

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AMENDING CHAPTER 20 "BUSINESSES" OF THE CODE OF ORDINANCES, BAYTOWN, TEXAS TO ADD A NEW ARTICLE TO BE NUMBERED AND ENTITLED ARTICLE II "CREDIT ACCESS BUSINESSES" TO SET FORTH REGISTRATION REQUIREMENTS AND CREDIT EXTENSION GUIDELINES FOR CREDIT ACCESS BUSINESSES; PROVIDING A REPEALING CLAUSE; CONTAINING A SAVINGS CLAUSE; PRESCRIBING A MAXIMUM PENALTY OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00); AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE THEREOF.

WHEREAS, certain credit access businesses engage in abusive and predatory lending practices, offering easy money to those members of our community who are in a tight spot with onerous terms and fees; and

WHEREAS, the practices of certain access businesses cause members of our community to become trapped in a cycle of short term, high interest loans resulting in large debt and huge payments; and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why* (July 2012), wrote that "payday loans are sold as two-week credit products that provide fast cash, but borrowers are actually indebted for an average of five months per year." The report further noted that "on average, a borrower takes out eight loans of \$375 each per year and spends \$520 on interest"; and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why* (July 2012), also noted: "How much borrowers spend on loans depends heavily on the fees permitted by their state. The same \$500 storefront loan would generally cost about \$55 in Florida, \$75 in Nebraska, \$87.50 in Alabama, and \$100 in Texas, even if it were provided by the same national company in all those states. Previous research has found that lenders tend to charge the maximum permitted in a state"; and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why* (July 2012), also stated that "the vast majority of borrowers use the loans on a long-term basis, not temporary one. Thus it seems that the payday loan industry is selling a product few people use as designed and that imposes debt that is consistently more costly and longer lasting than advertised"; and

WHEREAS, the Community Financial Services Association of America (CFSA), the national trade association for companies that offer small dollar, short-term loans or payday advances includes the following in the "Member Best Practices" as listed on its internet site (<http://cfsaa.com/cfsa-member-best-practices.aspx>): "Members shall not allow customers to rollover a payday advance (the extension of an outstanding advance by payment of only a fee) unless expressly authorized by state law, but in such cases where authorized will limit rollovers to four or the state limit, whichever is less." The need for consumer understanding was also outlined on this website: "A contract between a member and the customer must fully outline the terms of the payday advance transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR")"; and

WHEREAS, the Center for Responsible Lending, a non-profit, non-partisan organization, states on its internet site (<http://www.responsiblelending.org/other-consumer-loans/tools-resources/fast-facts.html>) that: “car title loans are based on the value of a borrower’s car - the ability to repay the loans is not [a] factor in the lending decision...”; “loan rates for a car title are typically 20-30 times that of rates charged by credit card issuers...”; “the average car title customer renews their loan 8 times...”; and, “on a \$500 title loan, this average customer will pay back \$650 in interest over eight months; the principal borrowed will be in addition;” and

WHEREAS, lenders hold onto the motor vehicle title and when borrowers cannot continue to pay the fees, they can lose their vehicles, which can drastically affect the borrower’s means of transportation for work and other essential household functions; NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS:

Section 1: That all matters and facts set forth in the recitals hereinabove are found to be true and such recitals are hereby approved and made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings by the City Council of the City of Baytown, Texas.

Section 2: That Chapter 20 “Businesses” of the Code of Ordinances, Baytown, Texas, is hereby amended to add a new article to be numbered and entitled Article II “Credit Access Businesses,” which article shall read as follows:.

CHAPTER 20. BUSINESSES

ARTICLE II. Credit Access Businesses

Sec. 20-21. Short title and purpose.

(a) This article may be known and cited as “Credit Access Businesses Regulation.”

(b) The purpose of this article is to protect the welfare of the citizens of the City of Baytown by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this article establishes a registration program for credit access businesses, imposes restrictions on extensions of consumer credit made by credit access businesses, and imposes recordkeeping requirements on credit access businesses.

Sec. 20-22. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Certificate of registration means a certificate of registration issued by the director under this article to the owner or operator of a credit access business.

Consumer means an individual who is solicited to purchase or who purchases the services of a credit access business.

Consumer's language of preference is the language the consumer understands best.

Credit access business has the meaning given that term in V.T.C.A., Finance Code §363.601.

Deferred presentment transaction has the meaning given that term in V.T.C.A., Finance Code §363.601.

Director means the director of the department designated by the city council, city manager, or city council or city manager's designee, to enforce and administer this chapter.

Extension of consumer credit has the meaning given that term in V.T.C.A., Finance Code §393.001.

