

83R6096 ATP-D

By: Carona

S.B. No. 1247

A BILL TO BE ENTITLED

AN ACT

relating to certain extensions of consumer credit facilitated by credit access businesses; providing a civil penalty.

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

SECTION 1. Section 392.301(a), Finance Code, is amended to read as follows:

(a) In debt collection, a debt collector may not use threats, coercion, or attempts to coerce that employ any of the following practices:

(1) using or threatening to use violence or other criminal means to cause harm to a person or property of a person;

(2) accusing falsely or threatening to accuse falsely a person of fraud or any other crime;

(3) representing or threatening to represent to any person other than the consumer that a consumer is wilfully refusing to pay a nondisputed consumer debt when the debt is in dispute and the consumer has notified in writing the debt collector of the dispute;

(4) threatening to sell or assign to another the obligation of the consumer and falsely representing that the result of the sale or assignment would be that the consumer would lose a

defense to the consumer debt or would be subject to illegal collection attempts;

(5) threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings;

(6) threatening to file a charge, complaint, or criminal action against a debtor when the debtor has not violated a criminal law;

(7) threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings;

(8) referencing a certification signed by the consumer as required by Section 393.630 or the penalties associated with a violation of that section; or

(9) [~~8~~] threatening to take an action prohibited by law.

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

Sec. 393.004. LIMITATION ON EXTENSIONS OF CONSUMER CREDIT AND REFINANCING. (a) A credit services organization may not obtain for a consumer or assist a consumer in obtaining an extension of consumer credit in any form other than in the form of a deferred presentment transaction that meets the requirements of Section 393.634 or 393.635, or a motor vehicle title loan that meets the requirements of Section 393.636 or 393.637.

(b) Any refinance of an extension of consumer credit in the

form of a deferred presentment transaction or motor vehicle title loan that a credit services organization obtains for a consumer or assists a consumer in obtaining:

- (1) must be authorized under Subchapter G;
- (2) may not advance additional cash to the consumer; and
- (3) must meet all the requirements under Subchapter G

applicable to the original extension of consumer credit, except as specifically provided otherwise by an applicable provision of Subchapter G.

SECTION 3. Section 393.222, Finance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A credit access business shall post, in the same manner as a notice required under Subsection (a), and provide as a separate document to a consumer, a notice prescribed by the Finance Commission of Texas regarding the availability of extended payment plans that describes the parameters of the plans.

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

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

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

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

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

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

SECTION 5. Section 393.625, Finance Code, is amended to read as follows:

Sec. 393.625. MILITARY BORROWERS. (a) In this section, "military borrower" includes a "covered member" or a "dependent" of a covered member, as those terms are defined by 10 U.S.C. Section 987 or a successor statute.

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

(c) The term of an extension of consumer credit described by Section 393.602(a), including all renewals and refinances, obtained for a military borrower by a credit access business or that a credit access business assists a military borrower in obtaining may not exceed:

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

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

SECTION 6. Subchapter G, Chapter 393, Finance Code, is amended by adding Sections 393.629 through 393.639 to read as follows:

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

(b) For purposes of this chapter, an extension of consumer credit obtained for a consumer by a credit access business or that a credit access business assists a consumer in obtaining on or before the fifth day after the date the consumer pays the debt on a previous extension of consumer credit in full is considered a refinance of the previous debt.

(c) The term of an extension of consumer credit obtained for a consumer by a credit access business or that a credit access

business assists a consumer in obtaining may not exceed 180 days.

(d) A credit access business that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit shall provide to the consumer a copy of the agreement between the business and the consumer, and all notices required to be given to the consumer under this chapter, in Spanish if the consumer requests that the documents be provided in Spanish or if the agreement is negotiated in Spanish. The executed agreement between the credit access business and the consumer must be written in English.

(e) With a consumer's written consent, a debt incurred under an extension of consumer credit that a credit access business obtained for the consumer or assisted the consumer in obtaining may be sold to another credit access business licensed under this subchapter. All transaction limits applicable to the debt before the sale apply to the debt after the debt is sold, except that the term of the extension of consumer credit may not exceed 180 days, beginning on the date the debt is sold. The sale of a debt under this subsection is considered to be a refinance of the debt for purposes of the applicable transaction limits.

(f) Before obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit, a credit access business shall consider the ability of the consumer to repay the debt within the term provided by law for the original extension of credit and any authorized renewal or refinance.

Sec. 393.630. LIMITATION ON OUTSTANDING DEBT. (a) A

consumer may have only one outstanding debt from an extension of consumer credit that a credit access business obtained for the consumer or assisted the consumer in obtaining.

