

## **BILL ANALYSIS**

C.S.H.B. 4266  
By: Shine  
Pensions, Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

During the COVID-19 pandemic, many Texans have lost their jobs and have relied on credit cards and federal stimulus funds to survive. It has been suggested that protecting consumers against a credit repair organization's aggressive tactics is needed now more than ever. Credit repair organizations have come under intense scrutiny by the Consumer Financial Protection Bureau, state attorneys general, and consumer watchdogs across the country due to possible unlawful fees, aggressive and misleading marketing, and deceptive representations to consumers. Consumers are harmed when they pay for these marketed services that promise to improve credit scores but ultimately do not and, moreover, often cause more financial harm to the consumer.

C.S.H.B. 4266 seeks to provide consumers protection by requiring credit repair organizations to provide certain notification to consumers relating to the consumer's credit report and by prohibiting certain activities of these organizations which should benefit consumers through greater transparency, data protection, and fairness and accuracy in communications.

### **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 rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 4266 amends the Finance Code to require a credit repair organization, before executing a contract with or receiving valuable consideration from a consumer, to provide the consumer with a document containing the following:

- 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;
- the basis for the deletion or modification of the adverse information;
- a description of each modification sought; and
- the anticipated payment required by the consumer to achieve each account deletion or modification, if applicable.

The bill prohibits a credit repair organization from doing the following:

- communicating with a consumer reporting agency, creditor, debt collector, or debt buyer about a consumer without the written authorization of the consumer; or
- communicating with those entities by impersonating a consumer and failing to identify as a credit repair organization if the credit repair organization initiates the communication.

The bill requires a credit repair organization or a representative of the organization to 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.

C.S.H.B. 4266 requires a credit repair organization or a representative of the organization to provide an itemized monthly statement to the consumer showing each service performed for the consumer under the contract, including each communication and credit check made on behalf of the consumer and the date of each service performed. The bill requires the organization or representative to perform the agreed services not later than the 180th day after the date the consumer signs the contract for those services.

C.S.H.B. 4266 prohibits a credit repair organization or a representative of the organization from doing the following:

- seeking to remove, or advising a consumer to remove or seek to remove, adverse information from the consumer's credit report that is known to the organization, or that by the exercise of reasonable care should be known to the organization, to be accurate;
- sending 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;
- sending 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
- sending a written communication that contains personal information of a consumer without redacting the consumer's personal information to include only the following:
  - the last four digits of the consumer's social security number, taxpayer identification number, or state identification number;
  - the last four digits of the consumer's financial account number, credit card number, or debit card number; or
  - the month and year of the consumer's date of birth, unless otherwise required by law.

C.S.H.B. 4266 entitles a consumer injured by a violation of the bill's provisions to actual damages, injunctive and equitable relief, and the costs of the action, including reasonable attorney's fees. The bill authorizes a consumer who prevails in an action to recover exemplary damages in an amount of not less than \$100 or more than \$1,000 in accordance with applicable Civil Practice and Remedies Code provisions, in addition to the award under the bill's provisions. The bill establishes the following:

- the duties and responsibilities of a credit repair organization under the bill's provisions are in addition to and not in replacement of the duties and responsibilities of a credit repair organization under other state laws; and
- remedies and damages afforded under the bill's provisions to consumers who are injured by a violation of those provisions are in addition to and not in replacement of remedies and damages afforded under other state laws.

C.S.H.B. 4266 authorizes the Finance Commission of Texas to adopt rules to carry out the bill's provisions. The bill authorizes the consumer credit commissioner to investigate the activities of a person subject to the bill's provisions to determine compliance with those provisions, including examination of the books, accounts, and records of a credit repair organization, and to 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. Failure to comply with the investigation is grounds for issuance of a cease and desist order. The bill authorizes the commissioner to receive and act on complaints, take action to obtain voluntary compliance with the bill's provisions, and refer cases to the attorney general for prosecution.

C.S.H.B. 4266 authorizes the commissioner to enforce the bill's provisions and rules adopted under those provisions by ordering the violator to cease and desist from the violation and any similar violations, 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 imposing an administrative penalty not to exceed \$1,000 for each violation. The bill sets out the circumstances the commissioner is required to consider in determining the amount of an administrative penalty. The bill authorizes the commissioner, on relation of the attorney general at the request of the commissioner, to bring an action in district court to enjoin a person from engaging in an act or continuing a course of action that violates the bill's provisions. The court may order a preliminary or final injunction.

### **EFFECTIVE DATE**

September 1, 2021.

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

While C.S.H.B. 4266 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute explicitly provides for the enforcement of the bill's debtor assistance provisions with respect to credit repair organizations through the finance commission, authorizes the finance commission to adopt rules for that enforcement, and authorizes the commissioner to take specified actions to enforce compliance and enjoin violations. These provisions were not included in the original.

The substitute revises the types of damages under the Finance Code to which a consumer injured by a violation of the bill's provisions is entitled. The original included exemplary damages in addition to the damages generally applicable to a consumer injured by violations of the state law governing credit services organizations. The substitute instead establishes damages specifically applicable to its provisions under the debtor assistance provisions of the Finance Code and provides that a consumer injured by a violation of the substitute's provisions, as follows:

- is entitled to recover actual damages, injunctive and equitable relief, and the costs of the action, including reasonable attorney's fees; and
- may recover, in an addition to an award under the substitute's revised provisions, exemplary damages in an amount of not less than \$100 or more than \$1,000 in accordance with the generally applicable provisions under the Civil Practice and Remedies Code regarding civil damages.

The substitute includes a provision not included in the original specifying that the duties and responsibilities of a credit repair organization and that the remedies and damages afforded under the bill's provisions are in addition to and not in replacement of the duties and responsibilities of such an organization under other state law.