

BILL ANALYSIS

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S.B. 92
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Over the past decade, payday and auto title loan outlets have proliferated in our communities, with around 3,000 licensed locations in our state. The resulting explosion in high-cost lending hinders the economic freedom of our families—as too many are trapped in high-cost debt—and undermines economic development in communities across our state.

Texas has long-standing laws that cap rate and fee charges for consumer loans and require that lenders assess the borrower's ability to repay, but payday and auto title businesses have found a loophole around those laws. As a result, this growing installment loan trend has simply meant more days in debt and higher fee payments for borrowers.

Texas' market is one driven by excessive charges and refinances. The 2013 Consumer Financial Protection Bureau white paper found that a 14-day loan payday loan cost, on average, 322 percent APR. The same loan in Texas averages over 600 percent APR (average \$22.92 per \$100 borrowed fee charge plus the 10 percent annual interest charge). Just as the national data shows, refinances are core to this business model. For payday and auto title loans in Texas—including installment and single payment—refinances make up nearly 60 percent of the loan volume according to data from the Texas Office of Consumer Credit Commissioner.

The data for auto title loans in Texas is equally concerning. Most concerning is the high number of families losing vehicles that had previously been paid in full. Texas prides itself as a state that actively promotes job creation. With nearly 74,000 cars lost to these businesses over the past two years, around one in 10 borrowers, these loans hurt the ability of families to get to work and to build their economic lives.

This legislation seeks to implement lending reforms which will help ensure a healthy market that encourages price-based competition, and is fair and equitable for consumers.

This legislation will limit payday loans (single and multiple payments) to 20 percent of borrower's gross monthly income, limit auto title loans (single and multiple payments) to the lesser of three percent of the borrower's gross annual income or 70 percent of the vehicle value, limit total loan payments to four payments, and require an amount from each installment or renewal reduce the loan principal by 25 percent. These standards would address current market failures by making the loans more affordable and ensuring that payments reduce the loan principal and lead to successful repayment of the loan in a short period of time.

In statewide polling, 75 percent of Texas voters, across party lines, support meaningful reform of these high-cost short-term loans.

As proposed, S.B. 92 amends current law relating to regulation of certain credit services organizations and to certain extensions of consumer credit the organizations obtain for a consumer or assist a consumer in obtaining.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 3 (Section 393.223, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 393, Finance Code, by adding Section 393.004, as follows:

Sec. 393.004. EFFECT ON MUNICIPAL ORDINANCES. (a) Defines “credit access business.”

(b) Provides that this chapter does not preempt a municipal ordinance 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.

(c) Provides that, if a municipal ordinance described by Subsection (b) conflicts with a provision of this chapter regulating a credit access business or an extension of consumer credit described by Subsection (b), the more stringent regulation controls to the extent of the conflict.

SECTION 2. Amends Section 393.203, Finance Code, as follows:

Sec. 393.203. INSURANCE OF CONTRACT AND OTHER DOCUMENTS. (a) Creates this subsection from existing text and makes no further change to this subsection.

(b) Requires that the contract and other documents provided by a credit access business, as defined by Section 393.221 (Definitions), to a consumer under this section in relation to an extension of consumer credit be provided before signing wholly written in the language in which the contract is negotiated and read before signing in their entirety in the language in which the contract is negotiated to any consumer who cannot read.

SECTION 3. Amends Section 393.223, Finance Code, by amending Subsection (a) and adding Subsection (b-1), as follows:

(a) Requires a credit access business, before performing services described by Section 393.602(a) (establishing the applicability of licensing and regulation of certain credit services organizations), to provide to a consumer a written disclosure adopted by rule of the Finance Commission of Texas (finance commission) in a form prescribed by the finance commission that, rather than requires 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 the following in a form prescribed by the finance commission:

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

(2) discloses 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;

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

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

(b-1) Requires that the disclosure and notice required by this section be available in English and Spanish at each location at which the credit access business performs services described by Section 393.602(a) and provided to a consumer wholly written, and

read in their entirety at the time provided to any consumer who cannot read, in the language in which the contract is negotiated.

SECTION 4. Amends Subchapter D, Chapter 393, Finance Code, by adding Sections 393.308 and 393.309, as follows:

Sec. 393.308. RESTRICTIONS ON AMOUNT ADVANCED UNDER CERTAIN EXTENSIONS OF CONSUMER CREDIT. (a) Defines “deferred presentment transaction” and “motor vehicle title loan.”

