

NO. D-1-GN-11-003142

CONSUMER SERVICE ALLIANCE OF TEXAS, INC.	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
TITLEMAX OF TEXAS, INC.	§	TRAVIS COUNTY, TEXAS
Plaintiff - Intervenor,	§	
v.	§	
	§	
CITY OF AUSTIN, TEXAS	§	250 <sup>TH</sup> JUDICIAL DISTRICT
Defendant.	§	

**DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin (“City”) files its Motion for Partial Summary Judgment. The Court should grant the City’s motion because the challenged ordinance is not preempted, does not conflict with state law, and is a reasonable and valid exercise of the City’s police power. The City respectfully shows the following:

**INTRODUCTION**

1. This is a Uniform Declaratory Judgment Act (“UDJA”) and Texas Open Meetings Act (“TOMA”) case. Plaintiff and Plaintiff-Intervenor (collectively “Plaintiffs”) allege that City of Austin Ordinance No. 20110818-075, which concerns credit access businesses (the “CAB Ordinance”), (1) unconstitutional because it is preempted by state law, conflicts with state law, and is a “virtual prohibition” on TitleMax’s business; and (2) was adopted in violation of the TOMA.<sup>1</sup> Plaintiffs seek a declaration that the CAB Ordinance is invalid, injunctive relief, and attorney fees.

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<sup>1</sup> The TOMA claim is addressed in the City’s Partial Plea to the Jurisdiction that was filed on April 27, 2012, and is not part of this Motion for Partial Summary Judgment.

## EVIDENCE

2. Attached and incorporated by reference for all purposes are the following exhibits:

**Exhibit 1:** House Bill 2594, 82<sup>nd</sup> Legislative Session

**Exhibit 2:** House Bill 2592, 82<sup>nd</sup> Legislative Session

**Exhibit 3:** House Bill 2593, 82<sup>nd</sup> Legislative Session

**Exhibit 4:** City of Austin Ordinance No. 20110818-075.

**Exhibit 5:** City of Dallas Ordinance No. 28287 (codified as in the Dallas City Code as Article XI, §§50-144 to 50-151.3).

## FACTS

### State law

3. The 82<sup>nd</sup> Legislature adopted House Bill 2594 and House Bill 2592 (the “State Bills”). *See* Exhibits 1 and 2. The State Bills concern credit access businesses (“CAB”), which are businesses that facilitate pay day and motor vehicle title loans. The State Bills require CABs to be licensed, to follow certain reporting requirements, and to provide certain disclosures. The State Bills also include an administrative enforcement penalty. The State Bills became effective on January 1, 2012.

4. A third bill concerning CABs, House Bill 2593, was also proposed during the 82<sup>nd</sup> legislative session. It addressed payment for extensions, the amount that could be advanced, restrictions on extensions of credit for auto title loans, and restrictions on the extensions of credit for payday loans. *See* Exhibit 3. House Bill 2593 was not voted on by the Legislature during the 82<sup>nd</sup> legislative session.

## **Ordinance No. 20110818-075**

5. The City of Austin is a home-rule municipality. On August 18, 2011, the Austin City Council (the “Council”) adopted Ordinance No. 20110818-075, the CAB Ordinance. *See* Exhibit 4. The purpose of the CAB Ordinance is “to protect the welfare of the citizens of the City by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices.” *See* Exhibit 4 at §4-12-2. It requires CABs located within the City to register with the City, to keep certain records for review and inspection, to submit the reports to the City, and to provide a form to consumers listing non-profit agencies that work with consumer credit issues. *See* Exhibit 4 at §4-12-1 to §4-12-20 and §4-12-22. The Ordinance also includes provisions related to extensions of credit (that is amount that can be loaned, number of installments allowed, and number of refinances/renewals allowed). *See* Exhibit 4 at §4-12-21. The CAB Ordinance became effective on January 1, 2012. *See* Exhibit 4 at Part 3. It is substantially similar to City of Dallas Ordinance No. 28287, which was adopted on or about June 22, 2011. *See* Exhibit 5.

### **STANDARD OF REVIEW**

6. The issues raised in this Motion concern the constitutionality of the CAB Ordinance. More specifically, whether the CAB Ordinance is preempted by, conflicts with State law, and/or is a virtual prohibition on Intervenor’s business. These are questions of law. Austin Police Association v. City Of Austin, 71 S.W.3d 885, 888 (Tex.App. – Austin 2002, no pet.) and Barnett v. City of Plainview, 848 S.W.2d 334, 340 (Tex.App. – Amarillo 1992, no pet.). A question of law should be resolved by a summary judgment. City of Pflugerville v. Capital Metropolitan Transportation Authority, 123 S.W.3d 106, 109 (Tex.App. – Austin, 2003, pet. denied). Accordingly, this Motion for Partial Summary Judgment is properly before the Court.

## ARGUMENT

7. The CAB Ordinance is valid and Plaintiffs cannot show otherwise. Texas courts presume that municipal ordinances are valid. City of Brookside Village v. Comeau, 633 S.W.2d 790, 792-793 (Tex. 1982). A party challenging the validity of an ordinance must rebut the strong presumption that the ordinance is valid. Austin Police Ass'n, 71 S.W.3d at 888. The presumption applies to (1) the basis for adopting the ordinance and (2) the reasonableness of the ordinance. Comeau, 633 S.W.2d at 792-793; City of College Station v. Turtle Rock Corp., 680 S.W.2d 802, 805 (Tex. 1984). The party challenging an ordinance's validity has an "extraordinary burden" to overcome the presumption of validity. Turtle Rock Corp., 680 S.W.2d at 805. Furthermore, a court has "no authority to interfere [with an ordinance] unless it is unreasonable and arbitrary, amounting to a clear abuse of municipal discretion." Barnett, 848 S.W.2d at 338.

### **The CAB Ordinance is not preempted.**

8. A municipality designated as a home-rule city has broad discretionary powers and full power of self-government. Austin Police Ass'n, 71 S.W.3d at 887. Only the Texas Constitution and the Texas Legislature impose limitations on a home-rule municipality's power. Id. A home-rule city is not preempted from regulating an area unless it is unmistakably clear that the area is exclusively regulated by the State. LCRA v. City of San Marcos, 523 S.W.2d 641, 645 (Tex. 1975) (sub.op.); Dallas Merchants & Consessionaire's Ass'n. v. City of Dallas, 852 S.W.2d 489, 491 (Tex. 1993). Unmistakable clarity is not proven by "the mere fact" that the Legislature has passed laws that concern a subject area. Austin Police Ass'n, 71 S.W.3d at 888; City of Richardson v. Responsible Dog Owners, 794 S.W.2d 14, 19 (Tex. 1990). Instead, a party asserting preemption must produce evidence that shows express or conflict preemption.

A. State law does not expressly preempt municipal regulation.

9. Neither of the State Bills includes explicit statutory preemption language. An example of statutory preemption can be found in Section 1.06 of the Texas Alcohol and Beverage Code:

“CODE EXCLUSIVELY GOVERNS. Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.”