(b) To obtain an extension of consumer credit facilitated through the services of a credit access business, a consumer must sign a written certification stating that the consumer:

(1) at that time has no other outstanding debt from an extension of consumer credit that any credit access business obtained for the consumer or assisted the consumer in obtaining;

(2) has not owed a debt subject to an extended payment plan that a credit access business obtained for the consumer or assisted the consumer in obtaining during the preceding 14 days;
and

(3) has not gone into default on a debt that a credit access business obtained for the consumer or assisted the consumer in obtaining during the preceding 30 days.

(c) For purposes of Subsection (b)(3), a consumer is not considered in default if the consumer made a payment on a debt on or before the 10th day after the date the payment was due.

(d) A credit access business shall in good faith verify that a consumer is not falsifying the certification required by Subsection (b), to the best knowledge and ability of the person acting on behalf of the credit access business for that transaction.

(e) A person acting on behalf of a credit access business has satisfied the requirement of Subsection (d) if the person considers all information that the consumer shares with the person in negotiating the transaction and if the person makes a reasonable effort to verify the consumer's representations with any records that the credit access business typically consults in the normal course of its business.

(f) A consumer who falsifies statements contained in the certification violates this section.

(g) A credit access business or a consumer who violates this section is subject to a civil penalty in an amount not to exceed \$1,000 for each violation.

(h) The finance commission shall adopt rules to implement this section.

Sec. 393.631. LIMITATIONS RELATING TO MOTOR VEHICLE SECURING DEBT. (a) Notwithstanding any other provision of law, the proceeds of the sale of a repossessed motor vehicle that secured an extension of consumer credit shall satisfy all outstanding and unpaid indebtedness under that extension of credit, and the consumer is not liable for any deficiency resulting from the sale unless the consumer has committed fraud in obtaining the extension of consumer credit.

(b) Any fee charged to a consumer for the repossession of a motor vehicle given as security for an extension of consumer credit must be reasonable.

Sec. 393.632. ESTABLISHMENT OF INCOME OR VALUE. (a) A

credit access business must require documentation to establish a consumer's income for purposes of this subchapter. Acceptable forms of documentation include:

(1) a payroll document;

(2) a paycheck;

(3) a bank statement;

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

(5) Internal Revenue Service Form W-2 from the preceding year;

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

(7) a signed letter from the consumer's employer; or

(8) another document approved by finance commission rule.

(b) A credit access business shall retain a copy of the documentation used to establish a consumer's income under Subsection (a) according to the business's standard records retention policy.

(c) To establish the retail value of a motor vehicle for purposes of this subchapter, a credit access business must:

(1) rely on a nationally or regionally recognized vehicle appraisal guide; or

(2) agree in good faith with the consumer to the vehicle's retail value.

Sec. 393.633. LOCAL ORDINANCES PREEMPTED. An ordinance

adopted by a municipality or other political subdivision regulating a credit access business or an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining is preempted to the extent that the ordinance is not within the political subdivision's standard zoning or police powers.

Sec. 393.634. SINGLE-PAYMENT DEFERRED PRESENTMENT

TRANSACTION. (a) The principal amount of a cash advance made under an extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed:

(1) 25 percent of the consumer's gross monthly income, if the consumer's annual income is not more than 125 percent of the federal poverty level for a family of four; or

(2) 35 percent of the consumer's gross monthly income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(b) The term of an original or refinanced extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not be less than 10 days.

(c) An extension of consumer credit in the form of a single-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not be refinanced more than four times.

(d) If a consumer has refinanced a single-payment deferred presentment transaction described by Subsection (c) four times:

(1) the credit access business shall offer an extended payment plan to the consumer, unless the consumer has entered into two or more extended payment plans in the preceding 12 months; and

(2) the consumer may request an extended payment plan at any time on or after the date the consumer refinances the single-payment deferred presentment transaction for the fourth time and on or before the date the deferred presentment transaction must be repaid in full.

(e) An extended payment plan authorized by Subsection (d) must comply with Section 393.638.

Sec. 393.635. MULTIPLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION. (a) The sum of all scheduled payments due in a single month under an extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed:

(1) 15 percent of the consumer's gross monthly income, if the consumer's annual income is not more than 125 percent of the federal poverty level for a family of four; or

(2) 20 percent of the consumer's gross monthly income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(b) An extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not be payable by the consumer in more than 12 installments, and the loan agreement must specify the number, date, and total amount due with regard to each installment.

(c) An extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining must be payable on a fully amortizing, declining principal balance basis with substantially equal payments.

(d) The first installment of an extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining may not be due before the 10th day after the date the consumer enters into the loan agreement. An installment may not be due before the 14th day or after the 31st day after the date a previous installment is due.

