

By: Farias

H.B. No. 1886

A BILL TO BE ENTITLED

AN ACT

1
2 relating to requirements applicable to certain credit services
3 organizations and certain extensions of consumer credit the
4 organizations obtain for a consumer or assist a consumer in
5 obtaining.

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

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

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

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

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

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

21 (3-a) "Deferred presentment transaction" has the
22 meaning assigned by Section 341.001. For purposes of this chapter,
23 this definition does not preclude repayment in more than one
24 installment.

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

6 SECTION 2. Section 393.201(c), Finance Code, is amended to
7 read as follows:

8 (c) A contract with a credit access business, as defined by
9 Section 393.601, for the performance of services described by
10 Section 393.602(a) must, in addition to the requirements of
11 Subsection (b) and Section 393.302:

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

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

18 (3) contain a statement that a person may not threaten
19 or pursue criminal charges against a consumer related to a check or
20 other debit authorization provided by the consumer as security for
21 a transaction in the absence of forgery, fraud, theft, or other
22 criminal conduct;

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

27 (5) disclose to the consumer:

1 (A) the lender from whom the extension of
2 consumer credit is obtained;

3 (B) the interest paid or to be paid to the lender;
4 and

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

7 (6) contain the name and address of the Office of
8 Consumer Credit Commissioner and the telephone number of the
9 office's consumer helpline.

10 SECTION 3. Section 393.203, Finance Code, is amended to
11 read as follows:

12 Sec. 393.203. ISSUANCE OF CONTRACT AND OTHER DOCUMENTS.

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

16 (b) The documents provided by a credit access business, as
17 defined by Section 393.221, to a consumer under this section must
18 be:

19 (1) written in the language in which the contract is
20 negotiated;

21 (2) written in plain language designed to be easily
22 understood by the average consumer; and

23 (3) printed in an easily readable font and type size.

24 SECTION 4. Section 393.221, Finance Code, is amended to
25 read as follows:

26 Sec. 393.221. DEFINITION [~~DEFINITIONS~~]. In this
27 subchapter, "credit access business" [+]

1 ~~[(1) "Credit access business"]~~ means a credit services
2 organization that obtains for a consumer or assists a consumer in
3 obtaining an extension of consumer credit ~~[in the form of a deferred~~
4 ~~presentment transaction or a motor vehicle title loan]~~.

5 ~~[(2) "Deferred presentment transaction" has the~~
6 ~~meaning assigned by Section 341.001. For purposes of this chapter,~~
7 ~~this definition does not preclude repayment in more than one~~
8 ~~installment. The term is also referred to as a payday loan.~~

9 ~~[(3) "Motor vehicle title loan" or "auto title loan"~~
10 ~~means a loan in which an unencumbered motor vehicle is given as~~
11 ~~security for the loan. The term does not include a retail~~
12 ~~installment transaction under Chapter 348 or another loan made to~~
13 ~~finance the purchase of a motor vehicle.]~~

14 SECTION 5. Section 393.223(a), Finance Code, is amended to
15 read as follows:

16 (a) Before performing services described by Section
17 393.221(1), a credit access business must provide to a consumer a
18 disclosure written in English and Spanish adopted by rule of the
19 Finance Commission of Texas ~~[that discloses the following]~~ in a
20 form prescribed by the commission that:

21 (1) discloses the interest, fees, and annual
22 percentage rates, as applicable, to be charged on a deferred
23 presentment transaction or on a motor vehicle title loan, as
24 applicable, in comparison to interest, fees, and annual percentage
25 rates to be charged on other alternative forms of consumer debt;

26 (2) discloses the amount of accumulated fees a
27 consumer would incur by renewing or refinancing a deferred

1 presentment transaction or motor vehicle title loan that remains
2 outstanding for a period of two weeks, one month, two months, and
3 three months; ~~and~~

4 (3) provides information regarding the typical
5 pattern of repayment of deferred presentment transactions and motor
6 vehicle title loans; and

7 (4) references consumer credit counseling agencies
8 that provide financial education and training or cash assistance to
9 borrowers.

