

# Credit Access Business Regulation

Chase Gomillion  
Assistant City Attorney  
City of Austin  
[Chase.gomillion@austintexas.gov](mailto:Chase.gomillion@austintexas.gov)

# What is a Credit Access Business?

Texas Finance Code § 393.001(3): "Credit services organization" means a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

- (A) improving a consumer's credit history or rating;
- (B) obtaining an extension of consumer credit for a consumer; or
- (C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

# What is a Credit Access Business?

Texas Finance Code § 393.221(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.

# What is a Credit Access Business?

A CAB is essentially a broker. Customers seek relatively small loans, the CAB obtains the principal cash from a third-party lender which they then give to the customer, and the CAB charges the fee for the brokerage service.

CAB's are commonly referred to as "payday lenders," referring how access to a bank account into which paychecks are deposited serves as collateral used to secure the transaction. Vehicle titles are also common security for CAB transactions.



# Why Regulation?

In Texas, creditors are limited to charging a maximum interest rate of 10% unless otherwise specified by statute, as per Texas Finance Code § 302.001. Rates exceeding 10% can be considered usurious and can carry civil and criminal penalties for the creditor.

CAB's are able to sidestep this by charging "fees" for their services, rather than interest.

# Why Regulation?

The CAB and CSO industry is regulated at the state level primarily by Chapter 393 of the Texas Finance Code and the Texas Office of Consumer Credit Commissioner (OCCC).

The OCCC is an administrative agency that imposes comprehensive licensing, reporting, and disclosure rules for CAB's (Texas Administrative Code Title 7, Chapter 83), but not substantive limitations on fee amounts or the terms of CSO transactions.

# Why Regulation?

Texas Finance Code § 393.602(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.

# Why Regulation?

TRUTH IN LENDING ACT DISCLOSURE STATEMENT			
<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate.  664.08%	<b>FINANCE CHARGE</b> The dollar amount your credit will cost you.  \$2552.99	<b>Amount Financed</b> The amount of credit provided to you.  \$1500.00	<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled.  \$4052.99
<b>Payment Schedule:</b> Your payment schedule will be as follows:			
Number of Payment	Amount of Payment	When Payments Are Due	
1	\$811.77	10/03/2018	
2	\$811.77	11/03/2018	
3	\$811.77	12/03/2018	
4	\$811.77	01/03/2019	
5	\$805.91	02/04/2019	
6			
7			
8			
9			
10			
11			
12			

# Why Regulation?

## FEDERAL TRUTH-IN-LENDING DISCLOSURES

<b>ANNUAL PERCENTAGE RATE</b> The cost of my credit as a yearly rate.	<b>FINANCE CHARGE</b> The dollar amount the credit will cost me.	<b>AMOUNT FINANCED</b> The amount of credit provided to me or on my behalf.	<b>TOTAL OF PAYMENTS</b> The amount I will have paid after I have made all payments as scheduled.
<b>344.54 %</b>	<b>\$ 1299.27</b>	<b>\$ 1300.00</b>	<b>\$ 2599.27</b>
<b>Payment Schedule:</b> My payment schedule will be as follows:			
Payment #	Payment Amount	Payment Date	
1	\$216.61	03/23/2018	
2	\$216.61	04/06/2018	
3	\$216.61	04/20/2018	
4	\$216.61	05/04/2018	
5	\$216.61	05/18/2018	
6	\$216.61	06/01/2018	
7	\$216.61	06/15/2018	
8	\$216.61	06/29/2018	
9	\$216.61	07/13/2018	
10	\$216.61	07/27/2018	
11	\$216.61	08/10/2018	
12	\$216.56	08/24/2018	
<b>Prepayment:</b> I may prepay this Note without penalty.			
<b>Late Fee:</b> The greater of 5% of the payment amount due or \$7.50 if payment is in default for a period of 10 days or more.			
<i>See the remainder of this document for additional information about non-payment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.</i>			

# Why Regulation?

## FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of my credit as a yearly rate. 209.66%	The dollar amount the credit will cost me. \$891.10	The amount of credit provided to me or on my behalf. \$1,000.00	The amount I will have paid after I have made all payments as scheduled. \$1,891.10

**Payment Schedule:** My payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due (each a "Payment Due Date")
1 payment to CSO	\$178.88	11/23/2018
1 payment to CSO	\$167.70	12/23/2018
1 payment to CSO	\$167.70	01/23/2019
1 payment to CSO	\$167.70	02/23/2019
1 payment to CSO	\$167.70	
1 payment to Lender	\$1,041.42	03/23/2019

**Security:** I am giving a security interest in the motor vehicle described above (the "Vehicle")

**Lien Filing Fee:** \$33.00

**Prepayment:** Lender will not charge a prepayment penalty/charge if I pay all or part of the principal balance before the date on which principal is due.

**Late Fee:** \$7.50 or 5% of the scheduled payment amount (whichever amount is greater), for any payment to Lender not paid after the 10th day after the date on which the payment is due.

*See the remainder of this Note for additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment penalties.*

# Why Regulation?

These uncapped fees represent a significant financial burden on consumers. Vehicle repossession, becoming trapped in a cycle of debt, and dependence on short term lending are examples of the harmful effects that industry practices can have on communities.

