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Credit Services Organization Bulletin

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The Office of Consumer Credit Commissioner (OCCC) is concerned about a business practice that some credit services organizations (CSOs) are using. The business practice appears to be designed to avoid compliance with Chapter 393 of the Texas Finance Code. Continued use of the practice could result in the Texas Legislature taking adverse action in the upcoming legislative session and could also lead to civil liability on the part of the CSO.

The business practice at issue is as follows. As contemplated by Chapter 393, the CSO assists the consumer in obtaining credit and charges a fee for this service. But the CSO does not take a post-dated check from the consumer or, in the case of a loan secured by the consumer's motor vehicle, the motor vehicle's title. By not requiring the consumer to provide a post-dated check or the motor vehicle's title, the CSO contends that the activity falls outside the definition of "credit access business" (CAB) and therefore escapes the regulatory requirements imposed on CABs in Chapter 393 of the Texas Finance Code. The Texas Finance Code does not specifically prohibit this practice; nevertheless, this transaction could be seen as an attempt to evade the regulatory requirements of Chapter 393 and an attempt to circumvent the law.

The OCCC believes that this business practice conflicts with the legislative intent manifested in house bills 2592 and 2594 passed in 2011. The purpose of these bills was to provide a licensing and regulatory framework to govern credit service organizations who obtain credit for Texas consumers. The OCCC believes that the legislature intended that the bills cover transactions where the CSO obtains an extension of credit for a consumer, even where the CSO does not require the consumer to provide a post-dated check, debit authorization, or motor vehicle title. If the legislature finds that this business practice conflicts with its intent, it could consider passing additional legislation that would put further regulatory restrictions on CSOs that obtain extensions of credit for consumers.

This practice could also subject a CSO to civil liability under the Texas Deceptive Trade Practices Act or under Chapter 393. If a consumer brought suit against a CSO who was engaged in the business practice described above, it is possible that a court could find for the consumer and enter a judgment against the CSO.

The OCCC is concerned about the potential legislative reaction to this practice and the possibility that the legislature will see this practice as a subterfuge intended to circumvent the regulatory requirements of Chapter 393. The OCCC is also concerned about the civil liability a CSO engaged in this practice could face. The agency strongly urges any CSO currently engaged in this practice to consider the legislative and legal consequences.