The relevant sections of the State Bills contain no same or similar plain language, which demonstrates that the Legislature could have included this type of provision had it meant to preempt all CAB regulation. Furthermore, the State Bills contain no language that could be interpreted to explicitly preempt municipal regulation of CABs. Because the Texas Legislature has not with unmistakable clarity preempted home-rule cities, home-rule cities may regulate CABs.

B. The CAB Ordinance does not conflict with State law.

10. Even in the absence of express preemption, a home-rule municipality cannot regulate in a manner inconsistent with the Texas Constitution or state law. Austin Police Ass’n, 71 S.W.3d at 888. To determine whether a conflict exists, a court must compare state law and the municipal ordinance. *See* Austin Police Ass’n, 71 S.W.3d at 888-889 (comparing and contrasting state law and an Austin City Charter provision to determine whether a conflict exists); City of Richardson, 794 S.W.2d at 19 (comparing a Richardson ordinance and state law). A municipal ordinance does not conflict with state law when its provisions expressly adopt State law. *See* Texas Health and Safety Code §382.113 (a municipality may expressly adopt state law as a city ordinance). Municipal ordinances that are “ancillary to and in harmony with” do not conflict with State law either. Villarreal v. State, 267 S.W.3d 204, 212 (Tex.App.- Corpus Christi-Edinburgh 2008, no

pet.).<sup>2</sup> Furthermore, regulation of an area where State law is silent does not create a conflict with State law. See City of Santa Fe v. Young, 949 S.W.2d 559, 561 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1997, no pet.) (the Houston Court of Appeals upheld Santa Fe’s ordinance regulating quarry and pit safety outside the area expressly regulated by state law, which included express preemption language).

11. In the event of a conflict, a court must attempt to harmonize State law and the city ordinance. Austin Police Ass’n, 71 S.W.3d at 888; City of Richardson, 794 S.W.2d at 19. The two regulations can be harmonized if “any reasonable construction upholding both can be reached.” Gordon v. State, 757 S.W.2d 496, 502 (Tex.App.-Houston [1st Dist.] 1988, pet. ref’d). If they can be harmonized, the ordinance is not invalid. Austin Police Ass’n, 71 S.W.3d at 888.

12. When the CAB Ordinance is compared to the State Bills, it is clear there is no conflict and it is valid. The CAB Ordinance expressly adopts state law, supplements state law, regulates in areas where state law is silent, and can be harmonized.

<b>EXPRESSLY ADOPTS STATE LAW</b>	<ul style="list-style-type: none"> <li>· Definitions</li> <li>· Reports that are required to be submitted</li> </ul>
<b>SUPPLEMENTS STATE LAW</b>	<ul style="list-style-type: none"> <li>· Maintain business records for 3 years &amp; make them available for inspection.</li> <li>· Registration requirements<sup>3</sup></li> <li>· Registration expires after 1 year or on same date as License and must be renewed with a new application.</li> </ul>
<b>REGULATES IN AREAS WHERE STATE LAW IS SILENT</b>	<ul style="list-style-type: none"> <li>· Restrictions on extension of consumer credit</li> <li>· Required to provide customer a non-profit agency reference form</li> </ul>
<b>HARMONIZED PROVISIONS<sup>4</sup></b>	<ul style="list-style-type: none"> <li>· Enforcement for violations of City Ordinance is a Class C misdemeanor with a maximum fine of \$500.</li> </ul>

<sup>2</sup> In Villarreal, the Corpus Christi-Edinburgh Court of Appeals analyzed the validity of Corpus Christi’s ordinances regulating sexually-oriented businesses. 267 S.W.3d at 210-213. Corpus Christi’s ordinance defined a sexually-oriented business more broadly than State law did, which resulted in more businesses being required to obtain a city permit than if the State law definition had been used. The Court of Appeals held that the difference in definition did not create a conflict between State law and city ordinance. Id.

<sup>3</sup> These are to fill out an application, provide evidence of State license, provide evidence of a certificate of occupancy (this would be necessary regardless of the CAB Ordinance), and pay a fee.

<sup>4</sup> The City does not concede that the provisions conflict. In an abundance of caution, however, this Motion treats this provision as if there is a conflict.

13. The enforcement provisions found in State law and the CAB Ordinance can be harmonized and are not fatal to the CAB Ordinance's validity. Texas courts have held that enforcement penalties conflict only if a violation is punished one way in state law but punished differently pursuant to the municipal ordinance. Honeycutt v. State, 627 S.W.2d 417, 420 (Tex. Crim. App. [Panel Op.] 1981). Here, the City's enforcement powers are confined to violations of the CAB Ordinance. If a CAB violates State law, the CAB Ordinance does not allow enforcement of those State law provisions, the CAB is subject to State law enforcement only. Therefore, two different punishments for the same violation are not imposed and the CAB Ordinance is not invalid.

**The CAB Ordinance is a reasonable exercise of the City's police powers.**

14. Plaintiffs' claim that the CAB Ordinance is a "virtual prohibition" on its business is effectively a challenge as to whether the CAB Ordinance is a reasonable exercise of the City's police powers. An ordinance is presumed to be a valid and reasonable exercise of police power. Turtle Rock Corp., 680 S.W.2d at 805; City of Houston v. Johnny Frank's Auto Parts Co., 480 S.W.2d 774, 779 (Tex. Civ. App.-Houston [14<sup>th</sup> Dist], 1972 writ ref'd n.r.e.). Furthermore, the adoption of the ordinance is final absent a clear showing that the ordinance is arbitrary, unreasonable, and clear abuse of discretion. City of Houston v. Adams, 353 S.W.2d 501, 502 (Tex. Civ. App.-Eastland 1962, writ ref'd n.r.e.). Unless the presumption is rebutted, the action is final and cannot be revised by the Court. Id. Whether an ordinance is a reasonable exercise of the City's police power is a question of law. Johnny Frank's Auto Parts Co., 480 S.W.2d at 779.

15. An ordinance should accomplish a legitimate goal substantially related to preservation of the health, safety, and welfare of the citizens. Turtle Rock Corp., 680 S.W.2d at 805; Johnny Frank's Auto Parts Co., 480 S.W.2d at 779. The preservation of the welfare of citizens is a

broad concept, and if reasonable minds differ about whether there is a substantial relationship between the ordinance and the health, safety, and welfare, the ordinance is a valid exercise of police power. Turtle Rock Corp., 680 S.W.2d at 805 (*citing* Berman v. Parker, 348 U.S. 26, 33 (1954) and Hunt v. City of San Antonio, 462 S.W.2d 536, 539 (Tex. 1971)).

16. Here, the goal is to protect the welfare of Austin’s citizens related to “abusive and predatory lending practices.” §4-12-2. In an effort to achieve the Council’s goal, the CAB Ordinance regulates the business of being a CAB by requiring registration, regulating certain aspects of the transactions, and requiring CABs to maintain records. In no way does the CAB Ordinance prohibit CABs from operating. Protecting citizens from predatory lending practices is a legitimate goal substantially related to the health, safety, and welfare of Austin citizens.

