

- SUBJECT:** Requiring certain activities by credit repair organizations
- COMMITTEE:** Pensions, Investments and Financial Services — committee substitute recommended
- VOTE:** 6 ayes — Anchia, Parker, Capriglione, Perez, Stephenson, Vo
3 nays — Muñoz, Rogers, Slawson
- WITNESSES:** For — Courtney Reynaud, ACA International; Paul Nagy, Amrow Resources Corporation and Southwest Collectors Association; Sonia Gibson, Encore Capital Group; Kristy Sledge, Texas Creditors Bar Association; (*Registered, but did not testify:* Dean McWilliams, Consumer Data Industry Association; Ben Williams and Fred Shannon, Encore Financial Group; Brian Yarbrough, JPMorgan Chase Holdings LLC; Perry Fowler)
Against — Eric Kamerath, Lexington Law Firm; Christian Cabellero, Progrexion; (*Registered, but did not testify:* Amy Beard and Craig Chick, Progrexion)
- BACKGROUND:** Concerns have been raised about deceptive representations made by some credit repair organizations in Texas, and calls have been made to better protect vulnerable consumers, many of whom have lost jobs during the pandemic, by reining in abusive practices.
- DIGEST:** CSHB 4266 would regulate certain activities of credit repair organizations (CROs) and require the organizations to provide certain notifications to potential consumers.
- Definitions.** A "credit repair organization" would be defined as an organization that provided, or represented that the organization could or would provide, for the payment of a valuable consideration, any of the following services with respect to the extension of consumer credit by others:

- improving a consumer's credit history or rating; or
- providing advice or assistance to a consumer to improve the consumer's credit history or rating.

Notice. The bill would require a CRO, before executing a contract with or receiving valuable consideration from a consumer, to provide the consumer with a document containing:

- a list of the inaccurate or obsolete adverse information that appeared on the consumer's credit report which the CRO would 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.

Communication with organizations. A CRO or its representative would be prohibited from communicating with a consumer reporting agency, creditor, debt collector, or debt buyer about a consumer without the written authorization of the consumer, or from impersonating a consumer and failing to identify as a CRO if the CRO initiated the communication.

Under the bill's provisions, a CRO or its representative would be required 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 disputed items.

Removal of information. A CRO or its representative would be prohibited from seeking to remove, or advise a consumer to remove or seek to remove, adverse information from the consumer's credit report that was known to the CRO, or that by the exercise of reasonable care should be known to the CRO, to be accurate.

Itemized statement. A CRO or its representative would be required to provide an itemized monthly statement to the consumer that showed each service performed for the consumer under the contract including each communication and credit check made on the consumer's behalf, and date of each service performed.

A CRO or its representative would have to perform the agreed services by the 180th day after the date the consumer signed the contract for those services.

Restrictions on communications. A CRO or its representative would be prohibited from:

- 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 fax number, and, if applicable, the name and street address of any parent organization of the sender;
- sending a written communication on the consumer's behalf to a person other than the consumer without providing a copy of the communication to the consumer by the fifth day after the date the communication was sent; or
- sending a written communication that contained personal information of a consumer without redacting the consumer's personal information to include only the last four digits of the consumer's Social Security number, taxpayer identification number, state identification number, financial account number, credit or debit card number, or the month and year of the consumer's date of birth, unless otherwise required by law.

Recovery of damages. A consumer injured by a violation of the bill's provisions would be entitled to recover actual damages, injunctive and equitable relief, and the costs of the action, including reasonable attorney's fees.

In addition, a consumer who prevailed in an action could recover

exemplary damages in an amount of not less than \$100 or more than \$1,000.

The duties and responsibilities of a CRO prescribed in the bill would be in addition to and not in replacement of the duties and responsibilities of a CRO under other laws of this state. Remedies and damages to consumers who were injured by a violation of the bill's provisions would be in addition to and not in replacement of remedies and damages afforded under other laws of this state to those consumers.

Rules. The Texas Finance Commission could adopt rules to carry out the bill's provisions. The consumer credit commissioner could:

- investigate the activities of a person subject to this statute to determine compliance with its provisions, including examination of the books, accounts, and records of a CRO; and
- 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 an investigation would be grounds for issuance of a cease and desist order. The commissioner could receive and act on complaints, take action to obtain voluntary compliance, and refer cases to the attorney general for prosecution.

The commissioner could enforce the bill's provisions and adopted rules 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.

In determining the amount of an administrative penalty to be imposed, the commissioner would be required to consider:

- the seriousness of the violation;
- the good faith of the violator;
- the violator's history of previous violations;
- the deleterious effect of the violation on the public; and
- any other factors the commissioner considered relevant.

The commissioner, on relation of the attorney general at the request of the commissioner, could bring an action in district court to enjoin a person from engaging in an act or continuing a course of action that violated the bill's provisions. The court would be authorized to order a preliminary or final injunction.

The bill would take effect September 1, 2021, and would apply only to a contract entered into on or after the effective date.