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

12 Sec. 393.308. PROHIBITION ON OBTAINING CERTAIN LOANS OR
13 EXTENSIONS OF CREDIT. A credit services organization may not:

14 (1) obtain for a consumer or assist a consumer in
15 obtaining a loan or other extension of credit that is not in the
16 form of a deferred presentment transaction or motor vehicle title
17 loan; or

18 (2) charge or receive from a consumer a fee or other
19 valuable consideration in connection with a loan or other extension
20 of credit that is not a deferred presentment transaction or motor
21 vehicle title loan.

22 SECTION 7. Section 393.601(2), Finance Code, is amended to
23 read as follows:

24 (2) "Credit access business" means a credit services
25 organization that obtains for a consumer or assists a consumer in
26 obtaining an extension of consumer credit [~~in the form of a deferred~~
27 ~~presentment transaction or a motor vehicle title loan~~].

1 SECTION 8. Sections 393.602(a) and (b), Finance Code, are
2 amended to read as follows:

3 (a) This subchapter applies only to a credit services
4 organization that obtains for a consumer or assists a consumer in
5 obtaining an extension of consumer credit [~~in the form of:~~
6 [~~(1) a deferred presentment transaction; or~~
7 [~~(2) a motor vehicle title loan~~].

8 (b) A credit access business may assess fees as agreed to
9 between the parties for [~~its~~] services performed to obtain an
10 extension of consumer credit for a consumer or assist a consumer in
11 obtaining an extension of consumer credit and for services
12 described by Section 393.001(3)(A) or (C) [~~as agreed to between the~~
13 ~~parties~~]. A credit access business fee may be calculated daily,
14 biweekly, monthly, or on another periodic basis. A credit access
15 business is permitted to charge amounts allowed by other laws, as
16 applicable. A fee may not be charged unless it is disclosed.

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

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

- 20 (1) be under oath;
- 21 (2) give the approximate location from which the
22 business is to be conducted;
- 23 (3) identify the business's principal parties in
24 interest;
- 25 (4) contain the name, physical address, and telephone
26 number of all third-party lender organizations:

27 (A) with which the business contracts to provide

1 services described by Section 393.602(a); or

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

4 (5) contain other relevant information that the
5 commissioner requires for the findings required under Section
6 393.607.

7 SECTION 10. Sections 393.622(a) and (b), Finance Code, are
8 amended to read as follows:

9 (a) The finance commission may:

10 (1) adopt rules necessary to enforce and administer
11 this subchapter;

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

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

23 (b) The finance commission may adopt rules under this
24 section to allow the commissioner to review, as part of a periodic
25 examination, any relevant contracts between the credit access
26 business and the third-party lender organizations with which the
27 credit access business contracts to provide services described by

1 Section 393.602(a) or from which the business arranges extensions
2 of consumer credit [~~described by Section 393.602(a)~~]. A contract
3 or information obtained by the commissioner under this section is
4 considered proprietary and confidential to the respective parties
5 to the contract, and is not subject to disclosure under Chapter 552,
6 Government Code.

7 SECTION 11. Section 393.625, Finance Code, is amended to
8 read as follows:

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

16 (b) With respect to a consumer who is a "covered member" or a
17 "dependent" of a covered member, as those terms are defined by 10
18 U.S.C. Section 987, the term of an extension of consumer credit,
19 including all renewals and refinances, obtained for the consumer by
20 a credit access business or that a credit access business assists
21 the consumer in obtaining may not exceed:

22 (1) 90 days, if the debt is a deferred presentment
23 transaction; or

24 (2) 180 days, if the debt is a motor vehicle title
25 loan.

26 SECTION 12. Section 393.626, Finance Code, is amended to
27 read as follows:

1 Sec. 393.626. DEBT COLLECTION PRACTICES. A violation of
2 Chapter 392 by a credit access business with respect to obtaining
3 for a consumer or assisting a consumer in obtaining an extension of
4 consumer credit [~~described by Section 393.602(a)~~] constitutes a
5 violation of this subchapter.

