

**QUARTERLY UPDATE TO THE
SENATE BUSINESS AND COMMERCE COMMITTEE**

January 24, 2013

BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

IMPLEMENTATION OF LEGISLATION FROM THE 82ND LEGISLATURE

HB 2592: Payday and Title Loan Disclosures

HB 2594: Payday and Title Loan Licensing

Summary of Legislation

These bills amend Chapter 393 of the Finance Code establishing new requirements for “credit access businesses,” which are credit services organizations (CSOs) that provide payday loans or title loans.

Under HB 2592, credit access businesses (CABs) are required to provide a consumer disclosure prescribed by the Finance Commission. The disclosure must include interest, fees, and APR for the loan and a comparison of those charges to “alternative forms of consumer debt,” and it must describe fees that the consumer will incur for renewing the loan.

Under HB 2594, credit access businesses are required to obtain a license with the OCCC. The OCCC has examination and investigation authority over credit access businesses. HB 2594 also requires the Finance Commission to create an endowment for financial education in Texas.

The bills became effective January 1, 2012.

Regulatory Activities

Licensing. A CAB license application must be processed within 30 days of receipt of a completed application package. Anticipating a high volume of CAB application submissions during the first months of calendar year 2012 (CY12), the Finance Commission (commission) promulgated rules regarding licensing and examination of credit access businesses and adopted a rule authorizing the issuance of a 90-day provisional license. The issuance of provisional licenses helped manage the licensing process through the transition and allowed recipients to continue operations until their applications had been fully processed.

CAB Applications	as of 03/30/12	as of 12/31/12
Applications Filed	3,451	3,804
Applications Fully Approved	2,579	3,504
Applications Withdrawn	161	201
Provisional Licenses Pending	3,002	3
Applications Denied	--	26

Table 1: CAB applications received and processed as of April and December 2012.

Consumer Protection & Examination. The commission adopted model disclosures for payday and title loan contracts in December 2011. The disclosures have been made available in both static and fillable formats to allow CABs to effectively comply with statutory and administrative requirements.

The examination process began mid-March 2012, and 253 examinations were conducted by the end of FY12, to include participation and coordination of examinations with the Federal Consumer Financial Protection Bureau (CFPB) and resulting in 90.91% of those examined being within acceptable compliance levels. The agency has conducted an additional 193 examinations between September and December 2012, resulting in 97.7% of those examined within this short time frame being within acceptable compliance levels.

Although the examination process has indicated that the majority of examined entities were within acceptable compliance levels, common violations and areas of non-compliance were identified. These violations include failure to provide or providing incorrect consumer disclosures; failure to post fee schedules; failure to obtain non-obligor signature; and charging of excessive or unauthorized late charges.

The consumer assistance section processed

- 253 complaints between December 1, 2011, and August 31, 2012 which represented 16.02% of all processed complaints by the agency during that 9-month period.
- 134 complaints between September 1, 2012, and December 31, 2012 which represented 20.1% of all processed complaints by the agency during that 3-month period.

Consumer assistance pertaining to CAB transactions resulted in 14 consumers receiving refunds totaling \$4,411.16 since December 2011. Consumer complaints predominately pertain to contract issues and charges and fees related to both title and payday loans, as shown in the Tables 2 and 3.

December 1, 2011 through August 31, 2012			
Payday Loans		Title Loans	
Complaint/Concern	% of Closed Complaints	Complaint/Concern	% of Closed Complaints
Contract Issues ¹	28.1%	Contract Issues	25.0%
Excessive or Unauthorized Charges & Fees	24.2%	Excessive or Unauthorized Charges & Fees	21.9%
Collection Practices	18.5%	Repossessions	16.7%

Table 2: Top three categories of consumer concerns regarding CAB products for the 9-month period Dec 1, 2011 through Aug 31, 2012.

September 1, 2012 through December 31, 2012			
Payday Loans		Title Loans	
Complaint/Concern	% of Closed Complaints	Complaint/Concern	% of Closed Complaints
Excessive or Unauthorized Charges & Fees	40.1%	Contract Issues	24.5%
Contract Issues ²	27.2%	Repossessions	20.8%
Collection Practices	14.8%	Excessive or Unauthorized Charges & Fees	15.1%

Table 3: Top three categories of consumer concerns regarding CAB products for the 3-month period Sept 1, 2012 through Dec 31, 2012. Prioritization of categories may change throughout the fiscal year as data is collected and aggregated.

¹ This category encompasses allegations or consumer concerns regarding violations of terms and conditions, fees and charges, fraud or misrepresentation, cross-collateralization between products, collection practices, choice of law/tribal entity, and failure to receive copy of contract.