Multiple social advocacy and public policy organizations have extensively studied and documented these issues:

<http://www.pewtrusts.org/~media/assets/2015/03/autotitleloansreport.pdf>

[https://www.texasappleseed.org/sites/default/files/Payday-Auto-Title-Lending-Tx\\_MktOv-Trends2012-2015Rev.pdf](https://www.texasappleseed.org/sites/default/files/Payday-Auto-Title-Lending-Tx_MktOv-Trends2012-2015Rev.pdf)

# Local Ordinances

Beginning in 2011, multiple cities in Texas began adopting ordinances that were based off of the same basic template: the “Unified Ordinance.” An example can be found here: <https://www.tml.org/313/Example-Ordinance>

Currently, a version of the ordinance scheme has been adopted by 45 cities in Texas, including Austin, Dallas, Houston, and San Antonio.

# Local Ordinances

Features of the ordinances include:

- Registration and licensing at the municipal level.
- Reporting requirements.
- Requirements that CAB's and CSO's provide education and information to increase transparency to consumers.
- Perhaps most importantly, substantive restrictions on CAB and CSO transactions.
- Requirements are enforced through Class C misdemeanor penalty which carry a \$500.00 fine per offense.

# Local Ordinances

Austin City Code § 4-12-22(D) (2015 version):

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 25% of the total amount of the transaction, including the principal, fees, interest, and any other charges or costs that the consumer owes the credit access business. An extension of consumer credit that provides for repayment in installments of the principal, fees, interest, and any other charges or costs that the consumer owes the credit access business may not be refinanced or renewed.

# Local Ordinances

Example: A customer wants a \$1,000.00 loan from a CAB. The CAB charges a \$950.00 fee and the loan has a 5% interest rate, totaling \$50.00. The customer would thus owe a total of \$2,000.00 in principle, interest, and fees for the entire transaction. With Austin City Code § 4-12-22(D), that repayment schedule would look like this:

Payment 1: \$500.00

Payment 2: \$500.00

Payment 3: \$500.00

Payment 4: \$500.00

At the end of which, the debt obligation is totally discharged.

# Legal Challenges

The CAB industry has brought multiple lawsuits against several different cities and raised legal challenges within criminal prosecutions. Prominent cases are as follows:

*Consumer Serv. Alliance of Tex., Inc., v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.): Lawsuit for declaratory and injunctive relief by CAB trade association against the City of Dallas claiming regulatory ordinances were preempted by provisions within Chapter 393 of the Texas Finance Code. The trial court granted Dallas' plea to the jurisdiction asserting plaintiffs had not met the criteria to invoke jurisdiction of a civil court over constitutional challenge to a penal ordinance. Appellate court affirmed the plea to the jurisdiction on the same grounds. No ruling on preemption claim.

# Legal Challenges

*ACE Cash Express, Inc. v. City of Denton*, No. 02–14–00146–CV, 2015 WL 3523963 (Tex. App.—Fort Worth June 4, 2015, pet. denied) (mem. op.): Similar to the *Consumer Service Alliance* case. CAB brought suit against the City of Denton alleging state law preemption of local ordinances and sought declaratory and injunctive relief. The trial court granted Denton’s PTJ, and appellate court upheld the trial court’s ruling. No ruling on substantive preemption issue either.

# Legal Challenges

*ACSO of Texas & The Money Store vs. City of Austin*, Cause Nos. C-1-CR-17-100025 & C-1-CR-17-100026:

- Began as criminal prosecutions in the Austin Municipal Court for violations of Austin City Code § 4-12-22(D).
- Both CAB's filed motions to quash the City's complaints alleging state law preemption. Both motions were granted.
- The City appealed to Travis County Court at Law #2, which overturned the Austin Municipal Court's order quashing the complaints, agreeing with the City that there is no conflict between the Texas Finance Code and Austin's CAB ordinances.
- County courts ruling on appeals from municipal courts cannot publish opinions, so their rulings lack broad precedential effect.

# Legal Challenges

Preemption is derived from the Texas Constitution Art. XI, § 5, which states that no local ordinance may contain any provision inconsistent with the laws of the state.

Absent some explicit statement of legislative intent to preempt local control, a claimant must establish that an ordinance irreconcilably conflicts with state law where no reasonable interpretation of the two existing side by side can be achieved. *City of Beaumont v. Fall*, 291 S.W. 202, 206 (Tex. Comm'n App. 1927).

# Legal Challenges

Texas Finance Code § 393.602(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.

# Legal Challenges

*TitleMax of Texas, Inc. v. City of Austin, et al.*, No. D-1-GN-19-002613,  
Travis County 353<sup>rd</sup> Civil District Court:

- Plaintiff brought suit against the City of Austin seeking declaratory and injunctive relief alleging various theories of unconstitutionality, including preemption.
- The City filed a PTJ, arguing that threshold for civil jurisdiction over a challenge to the constitutionality of a penal ordinance was not met.
- Trial court granted the City's PTJ on November 27, 2019.
- Case is currently on appeal to the First Court of Appeals in Houston.

# Future Issues

- The Texas Attorney General issued opinion number KP-0277 on November 1, 2019, addressing the question of whether a CSO may obtain for or assist a consumer in obtaining an extension of consumer credit in a form other than what the Texas Finance Code defines as CAB-specific transactions.
- The Texas AG answered this question in the affirmative. CSO's are not restricted by the Finance Code in offering such services in other forms besides deferred presentment transactions or motor vehicle title loans.
- However, the AG cautioned against using a “device, fraud or pretense” to evade Texas Finance Code Chapter 393's requirements.

# Future Issues

- On May 21, 2020, the Austin City Council passed Ordinance No. 20200521-28, which was a comprehensive amendment to Chapter 4-12 of the Austin City Code.
- Amendments broadened the reach of Austin's regulations to include both CSO's and CAB's, expanded the definition of covered transactions for clarity, and added a new offense for knowing evasion of the Chapter. All were borne out of issues identified in recent litigation.
- Amendments took effect on June 1, 2020.