

**QUARTERLY UPDATE TO THE
SENATE BUSINESS AND COMMERCE COMMITTEE
October 10, 2013
BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER**

IMPLEMENTATION OF LEGISLATION FROM THE 83RD LEGISLATURE

SB 247: Property Tax Loans

Summary:

This bill imposes new requirements on property tax lenders. The bill's requirements fall mainly into the following categories:

- ***Judicial foreclosure:*** The bill repeals language allowing property tax lenders to engage in non-judicial foreclosure. This effectively requires them to use judicial foreclosure for any property tax loans closed on or after the bill's effective date.
- ***Advertisements:*** The bill prohibits deceptive or misleading advertising, and it requires property tax lenders to disclose certain additional information if they disclose a rate or charge in an advertisement.
- ***Payoff statements:*** The bill imposes new requirements for payoff requests sent by other lienholders and payoff statements provided by the property tax lender. It requires the Finance Commission to adopt forms for the payoff statement and the request for a payoff statement.
- ***New prohibitions:*** The bill prohibits property tax loans in certain situations (e.g., where the borrower is 65 years old or older and can claim a tax exemption, or where the taxes are neither due nor delinquent).

Effective date:

May 29, 2013. The bill went into effect immediately upon the governor's signature. The new law applies only to property tax loans closed on or after May 29, and advertisements distributed on or after May 29. Property tax loans closed before May 29 are still subject to previous law.

Implementation Activities:

In late May, the OCCC distributed an advisory bulletin summarizing SB 247's requirements.

At its August 2013 meeting, the Texas Finance Commission adopted a rule implementing SB 247's advertising provisions. The rule prohibits property tax lenders from including certain phrases in advertisements, and it describes how property tax lenders must disclose rates in their advertisements. The rule also amends the model form for the property owner's sworn authorization, deleting a reference to borrowers who are 65 years old or older.

In September, the OCCC held a stakeholder meeting on proposed rules to implement SB 247's payoff statement requirements. Representatives from the Texas Property Tax Lienholders Association, the Texas Bankers Association, the Texas Mortgage Bankers Association, the Independent Bankers Association of Texas, and Protect My Texas Property attended the meeting. The OCCC has developed model forms for the payoff statement and the request for a payoff statement, incorporating suggestions made at the meeting. The Finance Commission intends to adopt the model forms—as well as a rule describing how they must be used—at its October 18 meeting.

SB 1251: Regulated Loan Fees

Summary:

Under previous law, Chapter 342 of the Finance Code provided a \$25 maximum administrative fee under Subchapter E, and a \$10 maximum acquisition charge under Subchapter F. This bill allows the Finance Commission to adopt rules setting a higher Subchapter E administrative fee and a higher Subchapter F acquisition charge. The bill provides that the administrative fee and the acquisition charge are not interest.

The bill also allows authorized lenders to use the true daily earnings method or scheduled installment earnings method for a Subchapter F loan. The bill includes interest-calculation requirements and payment-allocation requirements for a Subchapter F loan in which a lender uses these earnings methods.

Effective date:

September 1, 2013

Implementation Activities:

In May, the OCCC held a stakeholder meeting regarding the maximum administrative fee and maximum acquisition charge. Representatives from the Texas Consumer Finance Association, Springleaf Financial Services, Famsa Financial, Texas Appleseed, and the Center for Public Policy Priorities attended the meeting.

At its August meeting, the Finance Commission adopted a rule setting the maximum administrative fee at \$100 and the maximum acquisition charge at the lesser of \$100 or 10% of the cash advance. The rule also prohibits a Subchapter F lender from charging an acquisition charge more than once per month. Later in August, the OCCC distributed an advisory bulletin summarizing the rule's requirements.

Also at its August meeting, the Finance Commission published for comment a rule describing the calculation requirements for Subchapter F loans using the true daily earnings method or scheduled installment earnings method. The Finance Commission intends to adopt this rule at its October 18 meeting.

SB 1248: Chapter 345 Documentary Fee

Summary:

Under previous law, Chapter 345 of the Finance Code allowed a retail seller to charge a \$50 maximum documentary fee in a retail installment transaction for the purchase of a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. This bill repeals the \$50 limitation on the documentary fee in these sales. The bill provides that a documentary fee in these sales must be reasonable, must be agreed to by the parties, and may not exceed an amount set by the Finance Commission.