² This category encompasses allegations or consumer concerns regarding violations of terms and conditions, fees and charges, fraud or misrepresentation, cross-collateralization between products, collection practices, choice of law/tribal entity, and failure to receive copy of contract.

Legal Activities. The legal section has reported minimal enforcement actions taken or required since January 2012, and those taken predominantly pertain to compliance with quarterly reporting requirements.

Type of Action	Number of Actions	Cause of Action
Administrative Hearing	No. Hearings Conducted/Scheduled: 2	Applicants appeal of license denial.
	No. Hearings Dismissed: 2	Applicants entered into agreed orders.
License Revocation	1	Licensee failed to maintain registration with Secretary of State as a CSO. Licensee operated business under a name other than that applied for/provided on the CAB application. Licensee agreed to administrative penalty and license revocation.
Issuance of Preliminary Reports	17	Licensees did not timely file 2nd or 3rd quarter reports. Administrative penalties of \$100 per late report were assessed. <i>Note: 3 preliminary reports issued for delinquent 3rd quarter filings were withdrawn when licensee surrendered license.</i>
Agreed Orders	2	<ul style="list-style-type: none"> •Licensee agreed to license revocation and administrative penalty for failure to maintain CSO registration. •Licensee agreed to pay administrative penalty and submit late 2nd quarter reports as a condition of being approved for permanent licensure.

Table 4: Administrative actions taken January 2012 through January 2013.

Non-Compliance with Quarterly Data Reporting	
1st Quarter Reporting Due April 30, 2012	<p><u>Incomplete Filings: 5 Store Locations</u> 1 provisional licensee, with 5 store locations, did not timely file 1st quarter reports. <i>Status: Licensee has filed completed reports.</i> <i>All 1st-quarter reports have been filed.</i></p>
2nd Quarter Reporting Due July 31, 2012	<p><u>Incomplete Filings: 5 Store Locations</u> 1 provisional licensee, with 5 store locations, has not filed 2nd-quarter report filings.</p> <p><u>Delinquent Filings: 6 Store Locations</u> 5 licensees, comprised of 6 store locations, have not filed 2nd-quarter reports. <i>Status: Licensees have filed completed reports.</i> <i>All 2nd-quarter reports have been filed.</i></p>
3rd Quarter Reporting Due October 31, 2012	<p><u>Delinquent Filings: 3 Store Locations</u> 3 licensees, comprised of 3 store locations, have not filed 3rd-quarter reports.</p>

Table 5: Status of non-compliance with quarterly data reporting (1st through 3rd quarter, CY 2012).

Data Reporting. HB 2594 requires data reporting by the CABs that provides an industry snapshot as to the frequency of consumer use, fees assessed, and repayment characteristics. An online reporting site was launched in late March 2012 allowing the CABs to submit their quarterly data. Data reports have been received for the first three quarters of calendar year 2012 and highlights of the data received are presented below. Fourth-quarter and annual reporting will be conducted during January 2013.

Data Highlights	Quarter 1	Quarter 2	Quarter 3
Number of consumers for whom the CAB obtained an extension of credit	556,175	603,815	647,945
Number of extensions of credit obtained by CAB	826,517	871,417	921,844
Number of payday (deferred presentment) loans obtained	713,859	740,754	783,436
Number of auto title loans obtained	112,658	130,663	138,408
Average amount of single installment payday loan	\$471	\$469	\$479
Average cab fee per \$100 borrowed for a single installment payday loan	\$22.67	\$22.83	\$23.25
Average original term (in days) of single installment payday loan	19	19	19
Average amount of a single installment title loan	\$999.56	\$979.61	\$989.91
Average cab fee per \$100 borrowed for a single installment title loan	\$23.12	\$24.22	\$21.35
Average original term (in days) of single installment title loan	30	29	29
Number of vehicles surrendered or repossessed under auto title loan	8,854	8,230	8,052
Total number of locations reporting	3,239	3,286	3,402

TABLE 6: Highlights of data collected through quarterly CAB reports (1st Quarter through 3rd Quarter, CY2012).

Changes in Reported Aggregate Data Q1-Q3

- 16.5% increase in number of consumers
- 11.5% increase in new loans
 - 9.75% increase in payday loans
 - 22.86% increase in title loans

Repossession Rate³ Q1 –Q3

- Quarter 1
1 repossession per 29 active loans
- Quarter 2
1 repossession per 34 active loans
- Quarter 3
1 repossession per 36 active loans

Refinancing Activity Q1 - Q3 (Aggregate Quarterly Report)

- Newly obtained single-payment payday loans refinanced in same quarter
 - Quarter 1: 1.15 times
 - Quarter 2: 1.07 times
 - Quarter 3: 1.06 times
- Newly obtained single-payment title loans refinanced in same quarter
 - Quarter 1: 1.04 times
 - Quarter 2: 0.70 times
 - Quarter 3: .69 times

