

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1247  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, credit access businesses (CAB) arrange short-term consumer loans known as deferred presentment transactions, or "payday loans," and motor vehicle title loans, or "auto title loans." These loans are financed through an independent, third-party lender who collects interest, while CABs assess fees that are not limited by usury laws.

In 2011, the 82nd Legislature passed H.B. 2592 and H.B. 2594, which set forth requirements for CABs. Pursuant to Chapter 393 (Credit Services Organizations) of the Finance Code, CABs must comply with certain licensing, disclosure, and data reporting requirements in order to operate in the state. Aside from these basic regulatory requirements, however, CABs currently operate with very little regulatory oversight in terms of transaction requirements or limitations.

Many believe that under current market conditions CABs are predatory lenders that benefit from a phenomenon known as the "cycle of debt." The cycle of debt refers to an instance where a consumer struggles to retire the debt obtained through a CAB loan despite the fact that the consumer has paid the CAB multiple fee payments that may even exceed the original balance owed. This occurs primarily as a result of the high number of refinances and rollovers that consumers obtain while utilizing these products, and as a result of these payments, the annual percentage rate applicable to these loans can be as high as 600 percent.

S.B. 1247 places meaningful transaction limits on the payday and auto title loans that CABs offer consumers. Specifically, S.B. 1247 ensures that the size of a loan corresponds to a customer's income or vehicle value, limits the number of times consumers may refinance a loan, and mandates the use of extended payment plans, which give consumers an opportunity to retire debt without accumulating additional fees.

As proposed, S.B. 1247 amends current law relating to certain extensions of consumer credit facilitated by credit access businesses and provides a civil penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 4 (Section 393.223, Finance Code) and SECTION 6 (Sections 393.630 and 393.639, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 392.301(a), Finance Code, to prohibit a debt collector, in debt collection, from using threats, coercion, or attempts to coerce that employ any of certain practices, including by referencing a certification signed by the consumer as required by Section 393.630 or the penalties associated with a violation of that section and to make nonsubstantive changes.

SECTION 2. Amends Subchapter A, Chapter 393, Finance Code, by adding Section 393.004, as follows:

Sec. 393.004. LIMITATION ON EXTENSIONS OF CONSUMER CREDIT AND REFINANCING. (a) Prohibits a credit services organization from obtaining for a

consumer or assisting 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) Provides that 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 is required to be authorized under Subchapter G (Licensing and Regulation of Certain Credit Services Organization); is prohibited from advancing additional cash to the consumer; and is required to 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. Amends Section 393.222, Finance Code, by adding Subsection (a-1), to require a credit access business to post, in the same manner as a notice required under Subsection (a) (relating to a credit access business providing a disclosure), and provide as a separate document to a consumer, a notice prescribed by the Finance Commission of Texas (finance commission) regarding the availability of extended payment plans that describes the parameters of the plans.

SECTION 4. Amends Section 393.223(a), Finance Code, to require a credit access business, before performing services described by Section 393.221(1) (defining "credit access business"), to provide to a consumer a disclosure adopted by rule of the finance commission that discloses in a form prescribed by the finance commission to provide certain information, including the name of the credit access business and any unique number assigned to the license issued to the business under Subchapter G.

SECTION 5. Amends Section 393.625, Finance Code, as follows:

Sec. 393.625. **MILITARY BORROWERS.** (a) Provides that, 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) Creates this subsection from existing text. Requires that an extension of consumer credit described by Section 393.602(a) (relating to a credit services organization that obtains an extension of consumer credit) that is obtained by a credit access business for a military borrower, rather than a 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, rather than that person, in obtaining to comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

(c) Prohibits 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 from exceeding 90 days, if the debt is a deferred presentment transaction or 180 days, if the debt is a motor vehicle title loan.

SECTION 6. Amends Subchapter G, Chapter 393, Finance Code, by adding Sections 393.629 through 393.639, as follows:

Sec. 393.629. **GENERAL LIMITATIONS ON EXTENSIONS OF CONSUMER CREDIT.** (a) Provides that 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) Provides that, 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) Prohibits 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 from exceeding 180 days.

(d) Requires a credit access business that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit to 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. Requires that the executed agreement between the credit access business and the consumer be written in English.

(e) Authorizes a debt incurred under an extension of consumer credit that a credit access business obtained for the consumer or assisted the consumer in obtaining, with a consumer's written consent, to be sold to another credit access business licensed under this subchapter. Provides that 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 is prohibited from exceeding 180 days, beginning on the date the debt is sold. Provides that 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) Requires a credit access business, before obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit, to 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) Authorizes a consumer to 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) Requires a consumer, to obtain an extension of consumer credit facilitated through the services of a credit access business, to 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) Provides that, 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) Requires a credit access business to 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) Provides that 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) Provides that a consumer who falsifies statements contained in the certification violates this section.

