

- SUBJECT:** Limiting amounts, payments, and renewals of payday and auto title loans
- 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 bill:*)
For — None

Against — Jennifer Allmon, Texas Catholic Conference, Roman Catholic Bishops of Texas; (*Registered, but did not testify:* 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; Lori Henning, Texas Association of Goodwills; Tim Morstad, AARP; Suzii Paynter, Christian Life Commission, Baptist General Convention of Texas; (*Registered, but did not testify:* Sealy Hutchings, Office of Consumer Credit Commissioner; Rob Norcross, Consumer Service Alliance of Texas; 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).
- DIGEST:** CSHB 2593 would add a new subch. H to Finance Code, ch. 393 to regulate certain characteristics of payday and auto title loans. The subchapter would define a “credit access business” (CAB) 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.

Limits on loan amounts. The bill would establish limits on the cash value of a payday or auto title loan. These limits would be scaled to the borrower's gross family income and tiered based on whether that gross family income was above or below 100 percent of the federal poverty level for a family of four.

The limit on the value of a payday loan would be 25 or 32 percent of a borrower's monthly family income, depending respectively on whether that family income was no more than or greater than the federal poverty level.

The limit on the value of an auto title loan would be the lesser of:

- 3 or 5 percent of a borrower's annual family income, depending respectively on whether that family income was no more than or greater than the federal poverty level; or
- 70 percent of the retail value of the motor vehicle.

The bill would require a CAB to keep a record of the document used to establish a borrower's family income.

Partial payments of loans. The bill would require a payday or auto title loan to be payable in two-week or one-month increments or in a single payment, and the bill would require partial payments of the loan principal to be accepted.

Limits on loan renewals, refinancing, or installment payments. Under the bill, a payday loan could not be renewed, refinanced, or partially paid more than four times if the loan was payable monthly or six times if the loan was payable every two weeks. An auto title loan could not be renewed, refinanced, or partially paid more than five times if the loan was payable monthly or eight times if the loan was payable every two weeks.

The charging of a fee on a late or missing payment would be considered a loan refinancing, as would a loan made to a consumer within seven days of the consumer's payment of a previous loan from the same person.

Extended repayment plans. If a loan had been renewed, refinanced, or partially paid the maximum number of times allowed but still was not fully paid off, a CAB could arrange an extended repayment plan for the consumer but could not charge fees in connection with such a plan. An extended repayment plan would have to consist of four equal payments of principal and interest, with all principal and interest paid in full with the fourth payment. The plan payments would have to occur with the same two-week or one-month frequency that was initially required in the loan. A borrower would default if he or she failed to make any scheduled payment under the extended repayment plan.

A consumer could enter into an extended repayment plan for a payday loan only once in a 12-month period or, for an auto title loan, only once in a 14-month period. If a CAB arranged a new loan for a consumer who had entered into an extended repayment plan within the last 12 or 14 months, as applicable, and if the CAB then allowed the new loan to be renewed, refinanced, or partially paid the maximum number of times allowed, the lender or person making the cash advance, as applicable, would forfeit any claim to the debt principal and, in the case of an auto title loan, would have to return the auto title to the consumer.

Additional provisions for auto title loans. A CAB could seek reimbursement from a consumer on behalf of a lender for reasonable and documented costs associated with the sale of a vehicle surrendered due to default. The Finance Commission could, by rule, limit or prohibit unreasonable associated fees. The sale of a surrendered vehicle would satisfy all outstanding and unpaid debt from an auto title loan. The borrower would not be liable for any deficiency resulting from the sale, and the lender would have to pay the borrower for any surplus resulting from the sale.

The Finance Commission could, by rule, require that a disclaimer accompany an automobile club membership offer made in connection with an auto title loan. The disclaimer would have to state the benefits and limitations of the offer and that any contract documenting the customer's agreement to purchase an automobile club membership would have to bear the customer's signature.

The bill would make it a violation to fail to return an auto title after full repayment of an auto title loan.

Effective date. The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 2593 would break the exploitative cycle of debt that too often results from payday and auto title loan use by regulating key features of these loans, which currently are not meaningfully regulated in any way. The bill would limit predatory practices, protecting consumers and stabilizing the market for legitimate operators.

CSHB 2593 is part of a package of three bills, along with CSHB 2592 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 who would otherwise be caught in the cycle of debt. CSHB 2593 would establish limits on the value of payday and auto title loans, tying the principal of a loan to the consumer's ability to repay.

The bill also would place limits on the allowable number of loan renewals, which are the centerpiece of a debt trap. The bill would require partial payments to be accepted and create extended repayment plans, which are important tools that would allow consumers to avoid the cycle of debt while also paying off their obligations.

These provisions and others would represent a massive first step in establishing consumer protections in a previously unregulated industry. The trio of bills would eliminate many problems in the industry, narrowing the scope of focus needed to address remaining problems in the next legislative session, should the cycle of debt persist.

At the same time, the bills would protect the businesses and employees in the industry and consumers' access to these short-term loans. The bills would keep the affected businesses, CABs, in ch. 393 because they are loan brokers, not lenders. The bill would not allow any agency to cap the fees a CAB could charge for obtaining or renewing a payday or auto title loan. In fact, CSHB 2593 would not restrict CAB fees in any way except by (a) establishing a limit on the number of times a loan could be renewed and (b) requiring a surrendered vehicle sale fee to be reasonable. A CAB

could allow the market to set loan fees at whatever level it would support. The only rulemaking the bill would authorize would be extremely limited, enabling the Finance Commission to implement provisions regarding surrendered vehicle sale fees and auto club offer disclaimers.

The bill would establish necessary, valuable loan product requirements, incorporate industry best practices, and allow market competition to bring loan fees down naturally. CABs provide a needed loan-brokering service and deserve to earn a profit. At the same time, loan products have emerged from the absolute laissez-faire approach in this industry that has led to many, many consumer complaints. This package of bills would establish balanced and reasonable regulations that would stabilize the market, benefitting both consumers and businesses.

OPPONENTS
SAY:

The restrictive structuring of loan products in CSHB 2593 would drive CABs out of business and interfere with access to the free market for short-term credit. Consumers need a variety of product options, naturally designed by market demand and competition, to manage financial difficulties.

The forfeiture of loan principal and auto title after a second maxing out of renewals would harm CABs' ability to serve Texans that were frozen out of the traditional credit market by allowing these borrowers to evade their obligations and not pay back the principal borrowed. CSHB 2593's forfeiture provisions should be replaced with a mandatory, fee-free extended repayment plan, like the one that would have been optional after the first maxing out of renewals.

OTHER
OPPONENTS
SAY:

CSHB 2594 would fail to address one of the core problems of payday and auto title lending: the unbound, exorbitant fees that CSOs charge to arrange and renew loans. Because the bill would not establish fee or interest rate caps, it would not break the cycle of debt that traps families and nabs taxpayer-funded public benefits and charitable assistance given to these families, redirecting this money directly into the pockets of private companies.

The bill also would fail to establish a real-time enforcement database of customer loan use so that violations of ch. 393 could be prevented, rather than tolerating avoidable violations and necessitating the use of the resources of the Office of Consumer Credit Commissioner to enforce the law.

Consumer protection provisions in the bill should be stronger. The number of loan renewals permitted should be reduced, so that the repayment plan escape hatch from the cycle of debt could be accessed sooner. The repayment plan option should not be limited to just once per year or 14 months, and CABs should be required to offer it, not just have the option to offer it. The bill should include language to ensure that CABs could not find a way to offer a similar loan product under a different name to evade enforcement.

While CSHB 2593 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 to make 500 percent interest rate consumer loans.