³ Based on prior outstanding & newly obtained title loans

Multi-Payment Installment Loan Characteristics

	Average Additional Cash Advance	Equivalent Payments To Single Pay Term⁴
Quarter 1		
Payday	29%	5
Title	13%	4
Quarter 2		
Payday	19%	5
Title	17%	5
Quarter 3		
Payday	18%	5
Title	26%	6

Table 7: The average percentage amount of a cash advance that is greater between multi-payment loans to single-payment loans, and the number of equivalent payments that a customer must pay for a multi-payment loan in comparison with a single-payment loan. (Data represents aggregated statewide reporting, to include any received corrections, as of Dec 14, 2012).

Communication and Outreach. The agency has conversed with industry stakeholders and associations on myriad topics regarding licensing and examination processes, and met with individual groups as requested. The agency solicited industry stakeholder feedback regarding internet transaction regulation, provisional licensing, and licensing regulation during the third and fourth quarter of FY12. Webinars were conducted during the first and second quarters of FY13. The first webinar was conducted in September 2012 and provided assistance with data identification, definition and reporting as it relates to the quarterly report submissions. A second webinar was conducted in October 2012 and addressed general compliance topics targeted to specific industry stakeholders associated with a particular trade association. A third webinar was conducted in December 2012 and provided assistance with data identification and reporting as it related to the annual data report.

Texas Financial Education Endowment. As part of the licensing process each CAB location pays an annual assessment fee to OCCC to provide opportunities for asset building, improved consumer credit, and financial education (\$393.628, Texas Finance Code). The assessments are collected by the OCCC during the licensing process and are deposited into an interest-bearing account with Texas Treasure Safekeeping Trust Company.

The endowment is administered by the Finance Commission of Texas and the purpose of the endowment is to fund programs that effectively support the financial empowerment of Texas consumers through financial education and awareness, primarily delivered and leveraged through grant awards to provider organizations. To date the endowment fund balance is approximately \$1.5 million, representing assessments collected through the CAB licensing processing and recovery funds received from NMLS.

⁴ Payments rounded to whole number and assumes payment intervals are single payment averages (19 days for payday loans and 30 days for title loans)

The OCCC continues to work with the Finance Commission to develop grant application, administration and distribution policies. Over the next 6 – 12 months, the development and implementation of these policies will occur followed by grant distribution in accordance with approved program structure.

Finance Commission of Texas – Resolution Supporting Uniformity of Laws Governing Credit Access Businesses.

The commission adopted a resolution on April 20, 2012, in response to ordinances passed in certain Texas cities seeking to impose additional requirements or restrictions on CABs located within their city. Recently enacted local ordinances increase the complexity of compliance for Texas CABs. The resolution is a request to the Texas Legislature to amend the laws concerning CABs and to clearly articulate the legislature’s intent for uniform laws and rules to govern CABs.

HB 2490: Metal Dealers

Summary of Legislation

HB 2490 amends Chapter 1956 of the Occupations Code, requiring crafted precious metal dealers (including gold-buying businesses) to register with the OCCC. For each purchase, the dealer must complete a form listing the date of the transaction, a description of the metal product, and the name and address of the buyer and seller and then submit those transaction forms to local law enforcement authorities. If a peace officer notifies the dealer about an allegedly stolen item, the dealer will be required to hold the item for 60 days without altering or selling it. The OCCC has the authority to investigate complaints about metal dealers; consumer assistance reporting and data collection processes have been amended to include crafted precious metal dealers and agency representatives are prepared to address any received concerns or complaints. The registration requirement became effective January 1, 2012.

Implementation Actions

In December 2011, the agency implemented an online registration system enabling crafted precious metal dealers (CPMDs) to register permanent and temporary business locations. The registration system is hosted upon the Texas Department of Public Safety’s (TxDPS) website and is based upon that agency’s metals recycling program. By partnering with TxDPS’ software vendors and the state business portal, the registration process provides secure and efficient payment processing and allows for immediate, on-demand registration certificates for registrants. CPMDs have made efforts to comply with the registration requirements, however it is noted that registration levels may not wholly represent the number of CPMDs engaged in regulated activity throughout the state.

Registered Precious Metal Dealers	As of 06/30/12	As of 12/31/12
Permanent locations	2,213	2,179
Temporary locations	346	392
Total registered locations	2,559	2,571

Table 8: Number of CPMD registrations as of June and December 2012.

Since the registration requirement became effective January 1, 2012, the agency engaged in communication and marketing activities focused on effective and informative communication relating to CPMD registration requirements.

