

By: Shine, Button

H.B. No. 4266

Substitute the following for H.B. No. 4266:

By: Parker

C.S.H.B. No. 4266

A BILL TO BE ENTITLED

AN ACT

relating to credit repair services performed by credit repair organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 394, Finance Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CREDIT REPAIR ORGANIZATIONS

Sec. 394.301. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the consumer credit commissioner.

(2) "Credit repair organization" means an organization that provides, or represents that the organization 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; or

(B) providing advice or assistance to a consumer with regard to Paragraph (A).

(3) "Finance commission" means the Finance Commission of Texas.

Sec. 394.302. DISCLOSURE STATEMENT. Before executing a contract with a consumer, or receiving valuable consideration from a consumer, a credit repair organization shall provide the consumer

1 with a document containing:

2 (1) a list of the inaccurate or obsolete adverse
3 information appearing on the consumer's credit report which the
4 credit repair organization will seek to delete or modify;

5 (2) the basis for the deletion or modification of the
6 adverse information;

7 (3) a description of each modification sought; and

8 (4) the anticipated payment required by the consumer
9 to achieve each account deletion or modification, if applicable.

10 Sec. 394.303. COMMUNICATIONS WITH CONSUMER REPORTING
11 AGENCY OR DATA FURNISHER. (a) A credit repair organization or a
12 representative of the organization may not:

13 (1) communicate with a consumer reporting agency,
14 creditor, debt collector, or debt buyer about a consumer without
15 the written authorization of the consumer; or

16 (2) communicate with a consumer reporting agency,
17 creditor, debt collector, or debt buyer by impersonating a consumer
18 and failing to identify as a credit repair organization if the
19 credit repair organization initiates the communication.

20 (b) A credit repair organization or a representative of the
21 organization shall provide with the first written communication to
22 a consumer reporting agency or data furnisher sufficient
23 information to investigate a dispute of an item related to an
24 extension of consumer credit that is in the creditor's, debt
25 collector's, debt buyer's, or consumer reporting agency's files,
26 including any relevant information and copies of documents
27 concerning the disputed item.

1 Sec. 394.304. REMOVAL OF ACCURATE INFORMATION PROHIBITED.

2 A credit repair organization or a representative of the
3 organization may not seek to remove, or advise a consumer to remove
4 or seek to remove, adverse information from the consumer's credit
5 report that is known to the credit repair organization, or that by
6 the exercise of reasonable care should be known to the credit repair
7 organization, to be accurate.

8 Sec. 394.305. ITEMIZED STATEMENT REQUIRED; PERFORMANCE OF
9 AGREED SERVICES. (a) A credit repair organization or a
10 representative of the organization shall provide an itemized
11 monthly statement to the consumer showing each service performed
12 for the consumer under the contract, including:

13 (1) each communication and credit check made on behalf
14 of the consumer; and

15 (2) the date of each service performed.

16 (b) A credit repair organization or a representative of the
17 organization must perform the agreed services not later than the
18 180th day after the date the consumer signs the contract for those
19 services.

20 Sec. 394.306. RESTRICTIONS ON CERTAIN COMMUNICATIONS. A
21 credit repair organization or a representative of the organization
22 may not:

23 (1) send a communication, directly or indirectly, to a
24 person on behalf of a consumer without disclosing the sender's
25 identity, street address, telephone number, and facsimile number,
26 and, if applicable, the name and street address of any parent
27 organization of the sender;

1 (2) send a written communication on behalf of a
2 consumer to a person other than the consumer without providing a
3 copy of the communication to the consumer not later than the fifth
4 day after the date the communication is sent; or

5 (3) send a written communication that contains
6 personal information of a consumer without redacting the consumer's
7 personal information to include only:

8 (A) the last four digits of the consumer's social
9 security number, taxpayer identification number, or state
10 identification number;

11 (B) the last four digits of the consumer's
12 financial account number, credit card number, or debit card number;
13 or

14 (C) the month and year of the consumer's date of
15 birth, unless otherwise required by law.

16 Sec. 394.307. DAMAGES. (a) A consumer injured by a
17 violation of this subchapter is entitled to recover:

18 (1) actual damages;

19 (2) injunctive and equitable relief; and

20 (3) the costs of the action, including reasonable
21 attorney's fees.

22 (b) In addition to an award under Subsection (a), a consumer
23 who prevails in an action under this subchapter may recover
24 exemplary damages in an amount of not less than \$100 or more than
25 \$1,000 in accordance with Chapter 41, Civil Practice and Remedies
26 Code.

27 Sec. 394.308. DUTIES AND REMEDIES ADDITIONAL TO OTHER LAW.

1 (a) The duties and responsibilities of a credit repair
2 organization under this subchapter are in addition to and not in
3 replacement of the duties and responsibilities of a credit repair
4 organization under other laws of this state.

5 (b) Remedies and damages afforded under this subchapter to
6 consumers who are injured by a violation of this subchapter are in
7 addition to and not in replacement of remedies and damages afforded
8 under other laws of this state to those consumers.

9 Sec. 394.309. RULES; ADDITIONAL ENFORCEMENT POWERS. (a)
10 The finance commission may adopt rules to carry out this
11 subchapter.

12 (b) The commissioner may:

13 (1) investigate the activities of a person subject to
14 this subchapter to determine compliance with this subchapter,
15 including examination of the books, accounts, and records of a
16 credit repair organization; and

17 (2) require or permit a person to file a statement
18 under oath and otherwise subject to the penalties of perjury as to
19 all the facts and circumstances of the matter to be investigated.

20 (c) Failure to comply with an investigation under
21 Subsection (b) is grounds for issuance of a cease and desist order.

22 (d) The commissioner may receive and act on complaints, take
23 action to obtain voluntary compliance with this subchapter, and
24 refer cases to the attorney general for prosecution.

25 (e) The commissioner may enforce this subchapter and rules
26 adopted under this subchapter by:

27 (1) ordering the violator to cease and desist from the

1 violation and any similar violations;

2 (2) ordering the violator to take affirmative action
3 to correct the violation, including the restitution of money or
4 property to a person aggrieved by the violation; or

5 (3) imposing an administrative penalty not to exceed
6 \$1,000 for each violation.

7 (f) In determining the amount of an administrative penalty
8 to be imposed under this section, the commissioner shall consider:

9 (1) the seriousness of the violation;

10 (2) the good faith of the violator;

11 (3) the violator's history of previous violations;

12 (4) the deleterious effect of the violation on the
13 public;

14 (5) the assets of the violator; and

15 (6) any other factors the commissioner considers
16 relevant.

17 (g) The commissioner, on relation of the attorney general at
18 the request of the commissioner, may bring an action in district
19 court to enjoin a person from engaging in an act or continuing a
20 course of action that violates this subchapter. The court may order
21 a preliminary or final injunction.

22 SECTION 2. Sections 394.302 and 394.305, Finance Code, as
23 added by this Act, apply only to a contract entered into on or after
24 the effective date of this Act. A contract entered into before the
25 effective date of this Act is governed by the law in effect on the
26 date the contract was entered into, and the former law is continued
27 in effect for that purpose.

1 SECTION 3. This Act takes effect September 1, 2021.