17. The reasonableness of the CAB Ordinance is also supported by Dallas Ordinance No. 28287 (which concerns CABs), and House Bill 2593. Both address restrictions on extensions of consumer credit. *See* Exhibit 3, Section 1 (*Advance Amount Restricted, Renewal or Refinance, Restrictions Applicable to Extensions of Consumer Credit Secured by Certificate of Title*, and *Restrictions Applicable to Deferred Presentment Transactions*) and Exhibit 5, Sec. 50-151.3 (*Restrictions on Extensions of Consumer Credit*). Both were proposed and/or adopted prior to the Council’s action on the CAB Ordinance. Further, the restrictions in the CAB Ordinance are almost identical to the Dallas Ordinance and are similar to those proposed in House Bill 2593. Therefore, the CAB Ordinance is not arbitrary or unreasonable and is a valid exercise of the City’s police power.

### **CONCLUSION AND PRAYER**

For the reasons stated above, the Ordinance is valid. Therefore, the City prays this Court grant its Motion and deny Plaintiffs’ requested declaration.

RESPECTFULLY SUBMITTED,

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ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this **14th** day of **May, 2012**.

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**ATTORNEYS FOR INTERVENOR**

/s/ Patricia L. Link  
PATRICIA L. LINK

# EXHIBIT 1

H.B. No. 2594

## AN ACT

relating to the licensing and regulation of certain credit services organizations and the regulation of certain extensions of consumer credit obtained by those organizations or with regard to which the organizations provide assistance; providing an administrative penalty.

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

SECTION 1. Section 393.201, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) A contract with a credit access business, as defined by Section 393.601, for the performance of services described by Section 393.602(a) must, in addition to the requirements of Subsection (b) and Section 393.302:

(1) contain a statement that there is no prepayment penalty;

(2) contain a statement that a credit access business must comply with Chapter 392 and the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.) with respect to an extension of consumer credit described by Section 393.602(a);

(3) contain a statement that a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct;

(4) contain a statement that a credit access business must comply, to the extent applicable, with 10 U.S.C. Section 987 and any regulations adopted under that law with respect to an extension of consumer credit described by Section 393.602(a);

(5) disclose to the consumer:

(A) the lender from whom the extension of consumer credit is obtained;

(B) the interest paid or to be paid to the lender;

and

(C) the specific fees that will be paid to the credit access business for the business's services; and

(6) the name and address of the Office of Consumer Credit Commissioner and the telephone number of the office's consumer helpline.

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

SUBCHAPTER G. LICENSING AND REGULATION OF CERTAIN CREDIT SERVICES ORGANIZATIONS

Sec. 393.601. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the consumer credit commissioner.

(2) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.

(3) "Deferred presentment transaction" has the meaning assigned by Section 341.001. For purposes of this chapter, this definition does not preclude repayment in more than one installment.

(4) "Finance commission" means the Finance Commission of Texas.

(5) "Motor vehicle title loan" means a loan in which an unencumbered motor vehicle is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 or another loan made to finance the purchase of a motor vehicle.

(6) "Office" means the Office of Consumer Credit Commissioner.

Sec. 393.602. APPLICABILITY. (a) This subchapter applies only to a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of:

- (1) a deferred presentment transaction; or
- (2) a motor vehicle title loan.

(b) A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

(c) A person may not use a device, subterfuge, or pretense to evade the application of this subchapter. A lawful transaction governed under another statute, including Title 1, Business & Commerce Code, does not violate this subsection and may not be considered a device, subterfuge, or pretense to evade the application of this subchapter.

Sec. 393.603. LICENSE REQUIRED. A credit services organization must obtain a license under this subchapter for each location at which the organization operates as a credit access business in performing services described by Section 393.602(a).

Sec. 393.604. APPLICATION FOR LICENSE. (a) An application for a license under this subchapter must:

- (1) be under oath;
- (2) give the approximate location from which the business is to be conducted;
- (3) identify the business's principal parties in interest;
- (4) contain the name, physical address, and telephone number of all third-party lender organizations with which the business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a); and
- (5) contain other relevant information that the commissioner requires for the findings required under Section 393.607.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee of \$200. Except for good cause as determined by the finance commission, a separate investigation fee is not required for multiple license applications.

(c) On the filing of each license application, the applicant shall pay to the commissioner for the license's year of issuance a license fee in an amount determined as provided by Section 14.107.

Sec. 393.605. BOND. (a) If the commissioner requires, an applicant for a license under this subchapter shall file with the application a bond that is:

- (1) in an amount satisfactory to the commissioner that does not exceed the lesser of:
  - (A) \$10,000 for the first license and \$10,000 for each additional license; or
  - (B) \$2,500,000; and
- (2) issued by a surety company qualified to do

business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this subchapter against the license holder.

(c) The bond must be conditioned on:

(1) the license holder's faithful performance under this subchapter and rules adopted under this subchapter; and

(2) the payment of all amounts that become due to this state or another person under this subchapter during the calendar year for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this subchapter may not exceed the amount of the bond.

(e) A credit access business that files a bond under this section is not required to file a bond under Subchapter E.

(f) A credit access business, instead of obtaining a surety bond, may satisfy the requirements of this section by depositing an amount described by Subsection (a)(1) in a surety account held in trust at a federally insured bank or savings association located in this state. The name of the depository, trustee, and account number of the surety account must be filed with the office.

Sec. 393.606. INVESTIGATION OF APPLICATION. On the filing of an application and a bond, if required under Section 393.605, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Sec. 393.607. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license to operate as a credit access business for purposes of engaging in the activity to which this subchapter applies if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this subchapter; and

(2) the applicant has net assets of at least \$25,000 available for the operation of the business as determined in accordance with Section 393.611.

(b) If the commissioner does not find the eligibility requirements of Subsection (a) have been met, the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 30th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 30th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Sec. 393.608. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Sec. 393.609. NAME AND PLACE OF LICENSE. (a) A license issued under this subchapter must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted, except as provided by Subsection (c).

(b) A license holder may not conduct business under this subchapter under a name other than the name stated on the license.

(c) A license holder may not conduct business at a location other than the address stated on the license, except that a license holder:

(1) is not required to have an office in this state;  
and

(2) may operate using e-commerce methods, including the Internet.

Sec. 393.610. LICENSE DISPLAY. A license holder shall display a license at the place of business provided on the license. With respect to business conducted through the Internet, this requirement may be satisfied by displaying the license on the business's Internet website.

Sec. 393.611. MINIMUM ASSETS FOR LICENSE. A license holder shall maintain net assets used or readily available for use in conducting the business of each of the offices for which a license is held under this subchapter, in an amount that is not less than the lesser of:

- (1) \$25,000 for each office; or
- (2) \$2,500,000 in the aggregate.

Sec. 393.612. ANNUAL LICENSE FEE. Not later than December 1, a license holder shall pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

Sec. 393.613. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. If the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

- (1) that day; or
- (2) December 31 of the last year for which an annual fee was paid.