(e) An extension of consumer credit in the form of a multiple-payment deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in

obtaining may be refinanced only one time, and the combined terms of the original extension of consumer credit and the refinanced extension of consumer credit may not exceed 270 days. A credit access business is not required to offer an extended payment plan for an extension of consumer credit in the form of a multiple-payment deferred presentment transaction.

Sec. 393.636. SINGLE-PAYMENT MOTOR VEHICLE TITLE LOAN. (a)

The principal amount of a cash advance made under an extension of consumer credit in the form of a single-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed the lesser of:

(1) six percent of the consumer's gross annual income, if the consumer's annual income is not more than 125 percent of the federal poverty level for a family of four;

(2) eight percent of the consumer's gross annual income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law; or

(3) 70 percent of the retail value of the motor vehicle securing the debt.

(b) The term of an original or refinanced extension of consumer credit in the form of a single-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not be less than 30 days.

(c) An extension of consumer credit in the form of a single-

payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not be refinanced more than six times.

(d) If a consumer has refinanced a single-payment motor vehicle title loan described by Subsection (c) six times:

(1) the credit access business must offer an extended payment plan to the consumer before initiating any activities to repossess the vehicle securing the debt; and

(2) the consumer may request an extended payment plan at any time on or after the date the consumer refinances the motor vehicle title loan for the sixth time and on or before the date the motor vehicle title loan must be repaid in full.

(e) An extended payment plan authorized by Subsection (d) must comply with Section 393.638.

Sec. 393.637. MULTIPLE-PAYMENT MOTOR VEHICLE TITLE LOAN. (a)

The principal amount of a cash advance made under an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed 70 percent of the retail value of the motor vehicle securing the debt.

(b) A scheduled payment under a contract for an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not exceed:

(1) 15 percent of the consumer's gross monthly income,

if the consumer's annual income is not more than 125 percent of the federal poverty level for a family of four; or

(2) 20 percent of the consumer's gross monthly income, if the consumer is not described by Subdivision (1) and is not a military borrower to whom a different limit applies under federal law.

(c) An extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining must be payable on a fully amortizing, declining principal balance basis with substantially equal payments.

(d) An extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not be payable by the consumer in more than six installments, and the loan agreement must specify the number, date, and total amount due with regard to each installment.

(e) The first installment of an extension of consumer credit in the form of a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may not be due before the 10th day after the date the consumer enters into the loan agreement. A subsequent installment may not be due before the 30th day after the date the previous installment of the loan is due.

(f) An extension of consumer credit in the form of a

multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining may be refinanced only one time, and the combined terms of the original extension of consumer credit and the refinanced extension of consumer credit may not exceed 270 days.

(g) A credit access business may not initiate any activities to repossess the vehicle securing the debt under a multiple-payment motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining before offering the consumer an extended payment plan. An extended payment plan authorized by this subsection must comply with Section 393.638.

Sec. 393.638. EXTENDED PAYMENT PLAN REQUIREMENTS. (a) This section applies to extended payment plans permitted under Sections 393.634, 393.636, and 393.637.

(b) An extended payment plan must provide for payment in at least:

(1) four substantially equal installments, after which the outstanding balance will be paid in full, with respect to a single-payment deferred presentment transaction or single-payment motor vehicle title loan; or

(2) two additional substantially equal installments, after which the outstanding balance, including only the fees and interest that would have been due under the original extension of consumer credit, will be paid in full, with respect to a multiple-payment motor vehicle title loan.

(c) The period between installment payments on an extended payment plan may not be shorter than:

(1) the term of the original extension of credit, with respect to a single-payment deferred presentment transaction; or

(2) 30 days, with respect to a single-payment or multiple-payment motor vehicle title loan.

(d) The first payment owed under an extended payment plan may not be due before the 10th day after the date the consumer requests an extended payment plan.

(e) A credit access business may not assess additional fees or interest or assist a consumer in obtaining additional extensions of consumer credit if the consumer is paying an extension of credit under an extended payment plan.

(f) A consumer may pay in full a debt subject to an extended payment plan at any time without prepayment penalties.

(g) A person may not engage in debt collection or vehicle repossession activities for a debt subject to an extended payment plan if the consumer is in compliance with the extended payment plan.

Sec. 393.639. RULES. The finance commission may adopt any rules necessary to implement Sections 393.629-393.638.

SECTION 7. The changes in law made by this Act apply only to an extension of consumer credit made on or after the effective date of this Act. An extension of consumer credit made before the effective date of this Act is governed by the law in effect on the

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date the extension of consumer credit was made, and the former law is continued in effect for that purpose. For purposes of this section, a refinance or renewal of an extension of consumer credit is considered made on the date the extension of consumer credit being refinanced or renewed was made.

SECTION 8. This Act takes effect September 1, 2013.