As of December 31, 2012, the consumer assistance section has received 33 complaints or inquiries regarding crafted precious metals from the general public and local law enforcement. Complaints and inquiries predominantly pertain to confirmation of dealer registration, length of holding period, use of transaction forms, allegations of theft and under valuation of merchandise. Four investigations have been initiated due to the dealer failing to respond to agency requests or providing inadequate responses.

Number of Complaints or Inquiries	Type of Complaint or Inquiry
21	Confirmation of registration status by consumer or local law enforcement
3	Inquiry seeking information regarding the use of transaction forms by local law enforcement
3	Inquiry as to the length of hold periods for purchased merchandise by consumers
5	Misleading practices: sale for less than going price, allegation of theft of merchandise by consumer
1	Inquiry for general information

Table 9: Number and categorization of consumer concerns related to CPMD transactions.

SB 762: Property Tax Loan Fees

Summary of Legislation

SB 762 adds Section 351.0021 to the Finance Code, providing an exclusive list of post-closing fees that property tax lenders may charge. The bill became effective September 1, 2011. The bill also requires that the Finance Commission conduct a study of the interest, fees, and charges that are assessed by property tax lenders.

Implementation Actions

The OCCC staff collected and analyzed current and historical data to provide an understanding of the types and costs of fees charged to property tax loan borrowers in connection with obtaining the loan and after closing. Study findings provided details of allowable charges, and more specifically, the actual occurrence of charges incurred by borrowers. Through examination of actual loans made, the study classified the costs associated with property tax loans characterized by the paying habits of actual borrowers (non-problem, problem, and foreclosure loans). Data was obtained and analyzed from three sources:

- (1) annual report filings collected for CY 2008 – CY 2011;
- (2) a survey questionnaire filed as an addendum to the CY 2011 annual report which included historical data for CY 2008 – CY 2011; and
- (3) a data survey collected onsite by OCCC examiners using a random sampling of loans sufficient in size to yield a 95% confidence level within three separate sampling frames.

The Finance Commission approved the final study during its August 2012 meeting. The full report may be found at <http://www.fc.texas.gov/Studies/propertytaxlending.pdf>.

During recent legislative hearings, stakeholders expressed concerns about unlicensed activity by subsequent holders of property tax loans. The OCCC believes that the statute's applicability to subsequent holders is clear, as Texas Finance Code, §351.051(a) states that a license is required to "contract for, charge, or receive, *directly or*

indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense"

On January 8, 2012, the OCCC issued a bulletin to assist in the clarification of this issue. The bulletin states that a company must hold a property tax lender license with the OCCC in order for a property tax loan to be transferred, assigned, or sold to the company. A license is also required to accept any charges in connection with a property tax loan or to collect on the loan.

To provide further guidance to stakeholders, the OCCC has developed rule amendments related to recordkeeping and branch locations. The proposed amendments to 7 TAC §89.207 will ensure that the proper transfer and assignment documentation is maintained so that the agency can verify through the examination process that property tax loans are transferred, assigned, or sold to authorized parties under §351.051, Texas Finance Code. The amendments to 7 TAC §89.401 add the verbs "transact," "service," and "hold," to better track the statute and more accurately reflect all of the actions that require a license. The proposed amendments will be presented during the February 2012 Finance Commission meeting and recommended for publication within the *Texas Register* for public comment.

HB 2931: Motor Vehicle Debt Cancellation Agreements

Summary of Legislation

HB 2931 provides a new statutory framework for debt cancellation agreements on financed motor vehicles where the motor vehicle is required to be insured for property damage. A debt cancellation agreement (DCA) is an agreement in which the holder of a retail installment contract will cancel all or part of the remaining amount owed on the finance contract if the vehicle is stolen or totaled. If a DCA requires the buyer to maintain insurance on the vehicle, the holder will generally cancel only the difference between the insurance coverage on the vehicle and the remaining amount owed. HB 2931 adds a new subchapter to Chapter 348 of the Finance Code, detailing the provisions that may be included in a DCA that requires insurance. The bill also requires the OCCC to approve or disapprove DCA forms within 45 days after they are submitted to the agency. The bill does not affect DCAs where the buyer is not required to obtain insurance. These agreements would still have to comply with the rules that the Finance Commission adopted in 2010. HB 2931 became effective September 1, 2011.

Implementation Activities

As a result of HB 2931, existing rules relating to DCAs that required insurance were repealed, as the new provisions of HB 2931 will control these agreements. The OCCC issued a bulletin detailing the process for submission of a DCA form for review. A listing of approved DCAs is published to the agency website.

As of January 23, 2013, DCA review status is as follows:

Debt Cancellation Agreement Review Status	As of 01/23/13
Approved DCAs	393
Denied DCAs	60
DCAs Pending Review	21