(g) Provides that 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) Requires the finance commission to adopt rules to implement this section.

**Sec. 393.631. LIMITATIONS RELATING TO MOTOR VEHICLE SECURING DEBT.**

(a) Requires that the proceeds of the sale of a repossessed motor vehicle that secured an extension of consumer credit, notwithstanding any other provision of law, 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) Requires that any fee charged to a consumer for the repossession of a motor vehicle given as security for an extension of consumer credit be reasonable.

**Sec. 393.632. ESTABLISHMENT OF INCOME OR VALUE.** (a) Requires a credit access business to require documentation to establish a consumer's income for purposes of this subchapter. Provides that acceptable forms of documentation include a payroll document; a paycheck; a bank statement; a report from a nationally or regionally recognized credit and data reporting company; Internal Revenue Service Form W-2 from the preceding year; the income tax return from the preceding tax year; a signed letter from the consumer's employer; or another document approved by finance commission rule.

(b) Requires a credit access business to 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) Requires a credit access business, to establish the retail value of a motor vehicle for purposes of this subchapter, to rely on a nationally or regionally recognized vehicle appraisal guide or agree in good faith with the consumer to the vehicle's retail value.

**Sec. 393.633. LOCAL ORDINANCES PREEMPTED.** Provides that 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) Prohibits 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 from exceeding:

(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) Prohibits 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 from being less than 10 days.

(c) Prohibits 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 from being refinanced more than four times.

(d) Provides that if a consumer has refinanced a single-payment deferred presentment transaction described by Subsection (c) four times the credit access business is required to 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 the consumer is authorized to 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 is required to be repaid in full.

(e) Requires that an extended payment plan authorized by Subsection (d) comply with Section 393.638.

Sec. 393.635. MULTIPLE-PAYMENT DEFERRED PRESENTMENT TRANSACTION. (a) Prohibits 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 from exceeding:

(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) Prohibits 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 from being payable by the consumer in more than 12 installments, and requires that the loan agreement specify the number, date, and total amount due with regard to each installment.

(c) Requires that 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 be payable on a fully amortizing, declining principal balance basis with substantially equal payments.

(d) Prohibits 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 from being due before the 10th day after the date the consumer enters into the loan agreement. Prohibits an installment from being due before the 14th day or after the 31st day after the date a previous installment is due.

(e) Authorizes 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 to 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. Provides that 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) Prohibits 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 from exceeding 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) Prohibits 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 from being less than 30 days.

(c) Prohibits 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 from being refinanced more than six times.

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

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

(2) the consumer is authorized 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 is required to be repaid in full.

(e) Requires that an extended payment plan authorized by Subsection (d) comply with Section 393.638.

Sec. 393.637. MULTIPLE-PAYMENT MOTOR VEHICLE TITLE LOAN. (a) Prohibits 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 from exceeding 70 percent of the retail value of the motor vehicle securing the debt.

(b) Prohibits 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 from exceeding:

(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) Requires that 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 be payable on a fully amortizing, declining principal balance basis with substantially equal payments.

(d) Prohibits 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 from being payable by the consumer in more than six installments, and requires that the loan agreement specify the number, date, and total amount due with regard to each installment.

(e) Prohibits 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 from being due before the 10th day after the date the consumer enters into the loan agreement. Prohibits a subsequent installment from being due before the 30th day after the date the previous installment of the loan is due.

(f) Authorizes 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 to be refinanced only one time, and prohibits the combined terms of the original extension of consumer credit and the refinanced extension of consumer credit from exceeding 270 days.

(g) Prohibits a credit access business from initiating 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. Requires that an extended payment plan authorized by this subsection comply with Section 393.638.

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

(b) Requires that an extended payment plan 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) Prohibits the period between installment payments on an extended payment plan from being shorter than the term of the original extension of credit, with respect to a single-payment deferred presentment transaction or 30 days, with respect to a single-payment or multiple-payment motor vehicle title loan.

(d) Prohibits the first payment owed under an extended payment plan from being due before the 10th day after the date the consumer requests an extended payment plan.

(e) Prohibits a credit access business from assessing additional fees or interest or assisting a consumer in obtaining additional extensions of consumer credit if the consumer is paying an extension of credit under an extended payment plan.

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

(g) Prohibits a person from engaging 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. Authorizes the finance commission to adopt any rules necessary to implement Sections 393.629-393.638.

SECTION 7. Makes application of the changes in law made by this Act prospective.

SECTION 8. Effective date: September 1, 2013.