Effective date:

September 1, 2013

Implementation Activities:

In late May, the OCCC held a stakeholder meeting regarding the maximum documentary fee under Chapter 345. Representatives from the Texas Motorcycle Dealers Association, the Boating Trades Association of Texas, the Texas Recreational Vehicle Association, and Texas Appleseed attended the meeting.

At its August meeting, the Finance Commission adopted a rule setting the maximum documentary fee under Chapter 345. The rule distinguishes between land vehicles titled with the Texas Department of Motor Vehicles, and watercraft titled with the Texas Parks and Wildlife Department. The rule provides a \$125 maximum documentary fee for a retail installment contract that includes one or more land vehicles, a \$125 maximum for a contract that includes one or more watercraft, and a \$175 maximum for a contract that includes both a land vehicle and a watercraft. Later in August, the OCCC distributed an advisory bulletin summarizing the rule's requirements.

HB 2548: Credit Card Surcharge Exclusive Jurisdiction***Summary:***

Under previous law, the Finance Commission has exclusive jurisdiction to enforce Section 339.001 of the Finance Code, which prohibits credit card surcharges. This bill provides that the OCCC has exclusive jurisdiction to enforce the section. The bill also amends Chapter 14 of the Finance Code to provide that the OCCC has investigation authority, enforcement authority, and authority to order restitution to a person injured by a violation of Section 339.001.

Effective date:

September 1, 2013

Implementation Activities:

The OCCC has been working through transition issues related to the changed enforcement policy associated with HB 2548. The Finance Commission adopted a rule to assist with enforcement procedure for complaints both before and after the effective date. Nineteen complaints have recently been received that are being processed through under the older provisions. Eight of those have been closed and eleven remain pending as they are being worked through to resolution.

SIGNIFICANT POLICY ISSUES**Credit Access Businesses offering Payday (deferred presentment) and Auto Title Loans*****Background:***

The 82nd Legislature amended 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.

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. CABs are also required to obtain a license with the OCCC. The OCCC has examination and investigation authority over credit access businesses. Chapter 393 also requires the Finance Commission to create an endowment for financial education in Texas.

The requirements became effective January 1, 2012. Significant legislative activity and effort ensued in the 83rd Legislature for a short term lending reform bill. Unfortunately, the 83rd session came to a close without a final legislative reform bill.

Regulatory Activities**Licensing**

New applications for CABs continued at a brisk pace for FY2013, reflecting a 15% growth in the number of CAB locations.

CAB Applications	FY 12	FY13
Applications Filed	3,804	272
Applications Fully Approved	3,054	663
Applications Withdrawn	201	23
Provisional Licenses Pending	3	0
Applications Denied	26	7
Number of CAB Licenses Issued and Active	3,022	3,502

Table 1: CAB applications received and processed as of August 2012 and August 2013.

Consumer Protection & Examination

The OCCC significantly stepped up its examination activity in FY 13, more than tripling the production of the prior year. The average hours per CAB examination (7.51 hours per exam) for FY 2013 continues to be higher than estimated. The most significant non-compliance areas are smaller licensees not understanding the basic requirements of Credit Service Organization disclosures and contracts, and variations in the loan and credit service organization transaction design in response to city ordinances. Wide variability exists within the industry and lack of uniformity is becoming a greater compliance concern. During FY13, the OCCC also participated in and coordinated examinations with the Federal Consumer Financial Protection Bureau (CFPB).

CAB Examinations	FY 12	FY13
Number of Examinations	290	916
Acceptable Level of Compliance	90.9%	91.1%
Investigations Completed	0	13

Although the examination process has indicated that the majority of examined entities were within acceptable compliance levels, caution should be exercised in characterizing the entire industry at this rate of compliance. Thus far, the OCCC has only examined roughly less than 35% of the industry and the expectation is that the acceptable level of compliance will decline as additional segments of the industry come under examination. Common violations and areas of non-compliance, in addition to that mentioned above, were identified as 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. Restitution to consumers as a result of examinations of CABs was \$18,054 for FY13.