Sec. 393.614. LICENSE SUSPENSION OR REVOCATION. (a) After notice and a hearing the commissioner may suspend or revoke a license if the commissioner finds that:

- (1) the license holder failed to pay the annual license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this subchapter;
- (2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or
- (3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

(b) If in a three-year period the commissioner suspends or revokes under this section the licenses of five or more credit access businesses owned or controlled by the same person, including a corporation that owns multiple businesses, the commissioner may suspend or revoke the licenses of all credit access businesses owned or controlled by that person.

Sec. 393.615. LICENSE SUSPENSION OR REVOCATION FILED WITH PUBLIC RECORDS. The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Sec. 393.616. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement

or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Sec. 393.617. SURRENDER OF LICENSE. A license holder may surrender a license issued under this subchapter by delivering to the commissioner:

- (1) the license; and
- (2) a written notice of the license's surrender.

Sec. 393.618. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this subchapter does not affect the obligation of a contract between the license holder and a consumer entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 393.619. MOVING AN OFFICE. (a) A license holder shall give written notice to the commissioner before the 30th day before the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a license holder's license accordingly.

Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Sec. 393.621. ADMINISTRATION. The office shall administer this subchapter.

Sec. 393.622. RULES. (a) The finance commission may:

(1) adopt rules necessary to enforce and administer this subchapter;

(2) adopt rules with respect to the quarterly reporting by a credit access business licensed under this subchapter of summary business information relating to extensions of consumer credit described by Section 393.602(a); and

(3) adopt rules with respect to periodic examination by the office relating to extensions of consumer credit described by Section 393.602(a), including rules related to charges for defraying the reasonable cost of conducting the examinations.

(b) The finance commission may adopt rules under this section to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a). A contract or information obtained by the commissioner under this section is considered proprietary and confidential to the respective parties to the contract, and is not subject to disclosure under Chapter 552, Government Code.

(c) Nothing in Section 393.201(c) or Sections 393.601-393.628 grants authority to the finance commission or the Office of Consumer Credit Commissioner to establish a limit on the fees charged by a credit access business.

Sec. 393.623. PROVIDING OR ADVERTISING SERVICES WITHOUT LICENSE PROHIBITED. A credit access business or a representative of the business may not provide or advertise the services of the business if the business is not licensed under this subchapter.

Sec. 393.624. RESTRICTIONS ON OFF-SITE ADVERTISING. (a) A credit access business may not advertise on the premises of a nursing facility, assisted living facility, group home, intermediate care facility for persons with mental retardation, or

other similar facility subject to regulation by the Department of Aging and Disability Services.

(b) The finance commission may adopt rules to implement this section.

Sec. 393.625. MILITARY BORROWERS. An extension of consumer credit described by Section 393.602(a) that is obtained by a credit access business for a member of the United States military or a dependent of a member of the United States military or that the business assisted that person in obtaining must comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

Sec. 393.626. DEBT COLLECTION PRACTICES. A violation of Chapter 392 by a credit access business with respect to an extension of consumer credit described by Section 393.602(a) constitutes a violation of this subchapter.

Sec. 393.627. QUARTERLY REPORT TO COMMISSIONER. A credit access business shall file a quarterly report with the commissioner on a form prescribed by the commissioner that provides the following information relating to extensions of consumer credit described by Section 393.602(a) during the preceding quarter:

(1) the number of consumers for whom the business obtained or assisted in obtaining those extensions of consumer credit;

(2) the number of those extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;

(3) the number of refinancing transactions of the extensions of consumer credit described by Subdivision (2);

(4) the number of consumers refinancing the extensions of consumer credit described by Subdivision (2);

(5) the number of consumers refinancing more than once the extensions of consumer credit described by Subdivision (2);

(6) the average amount of the extensions of consumer credit described by Subdivision (2);

(7) the total amount of fees charged by the business for the activities described by Subdivision (1);

(8) the number of vehicles surrendered or repossessed under the terms of an extension of consumer credit in the form of a motor vehicle title loan obtained by the business or that the business assisted a consumer in obtaining;

(9) the mean, median, and mode of the number of extensions of consumer credit obtained by consumers as a result of entering into the extensions of consumer credit described by Subdivision (2); and

(10) any related information the commissioner determines necessary.

Sec. 393.628. TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) As part of the licensing fee and procedures described under this subchapter, each credit access business or license holder shall pay to the commissioner an annual assessment to improve consumer credit, financial education, and asset-building opportunities in this state. The annual assessment may not exceed \$200 for each license as specified by the finance commission.

(b) The commissioner shall remit to the comptroller amounts received under Subsection (a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Money in the account may be spent by the finance commission only for the purposes provided by this section. Amounts in the account may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from those investments shall be deposited to the credit of the account.

(c) The Texas Financial Education Endowment shall be administered by the finance commission to support statewide financial education and consumer credit building activities and programs, including:

- (1) production and dissemination of approved financial education materials at licensed locations;
- (2) advertising, marketing, and public awareness campaigns to improve the credit profiles and credit scores of consumers in this state;
- (3) school and youth-based financial literacy and capability;
- (4) credit building and credit repair;
- (5) financial coaching and consumer counseling;
- (6) bank account enrollment and incentives for personal savings; and
- (7) other consumer financial education and asset-building initiatives as considered appropriate by the finance commission.

(d) In implementing this section, the finance commission may solicit gifts, grants, and donations for this purpose.

(e) The finance commission may partner with other state agencies and entities to implement this section.

(f) The finance commission shall adopt rules to administer this section.

SECTION 3. Section 14.101, Finance Code, is amended to read as follows:

Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The commissioner shall enforce this chapter, Subtitles B and C of Title 4, Chapter 393 with respect to a credit access business, and Chapter 394 in person or through an assistant commissioner, examiner, or other employee of the office.

SECTION 4. Section 14.107, Finance Code, is amended to read as follows:

Sec. 14.107. FEES. (a) The finance commission shall establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, Chapter 393 with respect to a credit access business, and Chapters 371, 392, and 394 and under Chapters 51, 302, 601, and 621, Business & Commerce Code.

(b) The finance commission by rule shall set the fees for licensing and examination under Chapter 393 with respect to a credit access business or Chapter 342, 347, 348, 351, or 371 at amounts or rates necessary to recover the costs of administering those chapters. The rules may provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. The commissioner may provide for collection of a single annual fee from a person licensed under Subchapter G of Chapter 393 or Chapter 342, 347, 348, 351, or 371 to include amounts due for both licensing and examination.

SECTION 5. Section 14.201, Finance Code, is amended to read as follows:

Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY. Investigative and enforcement authority under this subchapter applies only to this chapter, Subtitles B and C of Title 4, Chapter 393 with respect to a credit access business, and Chapter 394.

SECTION 6. Section 14.2015(a), Finance Code, is amended to read as follows:

(a) Except as provided by Subsection (b), information or material obtained or compiled by the commissioner in relation to an

examination by the commissioner or the commissioner's representative of a license holder or registrant under Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 is confidential and may not be disclosed by the commissioner or an officer or employee of the Office of Consumer Credit Commissioner, including:

(1) information obtained from a license holder or registrant under Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394;

(2) work performed by the commissioner or the commissioner's representative on information obtained from a license holder or registrant for the purposes of an examination conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394;

(3) a report on an examination of a license holder or registrant conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394; and

(4) any written communications between the license holder or registrant, as applicable, and the commissioner or the commissioner's representative relating to or referencing an examination conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394.

