

SUBJECT: Consumer disclosure requirements for payday and auto title lenders

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 9 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr, Veasey

0 nays

WITNESSES: (*On original version:*)
For — None

Against — (*Registered, but did not testify:* Jennifer Allmon, Texas Catholic Conference, Roman Catholic Bishops of Texas; Kelly Rand, Catholic Charities, Diocese of Fort Worth; Richard Tomlinson; Tracey Whitley)

On — Ann Baddour, Texas Appleseed; Don Baylor, Center for Public Policy Priorities; Ryan Brannan, Texas Public Policy Foundation; Bill Hammond, Texas Association of Business; Lori Henning, Texas Association of Goodwills; Tim Morstad, AARP; Rob Norcross, Consumer Service Alliance of Texas; Suzii Paynter, Christian Life Commission, Baptist General Convention of Texas; (*Registered, but did not testify:* Michael Grimes, Consumer Service Alliance of Texas; Sealy Hutchings, Office of Consumer Credit Commissioner; Michael Price, Texas Coalition for Consumer Choice; Alex Vaughn, Cash America International, Inc.)

BACKGROUND: Finance Code, Title 5 regulates the protection of consumers of financial services. Within that title, ch. 393 regulates credit services organizations (CSOs), one of which is defined as a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others: (a) improving a consumer's credit history or rating, (b) obtaining an extension of consumer credit for a consumer, or (c) providing advice or assistance to a consumer with regard to (a) or (b).

Finance Code, Title 4, subtitle B regulates loans and financed transactions. Within that title, ch. 342 regulates consumer loans and grants the Finance

Commission of Texas authority to adopt rules to enforce the chapter.

DIGEST:

CSHB 2594 would provide notice and disclosure requirements for a “credit access business” (CAB), which would be defined as a credit services organization (CSO) that obtained for a consumer or assisted a consumer in obtaining an extension of consumer credit in the form of a payday loan or an auto title loan.

The bill would require a CAB to post, in a conspicuous location in the business accessible to consumers:

- a schedule of all fees to be charged for services performed by the CAB in connection with payday and auto title loans, as applicable;
- a notice with contact information for the Office of Consumer Credit Commissioner (OCCC) and its consumer telephone helpline; and
- a specified notice regarding the intended use of payday and auto title loans and the existence of charges associated with refinancing.

The bill also would require a CAB, before performing services for a consumer, to provide that consumer with a disclosure adopted by Finance Commission rule that included:

- the interest, fees, and annual percentage rates charged on a payday or auto title loan, in comparison to those charged on other alternative financial products, such as a credit card or pawn service, and in comparison to late fees and other typical costs a consumer might incur in lieu of the payday or auto title loan, such as a bank overdraft charge or a late charge on a utility bill;
- the accumulated fees a consumer would incur by refinancing an outstanding payday or auto title loan of various amounts for various periods of time, in comparison to the equivalent fees the consumer would incur borrowing those amounts on a credit card; and
- information regarding the typical pattern of repayment of payday and auto title loans.

The bill would require a CAB to provide an auto title loan consumer with a notice warning the consumer that, in the event of a default, the consumer may be required to surrender possession of the motor vehicle.

The bill would allow the Finance Commission to adopt rules to implement the posted notice requirements and would require the Finance Commission to adopt rules to implement the consumer disclosure requirements.

The bill would take effect January 1, 2012.

**SUPPORTERS
SAY:**

CSHB 2592 would increase consumer knowledge of payday and auto title loans, including basic and comparative information about potential fees, typical use and repayment of such loans, and contact information for official help if needed. These provisions would ensure customers received the unambiguous details they needed to make informed borrowing decisions. The bill would give the Finance Commission limited but flexible authority to implement these notice and disclosure requirements as would be most effective as the industry continued to evolve.

CSHB 2592 is part of a package of three bills, along with CSHB 2593 and CSHB 2594, designed to address a range of concerns associated with payday and auto title lending. The trio of bills is the negotiated product of more than 40 hours of mediation between consumer advocacy groups and the payday and auto title lending industry. These bills would bring the industry, which has grown rapidly under the very minimal restrictions of the CSO chapter, under meaningful state regulation for the first time. The bills would prevent predatory practices and provide recourse for consumers exploited by rogue actors in the industry. At the same time, the bills would protect consumers' access to these short-term loans.

The bills would protect the businesses and employees in the industry and would not erect barriers to entering the market. The bills would keep the affected businesses, CABs, in ch. 393 because they are loan brokers, not lenders. Entities as traditionally at odds on CSO regulation as ACE Cash Express and the Center for Public Policy Priorities support CSHB 2592..

**OPPONENTS
SAY:**

CSHB 2592 would give the Finance Commission broad and unclear new rulemaking authority, which could have unintended consequences. For example, the Texas Department of Insurance has exercised rulemaking authority in the past with the stated intent of protecting consumers but ended up regulating prices and harming consumers instead.

**OTHER
OPPONENTS
SAY:**

While CSHB 2592 and its two counterpart bills would begin to address the dangers of predatory lending, they also would legitimize the abusive business model that exploits the CSO loophole of ch. 393 to evade the

appropriate regulation of consumer loans required in ch. 342. By creating the “credit access business” designation within ch. 393, these bills would entrench the three-party lending model that uses a credit repair statute as a vehicle that allows 500 percent interest rate consumer loans.