Consumer Complaints

The consumer assistance section processed

- 282 complaints between September 1, 2011, and August 31, 2012 which represented 14.49% of all processed complaints by the agency during that 12-month period.
- 422 complaints between September 1, 2012, and August 31, 2013 which represented 21.16% of all processed complaints by the agency during that 12-month period.

Fiscal Year	Payday Loans	Title Loans	Total
FY '12	179	103	282
FY '13	243	179	422

Consumer assistance pertaining to CAB transactions resulted in consumers receiving refunds totaling \$6,331.59. The complaints predominately pertain to charges and fees, collection practices, posting/processing of payments, and repossessions, as shown in the table below for both categories.

FY '13: September 1, 2012– August 31, 2013			
Payday Loans		Title Loans	
Complaint/Concern	% of Closed Complaints	Complaint/Concern	% of Closed Complaints
Excessive/unauthorized Charges & Fees	40.7%	Repossession	22.3%
Collection Practices	15.6%	Excessive/unauthorized Charges & Fees	20.1%
Payment Posting/Processing	14.4%	Payment Posting/Processing	19.0%

Legal

The legal department has reported minimal enforcement actions taken or required during FY 2013, and those taken predominately pertain to compliance with quarterly reporting requirements.

Type of Action	Number of Actions	Cause of Action
Administrative Hearing	No. Hearings Conducted/Scheduled: 2 No. Hearings Dismissed: 2	Applicant's appeal of license denial. <ul style="list-style-type: none"> •Applicant completed application requirements. •Applicant entered into agreed order.
License Revocation	0	
Issuance of Preliminary Reports	49	Licensees did not timely file their quarterly reports. Administrative penalties of \$100 per late report were assessed.
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 approval for permanent licensure.

Table 2: Administrative action taken during FY 2013 (September 1, 2013 through August 31, 2013).

Non-Compliance with Quarterly Data Reporting	
CY 2012 – 2nd Quarter Due July 31, 2012	<u>Delinquent Filings: 6 Store Locations</u> 5 licensees, comprised of 6 store locations, have not filed 2nd quarter reports. <ul style="list-style-type: none"> • <i>Status: All licensees have filed completed 2nd quarter reports.</i>
CY 2012 – 3rd Quarter Due October 31, 2012	<u>Delinquent Filings: 22 Store Locations</u> 11 licensees, comprised of 22 store locations, have not filed 3rd quarter reports. <ul style="list-style-type: none"> • <i>Status: All licensees have filed completed 3rd quarter reports.</i> • <i>Note: 3 preliminary reports issued for delinquent 3rd quarter filings were withdrawn when licensee surrendered license.</i>
CY 2012 – 4th Quarter Due January 31, 2013	<u>Delinquent Filings: 24 Store Locations</u> 14 licensees, comprised of 24 store locations, have not filed 4th quarter reports. <ul style="list-style-type: none"> • <i>Status: All licensees have filed completed 4th quarter reports.</i> • <i>Note: 2 preliminary reports issued for delinquent 4th quarter filings were withdrawn when the licensees submitted proof that their licensed locations transacted no loans in the 2012 calendar year.</i>
CY 2013 – 1st Quarter Due April 30, 2013	<u>Delinquent Filings: 21 Store Locations</u> 16 licensees, comprised of 21 store locations, have not filed 1st quarter reports. <ul style="list-style-type: none"> • <i>Status: 15 licensees have filed completed reports. A license revocation action is pending against one licensee for failure to file a completed quarterly report.</i>

Table 3: Status of non-compliance with quarterly data reporting during FY 2013 (September 1, 2013 through August 31, 2013).

Credit Access Business Data Reporting

The statistics presented represent data reported to the OCCC from CABs through the 2nd quarter of calendar year 2013. Amendments and corrections of data are included as of October 3, 2013. Full summary reports are available on the OCCC website at <http://www.occc.state.tx.us/pages/publications/FinSvcActivityRpts.html#CABRpts>.