SECTION 7. Section 14.251, Finance Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) The commissioner shall assess an administrative penalty against a credit access business who knowingly and wilfully violates or causes a violation of Chapter 393, or a rule adopted under Chapter 393.

(b) The commissioner may order a person who violates or causes a violation of this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4, or a credit access business who violates or causes a violation of Chapter 393 or a rule adopted under Chapter 393, to make restitution to an identifiable person injured by the violation.

SECTION 8. Section 14.261(a), Finance Code, is amended to read as follows:

(a) In administering this chapter, the commissioner may accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of:

(1) this chapter or a rule adopted under this chapter;

(2) Chapter 393, if the person is a credit access business, or Chapter 394; or

(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

SECTION 9. Section 14.262, Finance Code, is amended to read as follows:

Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of voluntary compliance is not an admission of a violation of:

(1) this chapter or a rule adopted under this chapter;

(2) Chapter 393 with respect to a credit access business or Chapter 394; or

(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

(b) Unless an assurance of voluntary compliance is rescinded by agreement or voided by a court for good cause, a subsequent failure to comply with the assurance is prima facie evidence of a violation of:

(1) this chapter or a rule adopted under this chapter;

(2) Chapter 393 with respect to a credit access

business or Chapter 394; or  
(3) Subtitle B, Title 4, or a rule adopted under  
Subtitle B, Title 4.

SECTION 10. This Act takes effect January 1, 2012.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 2594 was passed by the House on May 13, 2011, by the following vote: Yeas 84, Nays 50, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2594 on May 26, 2011, by the following vote: Yeas 103, Nays 35, 1 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 2594 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 28, Nays 2, 1 present, not voting.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# EXHIBIT 2

H.B. No. 2592

## AN ACT

relating to notice and disclosure requirements for certain credit services organizations regarding charges and consumer borrowing; providing an administrative penalty.

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

SECTION 1. Chapter 393, Finance Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. NOTICE AND DISCLOSURE REQUIREMENTS FOR CERTAIN CREDIT SERVICES ORGANIZATIONS

Sec. 393.221. DEFINITIONS. In this subchapter:

(1) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.

(2) "Deferred presentment transaction" has the meaning assigned by Section 341.001. For purposes of this chapter, this definition does not preclude repayment in more than one installment. The term is also referred to as a payday loan.

(3) "Motor vehicle title loan" or "auto title loan" means a loan in which an unencumbered motor vehicle is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 or another loan made to finance the purchase of a motor vehicle.

Sec. 393.222. POSTING OF FEE SCHEDULE; NOTICES. (a) A credit access business shall post, in a conspicuous location in an area of the business accessible to consumers and on any Internet website, including a social media site, maintained by the credit access business:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) a notice of the name and address of the Office of Consumer Credit Commissioner and the telephone number of the office's consumer helpline; and

(3) a notice that reads as follows:

"An advance of money obtained through a payday loan or auto title loan is not intended to meet long-term financial needs. A payday loan or auto title loan should only be used to meet immediate short-term cash needs. Refinancing the loan rather than paying the debt in full when due will require the payment of additional charges."

(b) The Finance Commission of Texas may adopt rules to implement this section.

Sec. 393.223. CONSUMER TRANSACTION INFORMATION. (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.

(b) If a credit access business obtains or assists a consumer in obtaining a motor vehicle title loan, the credit access business shall provide to the consumer a notice warning the consumer that in the event of default the consumer may be required to surrender possession of the motor vehicle to the lender or other person to satisfy the consumer's outstanding obligations under the loan.

(c) The Finance Commission of Texas shall adopt rules to implement this section.

Sec. 393.224. ADMINISTRATIVE PENALTY. The consumer credit commissioner, in accordance with rules adopted by the Finance Commission of Texas, may assess an administrative penalty against a credit access business that knowingly and wilfully violates this subchapter or a rule adopted under this subchapter in the manner provided by Subchapter F, Chapter 14.

SECTION 2. Notwithstanding Section 393.223(a), Finance Code, as added by this Act, a credit access business is not required to comply with that section until the Finance Commission of Texas prescribes the form required by that section.

SECTION 3. This Act takes effect January 1, 2012.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 2592 was passed by the House on May 12, 2011, by the following vote: Yeas 123, Nays 23, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2592 on May 26, 2011, by the following vote: Yeas 117, Nays 28, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 2592 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 29, Nays 1, 1 present, not voting.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# EXHIBIT 3

82R19314 ATP-F

By: Truitt

H.B. No. 2593

Substitute the following for H.B. No. 2593:

By: Truitt

C.S.H.B. No. 2593

A BILL TO BE ENTITLED  
AN ACT

relating to certain restrictions on deferred presentment transactions and motor vehicle certificate of title loans that a credit services organization obtains for a consumer or assists a consumer in obtaining.

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

SECTION 1. Chapter 393, Finance Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. CERTAIN EXTENSIONS OF CONSUMER CREDIT OBTAINED BY CERTAIN CREDIT SERVICES ORGANIZATIONS

Sec. 393.651. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the consumer credit commissioner.

(2) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle certificate of title loan.

(3) "Deferred presentment transaction" has the meaning assigned by Section 341.001.

(4) "Finance commission" means the Finance Commission of Texas.

(5) "Motor vehicle certificate of title loan" means a loan in which a motor vehicle certificate of title is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 or another loan made to finance the purchase of a motor vehicle.

(6) "Office" means the Office of Consumer Credit Commissioner.

Sec. 393.652. APPLICABILITY. This subchapter applies only to an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle certificate of title loan that a credit access business obtains for a consumer or that a credit access business assists a consumer in obtaining.

Sec. 393.653. PAYMENT FOR CERTAIN EXTENSIONS OF CONSUMER CREDIT. (a) An extension of consumer credit to which this subchapter applies must be payable in two-week or one-month increments or payable in a single payment.

(b) A credit access business may not obtain or assist in obtaining for a consumer an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle certificate of title loan for which partial payment of the principal amount is not accepted.

Sec. 393.654. ADVANCE AMOUNT RESTRICTED. (a) The cash advanced under an extension of consumer credit that is in the form of a deferred presentment transaction may not exceed:

(1) 25 percent of the borrower's gross monthly family income, if the borrower's gross monthly family income is not more than 100 percent of the federal poverty level for a family of four; or

(2) 32 percent of the borrower's gross monthly family

income, if the borrower's gross monthly family income exceeds 100 percent of the federal poverty level for a family of four.

