

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 4-12 (*REGISTRATION OF CREDIT ACCESS BUSINESSES*) OF THE CITY CODE RELATING TO THE REGISTRATION OF BOTH CREDIT SERVICES ORGANIZATIONS AND CREDIT ACCESS BUSINESSES; CREATING AN OFFENSE AND PENALTY; AND AMENDING THE 2019-2020 FEE SCHEDULE IN ORDINANCE NO. 20190910-002 TO ADD A REGISTRATION APPLICATION FEE.

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

PART 1. City Code Chapter 4-12 (*Registration of Credit Access Businesses*) is amended to amend the title of the chapter to read as follows:

CHAPTER 4-12 REGISTRATION OF CREDIT SERVICES ORGANIZATIONS AND CREDIT ACCESS BUSINESSES.

PART 2. City Code Chapter 4-12 (*Registration of Credit Services Organizations and Access Businesses*) is amended to replace “Director” with “director” in each place that the word appears within Chapter 4-12.

PART 3. City Code Section 4-12-1 (*Definitions*) is amended to add new definitions for “Credit Access Fees”, “Credit Services Organization”, “Extension of Consumer Credit Transaction”, and “Valuable Consideration”; to amend the existing definitions for “Certificate of Registration”, “Consumer”, and “Owner”; to delete the definition of “Registrant”; to delete and replace the definition of “Credit Access Business”; and to re-letter the remaining definitions as set forth below:

(A) **CERTIFICATE OF REGISTRATION** means a certificate of registration issued by the director [~~Director~~] under this chapter to the owner or operator of a credit services organization or a credit access business.

(B) **CONSUMER** means an individual who is solicited to purchase or who purchases the services of a credit services organization or a credit access business.

(C) **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.

26 (D) CREDIT ACCESS BUSINESS FEES mean the fees charged by a credit access
27 business pursuant to Section 393.602, Texas Finance Code.

28 (E) CREDIT SERVICES ORGANIZATION means a person who obtains an
29 extension of consumer credit for a consumer as described in Section
30 393.001(3)(B), Texas Finance Code, or a person who provides advice or
31 assistance to a consumer with regard to obtaining an extension of consumer
32 credit.

33 (I) EXTENSION OF CONSUMER CREDIT TRANSACTION means the entirety
34 of the agreements made by a consumer to obtain an extension of consumer
35 credit, and includes any loan agreement between the lender and the consumer,
36 and any fee agreement between the credit services organization or credit access
37 business and the consumer.

38 (K) OWNER means, for the purposes of this chapter, any person who directly or
39 indirectly owns a credit services organization or a credit access business. For
40 publicly traded companies, the term means any person who directly or
41 indirectly owns or controls 10% or more of the outstanding shares of stock in
42 the credit services organization or credit access business.

43 (N) VALUABLE CONSIDERATION means the consideration described in
44 Section 393.001(3), Texas Finance Code. Valuable consideration includes, but
45 is not limited to, an agreement to provide future payment in exchange for an
46 extension of consumer credit as described in Section 393.001(3)(B), or advice
47 or assistance with that service.

48 **PART 4.** City Code Sections 4-12-2 (*Purpose*), 4-12-10 (*Registration Required*),
49 4-12-11 (*Registration Application*), 4-12-12 (*Issuance and Display of Certificate of*
50 *Registration; Presentment Upon Request*), 4-12-13 (*Expiration and Renewal of*
51 *Certificate of Registration*), 4-12-14 (*Nontransferability*), and 4-12-15 (*Revocation*
52 *of Certificate of Registration*) are amended to read as follows:

53 **§ 4-12-2 PURPOSE.**

54 The purpose of this chapter is to protect the welfare of the citizens of the
55 City by monitoring and regulating credit services organizations and credit access
56 businesses [in an effort] to reduce the harm caused by abusive and predatory
57 lending practices.

58 **§ 4-12-10 REGISTRATION REQUIRED.**

59 (A) A person may not operate or conduct business as a credit services organization
60 or as a credit access business without a valid certificate of registration.

61 (B) A certificate of registration is required for each credit services organization or
62 each credit access business at each location where the credit services
63 organization or credit access business operates or conducts business.

64 (C) A person operating or conducting a business as both a credit services
65 organization and a credit access business at the same location may obtain one
66 certificate of registration per location.

