

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

1 the principal amount as if each payment will be made on its  
2 scheduled installment date. A payment received before or after the  
3 due date does not affect the amount of the scheduled principal  
4 reduction.

5 (b) For the purposes of Subsection (a), the daily rate is  
6 1/365th of the equivalent contract rate.

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

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

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

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

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

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

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

22 (4) is either:

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

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

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

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

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

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

15            (1) maintaining loan information;

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

18            (3) processing payments;

19            (4) responding to customer inquiries;

20            (5) providing periodic billing statements;

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

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

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

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

3       (d) The administrative fee is not interest.

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

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

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

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

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

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

1 Finance Code.

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

4 (d) A loan contract under this subchapter may provide for  
5 automatic debits to the borrower's bank account in compliance with  
6 state and federal law, including the Electronic Fund Transfer Act  
7 (15 U.S.C. § 1693) and Regulation E (12 C.F.R. Part 1005).

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

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

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

16 (d) A loan contract under this subchapter may provide for  
17 automatic debits to the borrower's bank account and complies with  
18 state and federal law, including the Electronic Fund Transfer Act  
19 (15 U.S.C. § 1693) and Regulation E (12 C.F.R. Part 1005).

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

25 (b) If prepayment in full or demand for payment in full  
26 occurs during an installment period, the lender may retain, in  
27 addition to interest that accrued during any elapsed installment

1 periods, an amount computed by:

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

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

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

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

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

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

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

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

22 (2) the value of the collateral; and

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

25 (c) The insurance may not:

26 (1) cover unusual or exceptional risks; or

27 (2) provide coverage not ordinarily included in

1 policies issued to the general public.

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

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

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

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

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

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

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

24 Sec. 393.715. ACCEPTANCE OF PREPAYMENT. At any time during  
25 regular business hours, the lender or credit access business shall  
26 accept partial prepayment or prepayment of a loan in full. A lender  
27 shall accept any amount from a borrower in partial prepayment of an

1 installment or loan subject to this chapter. Monies received will  
2 first be applied to reducing interest and then to principal.

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

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

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

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

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

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

21 (c) On a loan subject to this chapter a lender may assess and  
22 collect a fee that does not exceed the amount prescribed by Section  
23 3.506, Business & Commerce Code, for the return by a depository  
24 institution of a dishonored check, negotiable order of withdrawal,  
25 or share draft offered in full or partial payment of a loan.

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



1 assignment of wages.

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

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

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

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

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

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

26 Sec. 393.723. COMPLIANCE WITH UNIFORM COMMERCIAL CODE. A  
27 lender must comply with Chapter 9, Uniform Commercial Code in the

1 repossession and redemption of a motor vehicle. If the borrower  
2 fails to redeem a motor vehicle legally repossessed by a lender, the  
3 lender may accept the motor vehicle in full satisfaction of the debt  
4 or the lender may dispose of the motor vehicle in compliance with  
5 Chapter 9, Uniform Commercial Code.

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

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

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

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

22 Sec. 393.728. ARBITRATION. A credit access business may  
23 not obtain an extension of credit that includes in a loan agreement  
24 a mandatory arbitration clause that is oppressive, unfair,  
25 unconscionable, or substantially in derogation of the rights of  
26 consumers. Any agreement to arbitrate disputes must be conspicuous,  
27 in type that is boldfaced, capitalized, underlined, or otherwise

1 distinguished from surrounding written material, if any, provided  
2 to the borrower. The time and location of any potential hearing must  
3 reasonable for the borrower to attend. The method of selecting the  
4 arbitrator or arbitrators, and the rules to be used by the  
5 arbitrators must be identified in the agreement. The cost of  
6 filing, picking the arbitrator and the first full day of the  
7 arbitration will be paid by the lender or the credit access  
8 business. Additional arbitration expenses after the first day will  
9 be split between the parties, with the borrower's total liability  
10 for the arbitrator's expense being capped at \$200.

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

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