(b) The cash advanced under an extension of consumer credit that is in the form of a motor vehicle certificate of title loan may not exceed the lesser of:

(1) as applicable, either:

(A) three percent of the borrower's gross annual family income, if the borrower's gross annual family income is not more than 100 percent of the federal poverty level for a family of four; or

(B) five percent of the borrower's gross annual family income, if the borrower's gross annual family income exceeds 100 percent of the federal poverty level for a family of four; or

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

(c) A credit access business shall keep a record of the document used to establish a borrower's family income under this section. A credit access business may use an affidavit signed by the borrower to establish the borrower's family income if a paycheck or other documentation establishing income is unavailable. An affidavit used for purposes of this subsection must state in bold letters the applicable advance limits provided by this section.

Sec. 393.655. RENEWAL OR REFINANCE. For purposes of this subchapter, an extension of consumer credit described by Section 393.652 that is made by a person to a consumer not later than the seventh day after a previous extension of consumer credit made by the same person is paid by the consumer is considered to be a renewal or refinance of the previous extension of credit.

Sec. 393.656. RESTRICTIONS APPLICABLE TO EXTENSIONS OF CONSUMER CREDIT SECURED BY CERTIFICATE OF TITLE. (a) This section applies only to an extension of consumer credit in the form of a motor vehicle certificate of title loan.

(b) The extension of consumer credit may not be refinanced or renewed or payable in installments more than:

(1) five times, if the debt is payable monthly or has a term of one month; or

(2) eight times, if the debt is payable biweekly, or has a term of two weeks.

(c) For purposes of Subsection (b), the charging of a fee on late payment of the debt or on failure to make a payment is considered to be a refinance of the extension of consumer credit.

(d) A credit access business may obtain for a consumer or assist a consumer in obtaining an extended repayment plan for the extension of consumer credit if the debt is not paid in full after the applicable number of refinances, renewals, or installment payments provided by Subsection (b), but may not charge the consumer fees in connection with the making of payments of principal and interest under an extended repayment plan.

(e) A single consumer may enter into only one extended repayment plan in a 14-month period with respect to an extension of consumer credit to which this section applies. If a credit access business enters into an agreement to obtain or assist in the obtaining of an extension of consumer credit with a consumer who during the preceding 14 months has entered into an extended repayment plan with respect to the debt and obtains for the consumer or assists the consumer in obtaining extensions of consumer credit in the form of refinances, renewals, or installment payments of the extension up to the maximum limits provided by Subsection (b), the lender has forfeited any claim to the principal amount of the debt and must return the certificate of title to the consumer.

(f) An extended repayment plan must provide for four equal or nearly equal payments of principal and interest, with all principal and interest to be paid in full in the fourth payment. The intervals between payments must be the same as the initial term of the original extension of consumer credit. A borrower is considered to have defaulted if the borrower fails to make any scheduled payment under the extended repayment plan.

(g) A credit access business may seek reimbursement from a consumer on behalf of a lender for reasonable and documented costs and fees in association with the sale of a vehicle surrendered in connection with the consumer's default on a debt, except to the extent limited or prohibited by finance commission rule. The finance commission by rule may limit or prohibit unreasonable fees associated with the cost of selling such a vehicle. Notwithstanding any other provision of law, the proceeds of the sale of a motor vehicle, the certificate of title of which is given as security for an extension of consumer credit under this section, shall satisfy all outstanding and unpaid indebtedness under that extension of credit, and the borrower is not liable for any deficiency resulting from the sale. The lender shall pay to the borrower any surplus arising from the sale, as required by Chapter 9, Business & Commerce Code.

(h) The finance commission by rule may require that an automobile club membership offer made in connection with an extension of consumer credit to which this section applies be accompanied by a disclaimer plainly stating the benefits and limitations of the offer and that the customer's signature must be present on any contract documenting the customer's agreement to purchase an automobile club membership.

(i) It is a violation of this chapter to fail to return the motor vehicle certificate of title after an extension of consumer credit to which this section applies is paid in full.

Sec. 393.657. RESTRICTIONS APPLICABLE TO DEFERRED PRESENTMENT TRANSACTIONS. (a) This section applies only to an extension of consumer credit in the form of a deferred presentment transaction.

(b) The extension of consumer credit may not be refinanced or renewed or payable in installments more than:

(1) four times, if the debt is payable monthly or has a term of one month; or

(2) six times, if the debt is payable biweekly, or has a term of two weeks.

(c) For purposes of Subsection (b), the charging of a fee on late payment of the debt or on failure to make a payment is considered to be a refinance of the extension of consumer credit.

(d) A credit access business may obtain for a consumer or assist a consumer in obtaining an extended repayment plan if the extension of consumer credit under this section is not paid in full after the applicable number of refinances, renewals, or installment payments provided by Subsection (b), but may not charge the consumer fees in connection with the making of payments of principal and interest to a lender under an extended repayment plan.

(e) A single consumer may enter into only one extended repayment plan in a 12-month period with respect to an extension of consumer credit to which this section applies. If a credit access business enters into an agreement to obtain or assist in the obtaining of an extension of consumer credit with a consumer who during the preceding 12 months has entered into an extended repayment plan with respect to the debt and obtains for the consumer or assists the consumer in obtaining extensions of consumer credit

in the form of refinances, renewals, or installment payments of the debt up to the maximum limit provided by Subsection (b), the person making the cash advance has forfeited any claim to the principal amount of the debt.

(f) An extended repayment plan must provide for four equal or nearly equal payments of principal and interest, with all principal and interest to be paid in full in the fourth payment. The intervals between payments must be the same as the initial term of the original extension of consumer credit. A borrower is considered to have defaulted if the borrower fails to make any scheduled payment under the extended repayment plan.

SECTION 2. This Act takes effect September 1, 2011.

# EXHIBIT 4



THE STATE OF TEXAS §

COUNTY OF TRAVIS §

I, Shirley A. Gentry, City Clerk of the City of Austin, Texas, do hereby certify that the foregoing instrument is a true and correct copy of Ordinance No. 20110818-075 consisting of six (6) pages, and exhibits consisting of 0 pages, for a total of 6 pages, as approved by the City Council of Austin, Texas, at a Regular Meeting on the 18<sup>th</sup> day of August 2011, as on file in the Office of the City Clerk.

WITNESS my hand and official seal of the City of Austin at Austin, Texas, this 20<sup>th</sup> day of April 2012.