(b) Prohibits a credit services organization from obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction if the amount of cash advanced exceeds 20 percent of the borrower’s gross monthly income.

(c) Prohibits a credit services organization from obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in the form of a motor vehicle title loan if the amount of cash advanced exceeds the lesser of:

(1) three percent of the borrower’s gross annual income; or

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

(d) Requires a credit services organization to use a consumer’s paycheck or other documentation establishing income to determine a consumer’s income for purposes of this section.

Sec. 393.309. REPAYMENT OF CERTAIN EXTENSIONS OF CONSUMER CREDIT.

(a) Defines “deferred presentment transaction” and “motor vehicle title loan.”

(b) Prohibits 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 from being payable in more than four installments. Requires that proceeds from each installment be used to repay at least 25 percent of the principal amount of the debt. Prohibits an extension of consumer credit described by this subsection that provides for repayment in installments from being refinanced or renewed.

(c) Prohibits 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 and that provides for a single lump-sum payment from being refinanced or renewed more than three times. Requires that proceeds from each refinancing or renewal be used to repay at least 25 percent of the principal amount of the original debt.

(d) Provides that, for purposes of this section, an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle title loan that is made to a consumer on or before the seventh day after the date the consumer has paid a previous extension of consumer credit made by the same person is considered a refinance or renewal of the previous debt.

SECTION 5. Amends Section 393.501, Finance Code, by adding Subsection (c) to provide that each day of a continuing violation of a provision of Subchapter C-1 (Notice and Disclosure Requirements for Certain Credit Services Organizations) or G (Licensing and Regulation of Certain Credit Services Organizations) constitutes a separate offense.

SECTION 6. Amends Section 393.604(a), Finance Code, as follows:

(a) Requires that an application for a license under this subchapter:

- (1) be under oath;
- (2) contain the applicant's name and the street address, mailing address, facsimile number, and telephone number of the applicant at the location for which the license is sought;
- (3) Creates this subdivision from existing text and makes no further change to this subdivision;
- (4) Redesignates existing Subdivision (3) as Subdivision (4) and makes no further change to this subdivision;
- (5) Redesignates existing Subdivision (4) as Subdivision (5) and makes no further change to this subdivision; and
- (6) Redesignates existing Subdivision (5) as Subdivision (6) and makes no further change.

SECTION 7. Amends Section 393.620, Finance Code, as follows:

Sec. 393.620. New heading: TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. Prohibits a license from being transferred or assigned, rather than authorizes a license to be transferred or assigned only with the approval of the consumer credit commissioner.

SECTION 8. Amends Subchapter G, Chapter 393, Finance Code, by adding Section 393.629, as follows:

Sec. 393.629. MAINTENANCE OF RECORDS. (a) Requires a credit access business to maintain a complete set of records of all extensions of consumer credit obtained for consumers by the business or that the business assisted consumers in obtaining. Requires that the record pertaining to each extension of consumer credit be retained until the third anniversary of the date the extension of consumer credit was obtained and include:

- (1) the name and address of the consumer;
- (2) the principal amount of the cash advance or loan;
- (3) the length of the original term of the extension of consumer credit, the number of installments or renewals, and the length of the term of any renewal or refinance;
- (4) the fees charged by the credit access business for obtaining for a consumer or assisting the consumer in obtaining the extension of consumer credit; and
- (5) the documentation used to establish a consumer's income under Section 393.308.

(b) Requires a credit access business to retain a copy of each written agreement between the business and a consumer pertaining to an extension of consumer credit, including any agreement regarding refinancing or renewing an extension of consumer credit, until the third anniversary of the date on which the agreement was entered into.

(c) Requires a credit access business to retain a copy of each report filed under Section 393.627 (Quarterly Report to Commissioner) until the third anniversary of the date on which the report was filed.

(d) Requires that a record described by this section be available for inspection on request by the Office of Consumer Credit Commissioner during the normal business hours of the credit access business.

SECTION 9. Makes application of this Act prospective in regards to an extension of consumer credit.

SECTION 10. (a) Makes application of Section 393.223, Finance Code, as amended by this Act, prospective to January 1, 2016, in regards to a disclosure or notice provided by a credit access business.

(b) Requires the Finance Commission of Texas to adopt rules prescribing forms under Section 393.223(a), Finance Code, as amended by this Act, not later than November 1, 2015.

SECTION 11. Makes application of Section 393.629, Finance Code, as added by this Act, prospective in regards to a record.

SECTION 12. Effective date: September 1, 2015.