

CHAPTER 764

H S.B. No. 742

AN ACT

relating to the regulation of credit services organizations; providing penalties.

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

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 18 to read as follows:

CHAPTER 18. CREDIT SERVICES ORGANIZATIONS

Sec. 18.01. DEFINITIONS. *In this chapter:*

- (1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.
- (2) "Consumer reporting agency" has the meaning assigned by Section 603(f), Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)).
- (3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

Sec. 18.02. CREDIT SERVICES ORGANIZATION. (a) A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

- (1) improving a buyer's credit record, history, or rating;
  - (2) obtaining an extension of credit for a buyer; or
  - (3) providing advice or assistance to a buyer with regard to Subdivision (1) or (2) of this subsection.
- (b) The following are exempt from this chapter:

(1) a person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States, or a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.);

(2) a bank or savings and loan association whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or a subsidiary of such a bank or savings and loan association;

(3) a credit union doing business in this state;

(4) a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;

(5) a person licensed as a real estate broker or salesman under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) acting within the course and scope of that license;

(6) a person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

(7) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation; and

(8) a consumer reporting agency.

**Sec. 18.03. PROHIBITED CONDUCT.** A credit services organization, a salesperson, agent, or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

(1) charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with Section 18.04 of this code a surety bond in the amount required by Section 18.04(e) issued by a surety company authorized to do business in this state or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in which the amount required by Section 18.04(e) is held in trust as required by Section 18.04(c);

(2) charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;

(3) make or use a false or misleading representation in the offer or sale of the services of a credit services organization; or

(4) engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization.

**Sec. 18.04. BOND; SURETY ACCOUNT.** (a) This section applies to a credit services organization required by Section 18.03(1) of this code to obtain a surety bond or establish a surety account.

(b) If a bond is obtained, a copy of it shall be filed with the secretary of state. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the secretary of state.

(c) The bond or surety account required must be in favor of the state for the benefit of any person who is damaged by any violation of this chapter. The bond or surety account must also be in favor of any person damaged by such a violation.

(d) Any person claiming against the bond or surety account for a violation of this chapter may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for damages awarded under Section 18.09(a) of this code and not the punitive damages permitted

under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter may not exceed the amount of the surety account or bond.

(e) The bond or the surety account shall be in an amount not to exceed \$10,000.

(f) A depository holding money in a surety account under this chapter may not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the secretary of state indicating that Section 18.05(f) of this code has been satisfied in relation to the account. The secretary of state may conduct investigations and require submission of information as necessary to enforce this subsection.

**Sec. 18.05. REGISTRATION.** (a) A credit services organization shall file a registration statement with the secretary of state before conducting business in this state. The registration statement must contain:

(1) the name and address of the credit services organization; and

(2) the name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the credit services organization.

(b) The registration statement must also contain either:

(1) a full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

(2) a notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

(c) The credit services organization shall update the statement not later than the 90th day after the date on which a change in the information required in the statement occurs.

(d) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(e) The secretary of state may charge each credit services organization that files a registration statement with the secretary of state a reasonable fee not to exceed \$100 to cover the cost of filing. The secretary of state may not require a credit services organization to provide information other than that provided in the registration statement.

(f) The bond or surety account shall be maintained until two years after the date that the credit services organization ceases operations.

**Sec. 18.06. DISCLOSURE STATEMENT.** (a) Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

(1) a complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(2) a statement explaining the buyer's right to proceed against the bond or surety account required by Section 18.03 of this code; and

(3) the name and address of the surety company that issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account.

(b) The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

**Sec. 18.07. FORM AND TERMS OF CONTRACT.** (a) Each contract between the buyer and a credit services organization for the purchase of the services of the credit

services organization must be in writing, dated, signed by the buyer, and must include:

(1) a conspicuous statement in boldfaced type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) the terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(3) a full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or estimated length of time for performing the services; and

(4) the address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service of process.

(b) The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

**"Notice of Cancellation**

*You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed.*

*If you cancel, any payment made by you under this contract will be returned within 10 days after the date of receipt by the seller of your cancellation notice.*

*To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or other written notice to:*

*(name of seller) at (address of seller) (place of business) not later than midnight (date)*

*I hereby cancel this transaction.*

*(date)*

*(purchaser's signature)"*

(c) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

**Sec. 18.08. WAIVER.** (a) A credit services organization may not attempt to cause a buyer to waive a right under this chapter.

(b) A waiver by a buyer of any part of this chapter is void.

**Sec. 18.09. ACTION FOR DAMAGES.** (a) A buyer injured by a violation of this chapter may bring any action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

(b) The buyer may also be awarded punitive damages.

**Sec. 18.10. INJUNCTION.** The attorney general or a buyer may bring an action in a district court to enjoin a violation of this chapter.

**Sec. 18.11. DECEPTIVE TRADE PRACTICE.** A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17 of this code.

**Sec. 18.12. STATUTE OF LIMITATIONS.** An action may not be brought under Section 18.09 or 18.11 of this code after four years after the date of the execution of the contract for services to which the action relates.

*Sec. 18.13. CRIMINAL PENALTY. A person who violates this chapter commits an offense. An offense under this chapter is a Class B misdemeanor.*

*Sec. 18.14. BURDEN OF PROVING EXEMPTION. In an action under this chapter the burden of proving an exemption under Section 18.02 of this code is on the person claiming the exemption.*

*Sec. 18.15. REMEDIES CUMULATIVE. The remedies provided by this chapter are in addition to other remedies provided by law.*

SECTION 2. This Act takes effect September 1, 1987.

SECTION 3. 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.

Passed by the House on May 20, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 742 on May 30, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective Sept. 1, 1987.