67 **§ 4-12-11 REGISTRATION APPLICATION.**

68 (A) To obtain a certificate of registration for a credit services organization or a
69 credit access business, a person must submit an application on a form
70 provided for that purpose to the director [~~Director~~]. The application must
71 contain the following:

72 [~~(1) the name, street address, mailing address, facsimile number, and~~
73 ~~telephone number of the registrant;~~]

74 (1) [~~(2)~~] the business or trade name, street address, mailing address, facsimile
75 number, and telephone number of the credit services organization or credit
76 access business;

77 (2) [~~(3)~~] the names, street addresses, mailing addresses, and telephone
78 numbers of all owners of the credit services organization or the credit
79 access business and other persons with a financial interest in the credit
80 services organization or credit access business, and the nature and extent of
81 each person's interest in the credit services organization or credit access
82 business;

83 (3) [~~(4)~~] a copy of a current, valid state license held by the credit access
84 business pursuant to Section 393.603, [~~of the~~] Texas Finance Code;

85 (4) a copy of a current, valid state registration statement submitted by the
86 credit services organization pursuant to Section 393.101, Texas Finance
87 Code;

88 (5) a copy of a current, valid certificate of occupancy showing that the credit
89 services organization or the credit access business complies [~~is in~~]

90 compliance] with City Code Title 25 (Land Development Code) [of the
91 City Code of Ordinances];

92 (6) a non-refundable application fee that is set by separate ordinance [of \$50];
93 and

94 (7) if a publicly traded company, the name of the registered agent for service
95 of process in Texas.

96 (B) A credit services organization or credit access business [~~Registrant~~] shall
97 notify the director [~~Director~~] in writing at least [~~no later than~~] 10 days before
98 making any material change in its business operations. A material change
99 includes [~~including~~] changes to the information contained in the application
100 for a certificate of registration, any change of address, business ownership or
101 equity interest, store location, type of loan products offered, operating status,
102 bankruptcy filings, closure of a store, and any change in the status of the state
103 license held or the state registration statement submitted by the credit services
104 organization or credit access business that has applied for or that currently
105 holds a certificate of registration [~~applicant or registrant~~].

106 **§ 4-12-12 ISSUANCE AND DISPLAY OF CERTIFICATE OF**
107 **REGISTRATION; PRESENTMENT UPON REQUEST.**

108 (A) The director [~~Director~~] shall issue to a credit services organization or a credit
109 access business [~~the Registrant~~] a certificate of registration for each location
110 upon receiving a completed application under Section 4-12-11 (*Registration*
111 *Application*).

112 (B) A certificate of registration issued under this section must be conspicuously
113 displayed to the public in the credit services organization or the credit access
114 business. The certificate of registration must be presented upon request to the
115 director [~~Director~~] or the director's [~~Director's~~] designee for examination.

116 **§ 4-12-13 EXPIRATION AND RENEWAL OF CERTIFICATE OF**
117 **REGISTRATION.**

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

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

120 (2) if the certificate of registration is held by a credit access business, on the
121 date of expiration, revocation, or termination of the credit access
122 business's [registrant's]state license.

123 (B) A certificate of registration may be renewed by making application in
124 accordance with Section 4-12-11 (*Registration Application*). A credit services
125 organization or credit access business [registrant] shall apply for renewal at
126 least 30 days before the registration expires [expiration of the registration].

127 **§ 4-12-14 NONTRANSFERABLEILITY.**

128 A certificate of registration for a credit services organization or a credit
129 access business is not transferable.

130 **§ 4-12-15 REVOCATION OF CERTIFICATE OF REGISTRATION.**

131 (A) The director [Director] may revoke a certificate of registration if the director
132 [Director] determines that a person [~~has~~]:

133 (1) made a false statement, in writing or orally, related to [an] an application
134 for a certificate of registration [~~has made a false oral statement relating to~~
135 ~~an application for a certificate of registration,];~~

136 (2) used a device, subterfuge, or pretense to evade the requirements of this
137 chapter; or

138 (3) engaged in serious or repeated violations of this chapter.

139 (B) [~~If t~~]The director [Director] must give notice of the revocation to [revokes a
140 certificate of registration, the Director shall notify] the credit services
141 organization or the credit access business [whose certificate of registration has
142 been revoked] by regular mail and by certified mail, return receipt requested, at
143 the address on the application for a certificate of registration. If the certified
144 letter is returned as undelivered, the director [Director] must post the notice of
145 revocation on the front door of the location of the [shall notify] credit services
146 organization or the credit access business [by providing the notice to the credit
147 access business by hand delivery] that is the subject of the revocation.

