87R16481 MWC-F

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 with a document containing:

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

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

(3)  a description of each modification sought; and

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

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

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

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

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

Sec. 394.304.  REMOVAL OF ACCURATE INFORMATION PROHIBITED. A credit repair organization or a representative of the organization may not seek to remove, or advise a consumer to remove or seek to remove, adverse information from the consumer's credit report that is known to the credit repair organization, or that by the exercise of reasonable care should be known to the credit repair organization, to be accurate.

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

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

(2)  the date of each service performed.

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

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

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

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

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

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

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

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

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

(1)  actual damages;

(2)  injunctive and equitable relief; and

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

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

Sec. 394.308.  DUTIES AND REMEDIES ADDITIONAL TO OTHER LAW. (a) The duties and responsibilities of a credit repair organization under this subchapter are in addition to and not in replacement of the duties and responsibilities of a credit repair organization under other laws of this state.

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

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

(b)  The commissioner may:

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

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

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

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

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

(1)  ordering the violator to cease and desist from the violation and any similar violations;

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

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

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

(1)  the seriousness of the violation;

(2)  the good faith of the violator;

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

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

(5)  the assets of the violator; and

(6)  any other factors the commissioner considers relevant.

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

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

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