SHIRLEY A. GENTRY  
CITY CLERK  
CITY OF AUSTIN, TEXAS

**ORDINANCE NO. 20110818-075**

**AN ORDINANCE ADDING A NEW CHAPTER 4-12 TO TITLE 4 OF THE CITY CODE RELATING TO THE REGISTRATION OF CREDIT ACCESS BUSINESSES; PROVIDING A PENALTY UP TO \$500 FOR EACH OFFENSE; AND INCLUDING A DEFENSE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Title 4 (*Business Regulation and Permit Requirements*) of the City Code is amended to add a new Chapter 4-12 to read:

**CHAPTER 4-12. CREDIT ACCESS BUSINESSES.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§ 4-12-1 DEFINITIONS.**

In this chapter:

- (A) **CERTIFICATE OF REGISTRATION** means a certificate of registration issued by the Director under this chapter to the owner or operator of a credit access business.
- (B) **CONSUMER** means an individual who is solicited to purchase or who purchases the services of a credit access business.
- (C) **CREDIT ACCESS BUSINESS** has the same meaning as defined in Section 393.601 of the Texas Finance Code.
- (D) **DEFERRED PRESENTMENT TRANSACTION** has the same meaning as defined in Section 393.601 of the Texas Finance Code.
- (E) **DIRECTOR** means, for purposes of this chapter, the Director of the department designated by the city manager to enforce and administer this Chapter.
- (F) **EXTENSION OF CONSUMER CREDIT** has the same meaning as defined in Section 393.001 of the Texas Finance Code.
- (G) **MOTOR VEHICLE TITLE LOAN** has the same meaning as defined in Section 393.601 of the Texas Finance Code.
- (H) **OWNER** means, for purposes of this chapter, any person who directly or indirectly owns a credit access business. For publicly traded companies, the term means any person who directly or indirectly owns or controls 10% or more of the outstanding shares of stock in the credit access business.

(I) PERSON means, for purposes of this chapter, any individual, corporation, organization, partnership, association, financial institution, or any other legal entity, but does not include the City.

(J) REGISTRANT means a person issued a certificate of registration for a credit access business under this chapter and includes all owners and operators of the credit access business identified in the registration application filed under this chapter.

(K) STATE LICENSE means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393 of the Texas Finance Code.

#### **§ 4-12-2 PURPOSE.**

The purpose of this chapter is to protect the welfare of the citizens of the City by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices.

#### **§ 4-12-3 through § 4-12-9 (RESERVED).**

### ***ARTICLE 2. REGISTRATION OF CREDIT ACCESS BUSINESSES.***

#### **§ 4-12-10 REGISTRATION REQUIRED.**

A person may not operate or conduct business as a credit access business without a valid certificate of registration. A certificate of registration is required for each credit access business.

#### **§ 4-12-11 REGISTRATION APPLICATION.**

(A) To obtain a certificate of registration for a credit access business, a person must submit an application on a form provided for that purpose to the Director. The application must contain the following:

- (1) the name, street address, mailing address, facsimile number, and telephone number of the registrant;
- (2) the business or trade name, street address, mailing address, facsimile number, and telephone number of the credit access business;
- (3) the names, street addresses, mailing addresses, and telephone numbers of all owners of the credit access business and other persons with a financial interest in the credit access business, and the nature and extent of each person's interest in the credit access business;

- (4) a copy of a current, valid state license held by the credit access business pursuant to Section 393 of the Texas Finance Code;
- (5) a copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with Title 25 of the City Code of Ordinances;
- (6) a non-refundable application fee of \$50; and
- (7) if a publicly traded company, the name of the registered agent for service of process in Texas.

(B) A Registrant shall notify the Director within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant.

**§ 4-12-12 ISSUANCE AND DISPLAY OF CERTIFICATE OF REGISTRATION; PRESENTMENT UPON REQUEST.**

(A) The Director shall issue to the Registrant a certificate of registration for each location upon receiving a completed application under Section 4-12-11 (*Registration Application*).

(B) A certificate of registration issued under this section must be conspicuously displayed to the public in the credit access business. The certificate of registration must be presented upon request to the Director or the Director's designee for examination.

**§ 4-12-13 EXPIRATION AND RENEWAL OF CERTIFICATE OF REGISTRATION.**

(A) A certificate of registration expires on the earlier of:

- (1) one year after the date of issuance; or
- (2) the date of expiration, revocation, or other termination of the registrant's state license.

(B) A certificate of registration may be renewed by making application in accordance with Section 4-12-11 (*Registration Application*). A registrant shall apply for renewal at least 30 days before the expiration of the registration.

**§ 4-12-14 NONTRANSFERABILITY.**

A certificate of registration for a credit access business is not transferable.

§ 4-12-15 through § 4-12-19 (RESERVED).

**ARTICLE 3. MISCELLANEOUS REQUIREMENTS FOR CREDIT ACCESS BUSINESSES.**

**§ 4-12-20 MAINTENANCE OF RECORDS.**

(A) A credit access business shall maintain a complete set of records of all extensions of consumer credit arranged or obtained by the credit access business, which must include the following information:

- (1) the name and address of the consumer;
- (2) the principal amount of cash actually advanced;
- (3) the fees charged by the credit access business to arrange or obtain an extension of consumer credit; and
- (4) the documentation used to establish a consumer's income under Section 4-12-21 (*Restrictions on Extensions of Consumer Credit*).

(B) A credit access business shall maintain a copy of each written agreement, between the credit access business and a consumer, evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

(C) A credit access business shall maintain and file on a quarterly basis with the Director copies of all quarterly reports filed with the Texas Consumer Credit Commissioner as required by Chapter 393 of the Texas Finance Code.

(D) The records required to be maintained by a credit access business under this section must be retained for at least three years and made available for inspection and copying by the City upon request during the usual and customary business hours of the credit access business.

**§ 4-12-21 RESTRICTIONS ON EXTENSIONS OF CONSUMER CREDIT.**

(A) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a deferred presentment transaction may not exceed twenty percent (20%) of the consumer's gross monthly income.

(B) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer, or that the credit access business assists a

consumer in obtaining, in the form of a motor vehicle title loan may not exceed the lesser of:

- (1) three percent (3%) of the consumer's gross annual income; or
- (2) seventy percent (70%) of the retail value of the motor vehicle.

(C) A credit access business shall use a paycheck, bank statement, IRS Form W-2 from the previous tax year, the previous year's tax return, a signed letter from an employer, or other similar documentation establishing income to determine a consumer's income.

(D) An extension of consumer credit that a credit access business obtains for a consumer or that the credit access business assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least twenty-five percent (25%) of the principal amount of the extension of consumer credit. An extension of consumer credit that provides for repayment in installments may not be refinanced or renewed.

(E) An extension of consumer credit that a credit access business obtains for a consumer or that the credit access business assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. The minimum payment due to refinance or renew an extension of consumer credit arranged or obtained by a credit access business must reduce by at least twenty-five percent (25%) the principal amount of the extension of consumer credit such that the extension of credit is paid in full after a maximum of three renewals or refinances.

(F) For purposes of this section, an extension of consumer credit that is made to a consumer within seven business days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.

#### **§ 4-12-22 REFERRAL TO CONSUMER CREDIT COUNSELING.**

A credit access business shall provide a form, to be prescribed by the Director, to each consumer seeking assistance in obtaining an extension of consumer credit which references non-profit agencies that provide financial education and training programs and agencies with cash assistance programs. The form will also contain information regarding extensions of consumer credit.

#### **§ 4-12-23 OFFENSE AND PENALTY.**

(A) A person who violates any section of this chapter commits a Class C misdemeanor punishable by a fine not to exceed \$500.

(B) Each day that a violation occurs is a separate offense.

(C) The penalties provided for in Subsection (A) are in addition to any other remedies available under City ordinance or state law.

(D) A culpable mental state is not required for a violation of this chapter and need not be proved.