148 (C) Not later than the 10th day after the credit services organization or the credit
149 access business receives notice of the revocation by the director [Director], the
150 credit services organization or the credit access business may file a notice of
151 appeal with the director [Director]. The notice of appeal must be in writing,

152 describe the decision being appealed, and state the reason why the revocation
153 should be reversed. Failure to timely file the notice of appeal results in the
154 revocation [~~Director's action~~] becoming final.

155 (D) If a credit services organization or a credit access business timely files a notice
156 of appeal under this section, the revocation [~~Director's action~~] is stayed.

157 (E) The city manager or the city manager's designee shall act as a hearing officer
158 and hear the appeal. The Texas Rules of Evidence [~~formal rules of evidence~~]
159 do not apply at a hearing under this section.

160 (F) The hearing officer shall hold the hearing not later than the 10th day after the
161 date the notice of the appeal is filed and shall render a written decision not later
162 than 30 days after the hearing.

163 (G) The hearing officer shall make a decision based on the preponderance of the
164 evidence submitted and may affirm, reverse, or modify the action of the
165 director [~~Director~~].

166 (H) The decision of the hearing officer is final.

167 **PART 5.** City Code Chapter 4-12, Article 3 (*Miscellaneous Requirements for*
168 *Credit Access Businesses*) is repealed and replaced to read as follows:

169 ***ARTICLE 3. MISCELLANEOUS REQUIREMENTS FOR CREDIT***
170 ***SERVICES ORGANIZATIONS AND CREDIT ACCESS BUSINESSES***

171 **§ 4-12-20 MAINTENANCE OF RECORDS.**

172 (A) A credit services organization and a credit access business shall maintain a
173 complete set of records of all extensions of consumer credit transactions:

- 174 (1) that the credit services organization or credit access business arranged or
175 obtained for a consumer; and
- 176 (2) on which the credit services organization or credit access business
177 provided advice or assistance to a consumer.

178 (B) A complete set of records must include the following information:

- 179 (1) the name and address of the consumer;
- 180 (2) the principal amount of cash actually advanced;

- 181 (3) the fees charged to arrange or obtain an extension of consumer credit;
- 182 (4) the fees charged to advise or assist a consumer in obtaining an extension
183 of consumer credit;
- 184 (5) the documentation used to establish a consumer's income under Section
185 4-12-22 (*Restrictions on Extensions of Consumer Credit Transactions*);
- 186 (6) a copy of each written agreement, between the credit services
187 organization or credit access business and a consumer, evidencing an
188 extension of consumer credit including, but not limited to, any
189 refinancing or renewal agreement with the consumer;
- 190 (7) whether any part of the extension of consumer credit transaction has been
191 refinanced or renewed and, if any part of the extension of consumer
192 credit transaction has been refinanced or renewed, the number of
193 refinances or renewals made; and
- 194 (8) a copy of each written agreement between the lender and consumer.
- 195 (C) A credit access business shall also maintain, and file with the director, copies,
196 in a format prescribed by the director, of all annual reports, quarterly reports,
197 and all revisions and updates to those reports filed with the Texas Consumer
198 Credit Commissioner as required by Chapter 393, Texas Finance Code. The
199 reports, revisions, and updates must be submitted to the City within five
200 business days of being submitted to the Texas Consumer Credit
201 Commissioner.
- 202 (D) The records required to be maintained under this section:
- 203 (1) must be retained for at least three years; and
- 204 (2) to the extent not filed with the director, made available for inspection and
205 copying by the City upon request during usual and customary business
206 hours.

207 **§ 4-12-21 CONSUMER RIGHT TO COPY OF AGREEMENT.**

- 208 (A) A credit services organization and a credit access business shall give to the
209 consumer, upon request, a printed copy of a signed contract, and any other
210 document the credit services organization or credit access business requires a
211 consumer to sign or acknowledge reading.

212 (B) All contracts and other documents that a credit services organization or credit
213 access business requires the consumer to sign or acknowledge reading shall be
214 in the language in which the contract was negotiated and explained to the
215 consumer.

216 **§ 4-12-22 RESTRICTIONS ON EXTENSIONS OF CONSUMER CREDIT**
217 **TRANSACTIONS.**

218 (A) A credit services organization or credit access business shall not obtain for a
219 consumer, or advise or assist a consumer in obtaining, a cash advance, under
220 an extension of consumer credit transaction, that exceeds more than 20
221 percent of the consumer's gross monthly income.