Motor vehicle title loan has the meaning given that term in V.T.C.A., Finance Code §363.601.

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 article.

State license means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under V.T.C.A., Finance Code ch. 393, subch. G.

Sec. 20-23. Violations; penalty.

- (a) A person who violates a provision of this article, or who fails to perform an act required of the person by this article, commits an offense. A person commits a separate offense for each and every violation relating to an extension of consumer credit, and for each day during which a violation is committed, permitted, or continued.
- (b) An offense under this article is punishable by a fine of not more than \$500 per day in accordance with section 1-14 of the code.
- (c) A culpable mental state is not required for the commission of an offense under this article and need not be proved.
- (d) The penalties provided for in subsection (b) are in addition to any other remedies that the city may have under city ordinances and state law.

Sec. 20-24. Defenses.

It is a defense to prosecution under this article that at the time of the alleged offense, the person was not required to be licensed by the state as a credit access business under V.T.C.A., Finance Code ch. 393, subch. G.

Sec. 20-25. Registration required.

A person commits an offense if the person acts, operates, or conducts business as a credit access business without a valid certificate of registration. A certificate of registration is required for each physically separate credit access business.

Sec. 20-26. 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 applicant.
 - (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 business¹, 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 V.T.C.A., Finance Code ch. 393, subch. G.
 - (5) A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the code.
 - (6) A non-refundable application fee in the amount of \$50.00.
- (b) An applicant or 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.

Sec. 20-27. Issuance and display of certificate of registration; presentment upon request.

- (a) The director shall issue to the applicant a certificate of registration upon receiving a completed application under section 20-26.
- (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 any peace officer for examination.

¹ Not in model ordinance.

Sec. 20-28. 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 revocation, suspension, surrender, expiration without renewal, or other termination of the registrant's state license.
- (b) A certificate of registration may be renewed by making application in accordance with section 20-26. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

Sec. 20-29. Non-transferability.

A certificate of registration for a credit access business is not transferable.

Sec. 20-29.5. Location of credit access businesses.²

Any lot containing a credit access business establishment shall be located at least 1,000 feet from any lot containing another credit access business establishment, as measured in a straight line between the nearest points of one lot to the other lot.

Sec. 20-30. 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 length of the extension of consumer credit, including the number of installments and renewals;
 - (4) The fees charged by the credit access business to arrange or obtain an extension of consumer credit; and
 - (5) The documentation used to establish a consumer's income under section 20-31 of this article.
- (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 a consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

² Not in model ordinance.

- (c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under V.T.C.A., Finance Code §393.627.
- (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 by the city upon request during the usual and customary business hours of the credit access business.

Sec. 20-31. Restriction on Extension 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 20 percent 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 assists a consumer in obtaining in the form of a motor vehicle title loan may not exceed the lesser of:
 - (1) Three percent of the consumer's gross annual income; or
 - (2) 70 percent of the retail value of the motor vehicle.
- (c) A credit access business shall use a paycheck or other 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 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 percent 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 assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. Proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit.
- (f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.

Sec. 20-32. Requirement of consumer understanding of agreement.

- (a) Every 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), must be written in the consumer's language of preference. Every credit access business location must maintain on its premises, to be available for use by consumers, agreements in the English and Spanish languages.

- (b) For every consumer who cannot read, every 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) must be read to the consumer in its entirety in the consumer's language of preference, prior to the consumer's signature.
- (c) For every consumer who cannot read, every disclosure and notice required by law must be read to the consumer in its entirety in the consumer's language of preference, prior to the consumer's signature.

Sec. 20-33. 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, and must include the information required by section 20-30(a)(1)-(5) of this article specific to the loan agreement with the consumer. If the director has prescribed a form in the consumer's language of preference, the form must be provided in the consumer's language of preference.

Section 3: Any person who fails to comply with any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 5: If any provisions, section, exception, subsection, paragraph, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and to this end all provisions of this ordinance are declared to be severable.

Section 6: This ordinance shall take effect from and after ten (10) days from its passage by the City Council. The City Clerk is hereby directed to give notice hereof by causing the caption of this ordinance to be published in the official newspaper of the City of Baytown at least twice within ten (10) days after passage of this ordinance.

INTRODUCED, READ and PASSED by the affirmative vote of the City Council of the City of Baytown, this the ____ day of _____, 2014.

STEPHEN H. DONCARLOS, Mayor

ATTEST:

LETICIA BRYSCH, City Clerk

APPROVED AS TO FORM:

IGNACIO RAMIREZ, SR., City Attorney