

BILL ANALYSIS

C.S.H.B. 80
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, credit reporting bureaus are not defined or regulated in Texas. These entities determine a consumer's eligibility for financial transactions, employment, insurance coverage, utility contracts, residential contracts, and accounts at financial institutions. Consumers are increasingly judged by the information in their credit reports, whether accurate or not. Attempting to identify and correct errors in a credit report is timely, costly, and difficult. Identity theft is widespread and has increased consumers' need for accurate credit report information, so the ability to quickly and easily correct false information is crucial.

C.S.H.B. 80 defines and licenses credit reporting bureaus, provides criminal and administrative penalties, and requires rules to be adopted to ensure consumer protections.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 80 amends the Finance Code to create a credit reporting bureau license, which authorizes a person, as a service or for consideration, to engage in the practice of assembling or reporting credit information about individuals in Texas for the purpose of furnishing the information to a third party.

C.S.H.B. 80 requires the Office of Consumer Credit Commissioner to administer the licensing provisions and authorizes the Finance Commission of Texas to adopt rules necessary for the enforcement and administration of those provisions, including rules relating to a license application and rules to accomplish the purposes of state laws regulating a consumer credit reporting agency and any other law applicable to a credit reporting bureau. The bill requires the commission, in adopting such rules, to consider the necessity to promote a stable consumer reporting environment, to provide adequate protection to consumers and their personal identifying information, and to ensure a consumer's ability to correct information provided by a credit reporting bureau to third parties.

C.S.H.B. 80 requires an application for a license to contain certain information about the applicant and the applicant's principals and be accompanied by a nonrefundable application fee, an audited financial statement of the applicant, the location of the applicant's home office and of the main office in Texas, and a surety bond in the amount of \$100,000. The bill sets forth procedures and conditions for the issuance, denial, and revocation of a license and requirements for maintaining a license. The bill requires a license holder, not later than June 30 of each year, to pay the consumer credit commissioner a license renewal fee in an amount specified by rule and specifies that the license application fee satisfies the license fee requirement for all or part of the first license year.

C.S.H.B. 80 makes it a third degree felony to intentionally make an untrue statement of a material fact in an application or report required to be filed with the commissioner under these provisions or to engage in the practices of a credit reporting bureau without a license. The bill authorizes the commissioner to impose an administrative penalty in an amount specified by the commissioner for a violation of these provisions or of a rule adopted or commissioner's order issued under these provisions. The bill caps the amount of the penalty at \$1,000 for each violation or \$1,000 for each day the violation continues and requires the commissioner, in determining the amount of the penalty, to consider certain factors enumerated in the bill.

C.S.H.B. 80 authorizes a stay of the enforcement of the penalty during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. The bill authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules. The bill authorizes the attorney general to sue to collect the penalty, and provides that a proceeding to impose the penalty is to be a contested case under state law.

C.S.H.B. 80 authorizes the attorney general to sue on behalf of claimants on the required bond in a district court in Travis County, either in one action or successive actions. The bill defines "commissioner," "credit reporting bureau," "finance commission," "office," and "principal."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 80 differs from the original by defining "commissioner" as the consumer credit commissioner of Texas, whereas the original defines the term to mean the banking commissioner of Texas. The substitute removes a definition of "department" in the original meaning the Texas Department of Banking and adds definitions not in the original of "finance commission," meaning the Finance Commission of Texas, and "office" meaning the Office of Consumer Credit Commissioner.

C.S.H.B. 80 adds a provision not in the original specifying that the term "credit reporting bureau" does not include a business or other person that reports to a credit reporting bureau information relating to a debt owed to that business or person or to a business or other person who holds a general distinguishing number relating to automotive vehicle sales.

C.S.H.B. 80 differs from the original by requiring the Office of Consumer Credit Commissioner to administer the bill's licensing provisions, whereas the original assigned that function to the Texas Department of Banking.

C.S.H.B. 80 adds a provision not in the original requiring that finance commission rules adopted relating to the regulation of credit reporting bureaus ensure a consumer's ability to correct information provided by a credit reporting bureau to third parties.

C.S.H.B. 80 adds a provision not in the original permitting enforcement of the administrative penalty for violating its provisions to be stayed during the time the order is under judicial review under certain conditions. The substitute adds provisions not in the original authorizing the attorney general to sue to collect the penalty and providing that a proceeding to impose the penalty is considered to be a contested case under state law.