sec. 393.631. SINGLE-PAYMENT DEFERRED PRESENTMENT  
7 TRANSACTION. (a) The sum of all fees, principal, interest, and  
8 other amounts due under an extension of consumer credit in the form  
9 of a single-payment deferred presentment transaction that a credit  
10 access business obtains for a consumer or assists a consumer in  
11 obtaining may not exceed 20 percent of the consumer's gross monthly  
12 income.

13 (b) An extension of consumer credit in the form of a  
14 single-payment deferred presentment transaction that a credit  
15 access business obtains for a consumer or assists a consumer in  
16 obtaining may not be refinanced more than three times. An amount  
17 from each payment of a refinanced deferred presentment transaction  
18 described by this subsection must be used to repay at least 25  
19 percent of the principal amount of the original debt.

20 Sec. 393.632. MULTIPLE-PAYMENT DEFERRED PRESENTMENT  
21 TRANSACTION. (a) The sum of all fees, principal, interest, and  
22 other amounts due under all scheduled payments of an extension of  
23 consumer credit in the form of a multiple-payment deferred  
24 presentment transaction that a credit access business obtains for a  
25 consumer or assists a consumer in obtaining may not exceed 20  
26 percent of the consumer's gross monthly income.

27 (b) An extension of consumer credit in the form of a

1 multiple-payment deferred presentment transaction that a credit  
2 access business obtains for a consumer or assists a consumer in  
3 obtaining and all fees associated with the debt may not be payable  
4 by the consumer in more than four installments. An amount from each  
5 payment must be used to repay at least 25 percent of the principal  
6 amount of the debt.

7 (c) An extension of consumer credit in the form of a  
8 multiple-payment deferred presentment transaction that a credit  
9 access business obtains for a consumer or assists a consumer in  
10 obtaining may not be refinanced.

11 Sec. 393.633. SINGLE-PAYMENT MOTOR VEHICLE TITLE LOAN. (a)  
12 The sum of all fees, principal, interest, and other amounts due  
13 under an extension of consumer credit in the form of a  
14 single-payment motor vehicle title loan that a credit access  
15 business obtains for a consumer or assists a consumer in obtaining  
16 may not exceed the lesser of:

17 (1) three percent of the consumer's gross annual  
18 income; or

19 (2) 70 percent of the retail value of the motor vehicle  
20 securing the debt.

21 (b) An extension of consumer credit in the form of a  
22 single-payment motor vehicle title loan that a credit access  
23 business obtains for a consumer or assists a consumer in obtaining  
24 may not be refinanced more than three times. An amount from each  
25 payment of a refinanced motor vehicle title loan described by this  
26 subsection must be used to repay at least 25 percent of the  
27 principal amount of the original debt.

1       Sec. 393.634. MULTIPLE-PAYMENT MOTOR VEHICLE TITLE LOAN.

2       (a) The sum of all fees, principal, interest, and other amounts due  
3       under all scheduled payments of an extension of consumer credit in  
4       the form of a multiple-payment motor vehicle title loan that a  
5       credit access business obtains for a consumer or assists a consumer  
6       in obtaining may not exceed the lesser of:

7               (1) three percent of the consumer's gross annual  
8       income; or

9               (2) 70 percent of the retail value of the motor vehicle  
10       securing the debt.

11       (b) An extension of consumer credit in the form of a  
12       multiple-payment motor vehicle title loan that a credit access  
13       business obtains for a consumer or assists a consumer in obtaining  
14       and all fees associated with the debt may not be payable by the  
15       consumer in more than four installments. An amount from each  
16       payment must be used to repay at least 25 percent of the principal  
17       amount of the debt.

18       (c) An extension of consumer credit in the form of a  
19       multiple-payment motor vehicle title loan that a credit access  
20       business obtains for a consumer or assists a consumer in obtaining  
21       may not be refinanced.