222 (B) A credit services organization or credit access business shall not obtain for a
223 consumer, or advise or assist a consumer in obtaining, a cash advance in the
224 form of a motor vehicle title loan that exceeds the lesser of:

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

226 (2) 70 percent of the retail value of the motor vehicle.

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

231 (D) A credit services organization or credit access business shall not obtain for a
232 consumer, or advise or assist a consumer in obtaining, an extension of
233 consumer credit transaction that by its terms:

234 (1) requires repayment in five payments or more of the total amount of the
235 extension of consumer credit transaction, including any principal,
236 interest, fees, valuable consideration, credit access business fees, and any
237 other charges or costs; and

238 (2) fails to reduce by at least 25 percent per payment the total amount of the
239 extension of consumer credit transaction, including any principal,
240 interest, fees, valuable consideration, credit access business fees, and any
241 other charges or costs.

242 (E) A credit services organization or credit access business shall not refinance or
243 renew an extension of consumer credit transaction, unless the total amount of

244 the extension of consumer credit transaction, including any principal, interest,
245 fees, valuable consideration, credit access business fees, and any other charges
246 or costs, is due in a single payment.

247 (F) A credit services organization or credit access business that refinances or
248 renews an extension of consumer credit transaction under Subsection (E):

249 (1) may not refinance or renew the extension of consumer credit transaction
250 more than three times; and

251 (2) the minimum payment amount due to refinance or renew such extension
252 of consumer credit transaction must reduce by at least 25 percent the total
253 amount of the extension of consumer credit transaction, including any
254 principal, interest, fees, valuable consideration, credit access business
255 fees, and any other charges or costs, such that the total amount owed by
256 the consumer is paid in full after a maximum of three refinances or
257 renewals.

258 (G) For purposes of this section, an extension of consumer credit transaction that
259 is made to a consumer within seven business days after a previous extension
260 of consumer credit transaction has been paid by the consumer constitutes a
261 refinancing or renewal.

262 **§ 4-12-23 REFERRAL TO CONSUMER CREDIT COUNSELING.**

263 (A) A credit services organization and a credit access business shall provide a list
264 of non-profit agencies that provide financial education, training programs, or
265 cash assistance programs to each consumer who seeks to obtain or seeks
266 advice or assistance on obtaining an extension of consumer credit. The list
267 must be on a form approved by the director and contain information regarding
268 extensions of consumer credit.

269 (B) A credit services organization and a credit access business must conspicuously
270 display a poster, or other similar document, that contains information
271 regarding extensions of consumer credit, as prescribed by the director. The
272 organization or business must display the poster or similar document so that it
273 is clearly visible to each consumer who enters the facility.

274 **§ 4-12-24 RESTRICTIONS ON NON-DEFERRED PRESENTMENT OR**
275 **MOTOR VEHICLE TITLE LOAN EXTENSIONS OF CONSUMER**
276 **CREDIT.**

277 (A) This section applies to an extension of consumer credit transaction that a
278 credit services organization obtains or arranges for a consumer or provides
279 advice or assistance to obtain and that is not a deferred presentment
280 transaction or a motor vehicle title loan.

281 (B) The sum of all valuable consideration, fees, or other charges owed by the
282 consumer to the credit services organization may not exceed 0.1 percent per
283 day of the outstanding balance of the extension of consumer credit.

284 **§ 4-12-25 COMPLIANCE REQUIRED.**

285 A person may not knowingly use a device, subterfuge, or pretense to evade
286 the application of this chapter.

287 **§ 4-12-26 OFFENSE AND PENALTY.**

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

290 (B) Except as provided in Subsection (C), each day that a violation occurs is a
291 separate offense.

292 (C) Each extension of consumer credit transaction is a separate offense if the
293 extension of consumer credit transaction violates:

294 (1) Section 4-12-22 (*Restrictions on Extensions of Consumer Credit*
295 *Transactions*); or

296 (2) Section 4-12-24 (*Restrictions on Non-Deferred Presentment or Motor*
297 *Vehicle Title Loan Extensions of Consumer Credit*).

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

300 (E) Except for an offense under Section 4-12-25 (*Compliance Required*), a
301 culpable mental state is not required for a violation of this chapter and need
302 not be proved.

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