

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.

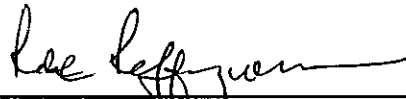
PART 2. A credit access business that possesses a state license issued pursuant to Chapter 393 of the Texas Finance Code on the effective date of this ordinance shall file a registration application and pay the fee required under this chapter within thirty days of the effective date of this ordinance.

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


PASSED AND APPROVED

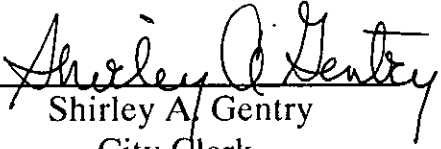
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Lee Leffingwell
Mayor

APPROVED: 
Karen M. Kennard
City Attorney

ATTEST: 
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City Clerk