22       Sec. 393.635. REFINANCES. (a) Any refinance of an  
23       extension of consumer credit that a credit access business obtains  
24       for a consumer or assists a consumer in obtaining:

25               (1) must be authorized under this subchapter;

26               (2) must be in the same form as the original extension  
27       of consumer credit; and

1           (3) must meet all the requirements applicable to the  
2 original extension of consumer credit, including the duration,  
3 transaction, and applicable income-based or vehicle value-based  
4 limitations under Section 393.631(a) or 393.633(a).

5           (b) For purposes of this section, a single-payment deferred  
6 presentment transaction, a multiple-payment deferred presentment  
7 transaction, a single-payment motor vehicle title loan, and a  
8 multiple-payment motor vehicle title loan are the different forms  
9 of extensions of consumer credit that a credit access business may  
10 obtain for a consumer or assist a consumer in obtaining.

11           (c) A person may not use a device, subterfuge, or pretense  
12 to evade the refinance requirements and limitations imposed on a  
13 credit access business under this subchapter.

14           Sec. 393.636. MAINTENANCE OF RECORDS. (a) A credit access  
15 business shall maintain a complete set of records of all extensions  
16 of consumer credit obtained for consumers by the business or that  
17 the business assisted consumers in obtaining. The record  
18 pertaining to each extension of consumer credit must be retained  
19 until the third anniversary of the date the extension of consumer  
20 credit was obtained and must include:

21                   (1) the name and address of the consumer;  
22                   (2) the principal amount of the cash advance or loan;  
23                   (3) the length of the original term of the extension of  
24 consumer credit, the number of installments or refinances, if  
25 applicable, and the length of the term of any refinance;

26                   (4) the fees charged by the credit access business for  
27 obtaining for a consumer or assisting the consumer in obtaining the

1 extension of consumer credit; and

2 (5) the documentation used to establish a consumer's  
3 income under Section 393.630.

4 (b) A credit access business shall retain a copy of each  
5 written agreement between the business and a consumer pertaining to  
6 an extension of consumer credit, including any agreement regarding  
7 refinancing an extension of consumer credit, until the third  
8 anniversary of the date on which the agreement was entered into.

9 (c) A credit access business shall retain a copy of each  
10 report filed under Section 393.627 until the third anniversary of  
11 the date on which the report was filed.

12 (d) A record described by this section must be available for  
13 inspection on request by the office during the normal business  
14 hours of the credit access business.

15 Sec. 393.637. RULES. The finance commission shall adopt  
16 any rules necessary to implement Sections 393.629-393.636.

17 SECTION 14. The following laws are repealed:

18 (1) Section 393.221, Finance Code; and

19 (2) Sections 393.601(2), (3), and (5), Finance Code.

20 SECTION 15. The changes in law made by this Act apply only  
21 to an extension of consumer credit made on or after the effective  
22 date of this Act. An extension of consumer credit made before the  
23 effective date of this Act is governed by the law in effect on the  
24 date the extension of consumer credit was made, and the former law  
25 is continued in effect for that purpose. For purposes of this  
26 section, a refinance of an extension of consumer credit is  
27 considered made on the date the extension of consumer credit being

1 refinanced was made.

2           SECTION 16. (a) The change in law made by this Act to  
3 Section 393.223, Finance Code, applies only to a disclosure or  
4 notice provided by a credit access business on or after January 1,  
5 2020. A disclosure or notice provided by a credit access business  
6 before January 1, 2020, is governed by Section 393.223, Finance  
7 Code, as that section existed immediately before the effective date  
8 of this Act, and that law is continued in effect for that purpose.

9           (b) The Finance Commission of Texas shall adopt rules  
10 prescribing forms under Section 393.223(a), Finance Code, as  
11 amended by this Act, not later than November 1, 2019.

12           SECTION 17. Section 393.636, Finance Code, as added by this  
13 Act, applies only to a record created on or after the effective date  
14 of this Act. A record created before the effective date of this Act  
15 is governed by the law in effect when the record was created, and  
16 the former law is continued in effect for that purpose.

17           SECTION 18. This Act takes effect September 1, 2019.