The current reports include miscategorized data, which disregarded instructions issued by the OCCC. Specifically, several stores located in municipalities with ordinances affecting the operations of CABs have developed longer term obligations that were reported as single-payment transactions. These transactions should have been reported as multi-payment transactions. CABs that have reported the incorrect information are being contacted to amend their reports. Future releases will reflect the pending data corrections.

Statewide Averages

Quarterly reporting is designed on the product type, whether the product is a deferred presentment transaction (payday loan) or a title loan, and the repayment schedule due; either a single installment or multiple installment repayment. Each transaction must be reported as one of the four product types.

Selected loan characteristics from the three preceding quarters is presented in the table below as well as the percent the data has changed from Q4 2012 to Q2 2013. The most noticeable trend is the overall lengthening of the original term of each product type. For example, the average scheduled term of installment title loans for Q4 was 151 days and is now 180 days.

Prior 3 Quarters	Single Payment Deferred	Installment Payment Deferred	Single Payment Title	Installment Payment Title
Average Fee Amount (per \$100 loaned)				
Q2 2013	\$23.92	\$82.79	\$22.17	\$63.62
Q1 2013	\$23.80	\$83.25	\$22.42	\$54.25
Q4 2012	\$23.40	\$68.76	\$21.74	\$59.72
Change (Q4 - Q2)	2.22%	20.40%	1.98%	6.53%
Average Loan Amount				
Q2 2013	\$438.91	\$571.30	\$1,147.18	\$1,267.49
Q1 2013	\$447.71	\$588.58	\$1,053.51	\$1,221.57
Q4 2012	\$469.50	\$558.18	\$1,092.56	\$1,226.59
Change	(6.52%)	2.35%	5.00%	3.33%
Average Original Term (days)				
Q2 2013	23	125	30	180
Q1 2013	21	128	29	177
Q4 2012	19	101	29	151
Change	21.05%	23.76%	3.45%	19.21%

Volume Totals (Comparison of First Two quarters CY 2012 & 2013)

The following table captures the year over year volume comparison of combined Q1 & Q2 regardless of product type. Little change is reported in the number of consumers or the number of loans they obtained in the quarter. However, a roughly 25% decrease in refinancing activity is attributable to the combination of lengthier terms and more familiarity with refinancing definitions in the reporting process.

Q1 & Q2	CY 2012	CY 2013	Change
Number of Consumers (Per Reporting Location)	1,115,168	1,108,001	(0.64%)
Number of New Extensions	1,410,808	1,419,565	0.62%
Number of Renewals on those Extensions (Renewed in quarter they were obtained)	1,360,324	994,984	(26.86%)
Number of Consumers Renewing	649,164	492,332	(24.16%)
Total Number of Transactions ¹	3,932,579	3,399,528	(13.55%)
Total Number of Vehicle Repossessions	17,175	17,604	2.50%

Metropolitan Statistical Area (MSA) – Q2 Year of Year

A number of local municipalities have enacted their own ordinances to regulate the CAB industry. The local effect of ordinances on reporting is noticeable in the length of the obligation. The following chart represents the 2nd quarter data received in ordinance affected areas that have influenced the term and consequently, the average fees initially charged on the obligations.

Single Payment Deferred Presentment	Average Fee (per \$100 loaned)	Average Term (In Days)
Austin		
-2012	\$22.14	17
-2013	\$30.74	47
Dallas		
-2012	\$24.54	17
-2013	\$26.35	23
El Paso		
-2012	\$22.80	17
-2013	\$22.12	18
San Antonio		
-2012	\$22.04	17
-2013	\$33.55	58
Statewide Average		
-2012	\$22.74	19
-2013	\$23.92	23

¹All CAB Contracts including renewals made on previous loans

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 invested with the Texas Treasury 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 \$1.85 million, representing assessments collected through the CAB license processing and \$0.5 million of litigation settlement proceeds. On September 3, 2013, the Finance Commission of Texas announced the availability of \$250,000 in grant funds from the Texas Financial Education Endowment "TFEE". Schools, governmental agencies, profit and not-for-profit organizations will be eligible for grant awards through a competitive application and review process. Applications for funding consideration will be accepted until October 15, 2013. Grant awards will range from \$5,000 to \$40,000. The determination for grant awards is expected in mid-December.