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

8 Sec. 393.627. QUARTERLY REPORT TO COMMISSIONER. A credit
9 access business shall file a quarterly report with the commissioner
10 on a form prescribed by the commissioner that provides the
11 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
17 credit obtained by the business or that the business assisted
18 consumers in 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;

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 SECTION 14. Subchapter G, Chapter 393, Finance Code, is
13 amended by adding Sections 393.629 and 393.630 to read as follows:

14 Sec. 393.629. RESTRICTIONS ON AMOUNT ADVANCED UNDER CERTAIN
15 EXTENSIONS OF CONSUMER CREDIT. (a) A credit services organization
16 may not obtain for a consumer or assist a consumer in obtaining an
17 extension of consumer credit in the form of a deferred presentment
18 transaction if the amount of cash advanced and all fees associated
19 with the extension of consumer credit, including fees for arranging
20 or assisting the borrower in arranging the extension of consumer
21 credit, exceeds 20 percent of the borrower's gross monthly income.

22 (b) A credit services organization may not obtain for a
23 consumer or assist a consumer in obtaining an extension of consumer
24 credit in the form of a motor vehicle title loan if the amount of
25 cash advanced and all fees associated with the extension of
26 consumer credit, including fees for arranging or assisting the
27 borrower in arranging the extension of consumer credit, exceeds the

1 lesser of:

2 (1) three percent of the borrower's gross annual
3 income; or

4 (2) 70 percent of the retail value of the motor
5 vehicle.

6 (c) A credit services organization shall use a consumer's
7 paycheck or other documentation establishing income to determine a
8 consumer's income for purposes of this section.

9 Sec. 393.630. REPAYMENT OF EXTENSIONS OF CONSUMER CREDIT.

10 (a) An extension of consumer credit that a credit services
11 organization obtains for a consumer or assists a consumer in
12 obtaining may not be payable in more than four installments.
13 Proceeds from each installment must be used to repay at least 25
14 percent of the principal amount of the debt so that the debt is paid
15 in full in four or fewer installments. An extension of consumer
16 credit described by this subsection that provides for repayment in
17 installments may not be refinanced or renewed.

18 (b) An extension of consumer credit that a credit services
19 organization obtains for a consumer or assists a consumer in
20 obtaining and that provides for a single lump-sum payment may not be
21 refinanced or renewed more than three times. Proceeds from each
22 refinancing or renewal must be used to repay at least 25 percent of
23 the principal amount of the original debt so that the debt is paid
24 in full in four or fewer payments.

25 (c) For purposes of this section, an extension of consumer
26 credit that is made to a consumer on or before the seventh day after
27 the date the consumer has paid a previous extension of consumer

1 credit made by the same person is considered a refinance or renewal
2 of the previous debt.

3 SECTION 15. Sections 393.601(3) and (5), Finance Code, are
4 repealed.

5 SECTION 16. The changes in law made by this Act apply only
6 to an extension of consumer credit made on or after the effective
7 date of this Act. An extension of consumer credit made before the
8 effective date of this Act is governed by the law in effect on the
9 date the extension of consumer credit was made, and the former law
10 is continued in effect for that purpose.

11 SECTION 17. (a) The change in law made by this Act to
12 Section 393.223(a), Finance Code, applies only to a disclosure
13 provided by a credit access business on or after January 1, 2014. A
14 disclosure provided by a credit access business before January 1,
15 2014, is governed by Section 393.223(a), Finance Code, as that
16 section existed immediately before the effective date of this Act,
17 and that law is continued in effect for that purpose.

18 (b) The Finance Commission of Texas shall adopt rules
19 prescribing forms under Section 393.223(a), Finance Code, as
20 amended by this Act, not later than November 1, 2013.

21 SECTION 18. This Act takes effect September 1, 2013.