**§ 4-12-24- DEFENSE.**

It is a defense to prosecution under this chapter that at the time of the alleged offense the person was not required to be licensed by the State of Texas as a credit access business pursuant to Chapter 393 of the Texas Finance Code.

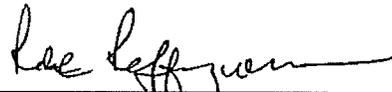
**PART 2.** A credit access business that possesses a state license issued pursuant to Chapter 393 of the Texas Finance Code on the effective date of this ordinance shall file a registration application and pay the fee required under this chapter within thirty days of the effective date of this ordinance.

**PART 3.** This ordinance takes effect on January 1, 2012.

**PASSED AND APPROVED**

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August 18, 2011

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§  
§



\_\_\_\_\_  
Lee Leffingwell  
Mayor

APPROVED:

  
\_\_\_\_\_  
Karen M. Kennard  
City Attorney

ATTEST:

  
\_\_\_\_\_  
Shirley A. Gentry  
City Clerk

# EXHIBIT 5

The Dallas City Code

**ARTICLE XI.  
CREDIT ACCESS BUSINESSES.**

**Division 1. General Provisions.**

**SEC. 50-144. PURPOSE OF ARTICLE.**

The purpose of this article is to protect the welfare of the citizens of the city of Dallas by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this article establishes a registration program for credit access businesses, imposes restrictions on extensions of consumer credit made by credit access businesses, and imposes recordkeeping requirements on credit access businesses. (Ord. 28287, eff. 1-1-12)

**SEC. 50-145. DEFINITIONS.**

In this article:

- (1) **CERTIFICATE OF REGISTRATION** means a certificate of registration issued by the director under this article to the owner or operator of a credit access business.
- (2) **CONSUMER** means an individual who is solicited to purchase or who purchases the services of a credit access business.
- (3) **CREDIT ACCESS BUSINESS** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- (4) **DEFERRED PRESENTMENT TRANSACTION** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- (5) **DIRECTOR** means the director of the department designated by the city manager to enforce and administer this article and includes any representatives, agents, or department employees designated by the director.
- (6) **EXTENSION OF CONSUMER CREDIT** has the meaning given that term in Section 393.001 of the Texas Finance Code, as amended.
- (7) **MOTOR VEHICLE TITLE LOAN** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- (8) **PERSON** means any individual, corporation, organization, partnership, association, financial institution, or any other legal entity.
- (9) **REGISTRANT** means a person issued a certificate of registration for a credit access business under this article and includes all owners and operators of the credit access business identified in the registration application filed under this article.

(10) STATE LICENSE means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393, Subchapter G of the Texas Finance Code, as amended. (Ord. 28287, eff. 1-1-12)

#### **SEC. 50-146. VIOLATIONS; PENALTY.**

(a) A person who violates a provision of this article, or who fails to perform an act required of the person by this article, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.

(b) An offense under this article is punishable by a fine of not more than \$500.

(c) The culpable mental state required for the commission of an offense under this article is governed by Section 1-5.1 of this code.

(d) The penalties provided for in Subsection (b) are in addition to any other enforcement remedies that the city may have under city ordinances and state law. (Ord. 28287, eff. 1-1-12)

#### **SEC. 50-147. DEFENSE.**

It is a defense to prosecution under this article that at the time of the alleged offense the person was not required to be licensed by the state as a credit access business under Chapter 393, Subchapter G of the Texas Finance Code, as amended. (Ord. 28287, eff. 1-1-12)

### **Division 2. Registration of Credit Access Businesses.**

#### **SEC. 50-148. REGISTRATION REQUIRED.**

A person commits an offense if the person acts, operates, or conducts business as a credit access business without a valid certificate of registration. A certificate of registration is required for each physically separate credit access business. (Ord. 28287, eff. 1-1-12)

#### **SEC. 50-149. REGISTRATION APPLICATION.**

(a) To obtain a certificate of registration for a credit access business, a person must submit an application on a form provided for that purpose to the director. The application must contain the following:

(1) The name, street address, mailing address, facsimile number, and telephone number of the applicant.

(2) The business or trade name, street address, mailing address, facsimile number, and telephone number of the credit access business.

(3) The names, street addresses, mailing addresses, and telephone numbers of all owners of the credit access business and other persons with a financial interest in the credit access business, and the nature and extent of each person's interest in the credit access business.

(4) A copy of a current, valid state license held by the credit access business.

(5) A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the Dallas Development Code.

(6) A non-refundable application fee of \$50.

(b) An applicant or registrant shall notify the director within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant. (Ord. 28287, eff. 1-1-12)

**SEC. 50-150. ISSUANCE AND DISPLAY OF CERTIFICATE OF REGISTRATION; PRESENTMENT UPON REQUEST.**

(a) The director shall issue to the applicant a certificate of registration upon receiving a completed application under Section 50-149.

(b) A certificate of registration issued under this section must be conspicuously displayed to the public in the credit access business. The certificate of registration must be presented upon request to the director or any peace officer for examination. (Ord. 28287, eff. 1-1-12)

**SEC. 50-151. EXPIRATION AND RENEWAL OF CERTIFICATE OF REGISTRATION.**

(a) A certificate of registration expires on the earlier of:

(1) one year after the date of issuance; or

(2) the date of expiration, revocation, or other termination of the registrant's state license.

(b) A certificate of registration may be renewed by making application in accordance with Section 50-149. A registrant shall apply for renewal at least 30 days before the expiration of the registration. (Ord. 28287, eff. 1-1-12)

**SEC. 50-151.1. NONTRANSFERABILITY.**

A certificate of registration for a credit access business is not transferable. (Ord. 28287, eff. 1-1-12)

**Division 3. Miscellaneous Requirements for Credit Access Businesses.**

**SEC. 50-151.2. MAINTENANCE OF RECORDS.**

(a) A credit access business shall maintain a complete set of records of all extensions of consumer credit made by the credit access business, which must include the following information:

(1) The name and address of the consumer.

(2) The principal amount of cash actually advanced.

(3) The documentation used to establish a consumer's income under Section 50-151.3.

(b) A credit access business shall maintain a copy of each written agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

(c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code, as amended.

(d) The records required to be maintained by a credit access business under this section must be retained for at least three years and made available for inspection by the city upon request during the usual and customary business hours of the credit access business. (Ord. 28287, eff. 1-1-12)

### **SEC. 50-151.3. RESTRICTIONS ON EXTENSIONS OF CONSUMER CREDIT.**

(a) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a deferred presentment transaction may not exceed 20 percent of the consumer's gross monthly income.

(b) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a motor vehicle title loan may not exceed the lesser of:

(1) three percent of the consumer's gross annual income; or

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

(c) A credit access business shall use a paycheck or other documentation establishing income to determine a consumer's income.

(d) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least 25 percent of the principal amount of the extension of consumer credit. An extension of consumer credit that provides for repayment in installments may not be refinanced or renewed.

(e) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. Proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit.

(f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal. (Ord. 28287, eff. 1-1-12)

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