

CHAPTER 767

H.B. No. 2005

AN ACT

relating to avoidance of liability by correction of certain violations of state credit law.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 1.06, Title 79, Revised Statutes (Article 5069–1.06, Vernon's Texas Civil Statutes), is amended by adding Sections (4) and (5) to read as follows:

(4)(A) A person has no liability to an obligor for a violation of this Subtitle if:

(i) within 60 days after the date the person actually discovered the violation the person corrects the violation as to the obligor by taking whatever actions and by making whatever adjustments are necessary to correct the violation, including the payment of interest on a refund, if any, at the applicable rate provided for in the contract of the parties; and

(ii) the person gives written notice to the obligor of the violation before the obligor has given written notice of or has filed an action alleging the violation of this Subtitle.

(B) For the purposes of this section, the term "actually discovered" may not be construed, interpreted, or applied in a manner that refers to the time or date when, through reasonable diligence, an ordinarily prudent person could or should have discovered or known as a matter of law or fact of the violation in question, but the term shall be construed, interpreted, and applied to refer to the time of the discovery of the violation in

fact. However, the actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all the other transactions. For purposes of this Section the giving of written notice shall be accomplished by and on the delivery of the notice to the person to whom the notice is directed or to the person's duly authorized agent or attorney of record. The delivery shall be made in person or by United States mail to the address shown on the most recent documents in the transaction. Deposit of the notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service constitutes prima facie evidence of the delivery of the notice to the person.

(C) A person has no liability to an obligor for a violation of this Subtitle if:

(i) before March 1, 1994, the person corrects the violation as to the obligor by taking whatever actions and by making whatever adjustments are necessary to correct the violation, including the payment of interest on a refund, if any, at the applicable rate provided for in the contract of the parties; and

(ii) the person gives written notice to the obligor of the correction before the obligor has given written notice of or has filed an action alleging the violation of this Subtitle.

(5) The action of a person who corrects a violation of this Subtitle as provided by Section (4) of this Article is effective as to all persons in the same transaction, and those persons are entitled to the same protection as that provided by Section (4) of this Article to the person who makes the correction.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 23, 1993, by a non-record vote; the House concurred in Senate amendments on May 24, 1993, by a non-record vote; passed by the Senate, with amendments, on May 19, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.