

## **BILL ANALYSIS**

C.S.H.B. 975  
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Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that there have been too many cases of credit services organizations filing bad-faith criminal complaints against consumers and that consumers should be protected from this behavior. C.S.H.B. 975 seeks to provide this protection by prohibiting a credit services organization or its representatives from filing or threatening to file certain criminal complaints against a consumer without certain evidence.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 975 amends the Finance Code to prohibit a credit services organization or a representative of a credit services organization from filing a criminal complaint or threatening to file a criminal complaint related to an extension of consumer credit against the consumer for an offense of theft, theft of service, or issuance of a bad check or similar sight order or referring or threatening to refer a consumer to a prosecutor for the collection and processing of a check or similar sight order that was issued in relation to an extension of consumer credit unless the credit services organization or representative has extrinsic evidence sufficient to prove that the consumer has committed such an offense. The bill establishes that evidence of a denied or returned payment due to insufficient funds or account closure is not extrinsic evidence of an offense of theft, theft of service, or issuance of a bad check or similar sight order and establishes that extrinsic evidence of such offenses includes evidence that the consumer was not an authorized user of the account on which the payment was drawn at the time the payment was provided.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 975 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 393, Finance Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. CRIMINAL CHARGES AGAINST CONSUMER

Sec. 393.421. CRIMINAL CHARGE AGAINST CONSUMER. (a) A credit services organization or a representative of a credit services organization may not, unless the credit services organization or representative of the credit services organization has extrinsic evidence sufficient to prove that the consumer has committed an offense under Section 31.03, 31.04, or 32.41, Penal Code:

(1) file a criminal complaint or threaten to file a criminal complaint related to an extension of consumer credit against the consumer for an offense under Section 31.03, 31.04, or 32.41, Penal Code; or

(2) refer or threaten to refer a consumer to a prosecutor under Article 102.007, Code of Criminal Procedure, for the collection and processing of a check or similar sight order that was issued in relation to an extension of consumer credit.

(b) Notwithstanding the presumptions provided by Sections 31.06(a) and 32.41(b), Penal Code, evidence of a denied or returned payment due to insufficient funds or account closure is not extrinsic evidence of an offense under Section 31.03, 31.04, or 32.41, Penal Code.

(c) Extrinsic evidence of an offense under Section 31.03, 31.04, or 32.41, Penal Code, includes evidence that the consumer was not an authorized user of the account on which the payment was drawn at the time the payment was provided.

Sec. 393.422. CIVIL REMEDIES. (a) For a violation of this subchapter against a consumer, the consumer may bring an action to:

(1) obtain injunctive relief to restrain the violation or to correct any negative credit issues caused by the violation;

(2) void the contract for the debt or the debt services; or

(3) recover any actual damages sustained as a result of the violation.

(b) A consumer who successfully maintains an action under Subsection (a) is entitled to reasonable attorney's fees and court costs.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 393, Finance Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. CRIMINAL CHARGES AGAINST CONSUMER

Sec. 393.421. CRIMINAL CHARGE AGAINST CONSUMER. (a) A credit services organization or a representative of a credit services organization may not, unless the credit services organization or representative of the credit services organization has extrinsic evidence sufficient to prove that the consumer has committed an offense under Section 31.03, 31.04, or 32.41, Penal Code:

(1) file a criminal complaint or threaten to file a criminal complaint related to an extension of consumer credit against the consumer for an offense under Section 31.03, 31.04, or 32.41, Penal Code; or

(2) refer or threaten to refer a consumer to a prosecutor under Article 102.007, Code of Criminal Procedure, for the collection and processing of a check or similar sight order that was issued in relation to an extension of consumer credit.

(b) Notwithstanding the presumptions provided by Sections 31.06(a) and 32.41(b), Penal Code, evidence of a denied or returned payment due to insufficient funds or account closure is not extrinsic evidence of an offense under Section 31.03, 31.04, or 32.41, Penal Code.

(c) Extrinsic evidence of an offense under Section 31.03, 31.04, or 32.41, Penal Code, includes evidence that the consumer was not an authorized user of the account on which the payment was drawn at the time the payment was provided.

(c) If the attorney general reasonably believes that a person is violating or is about to violate this subchapter, the attorney general may bring an action in the name of this state against the person to restrain or enjoin the person from violating this subchapter.

(d) A consumer who successfully maintains an action under this section for a violation of this subchapter is entitled to not less than \$100 for each violation.

SECTION 2. This Act takes effect September 1, 2017.

SECTION 2. Same as introduced version.