



Texas Finance Code, Chapter 393

Title 5. Protection of Consumers of Financial Services

Chapter 393. Credit Services Organizations

Subchapter A. General Provisions

§393.001. DEFINITIONS. In this chapter:

(1) "Consumer" 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) "Credit services organization" means a person who provides, or represents that the person 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;

(B) obtaining an extension of consumer credit for a consumer; or

(C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

(4) "Extension of consumer credit" means the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.

§393.002. PERSONS NOT COVERED. (a) This chapter does not apply to:

(1) a person:

(A) authorized to make a loan or grant an extension of consumer credit under the laws of this state or the United States; and

(B) subject to regulation and supervision by this state or the United States;

(2) 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.*);

(3) a bank or savings association the deposits or accounts of which are eligible to be insured by the Federal Deposit Insurance Corporation or a subsidiary of the bank or association;

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

(5) a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));

(6) a real estate broker or salesperson licensed under Chapter 1101, Occupations Code, who is acting within the course and scope of that license;

(7) an individual licensed to practice law in this state who is acting within the course and scope of the individual's practice as an attorney;

(8) 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;

(9) a consumer reporting agency;

(10) a person whose primary business is making loans secured by liens on real property; or

(11) a mortgage broker or loan officer licensed under Chapter 156, Finance Code, who is acting within the course and scope of that license; or

(12) an electronic return originator who:

(A) is an authorized Internal Revenue Service e-file provider; and

(B) makes, negotiates, arranges for, or transacts a loan that is based on a person's federal income tax refund on behalf of a bank, savings bank, savings and loan association, or credit union.

(b) In an action under this chapter, a person claiming an exemption under this section has the burden of proving the exemption.

§393.003. WAIVER VOID. A waiver of a provision of this chapter by a consumer is void.

Subchapter B. Registration and Disclosure Statements

§393.101. REGISTRATION STATEMENT. *See, also, italicized material following text of this section*

(a) Before conducting business in this state, a credit services organization shall register with the secretary of state by filing a statement that:

(1) contains the name and address of:

(A) the organization; and

(B) each person who directly or indirectly owns or controls at least 10 percent of the outstanding shares of stock in the organization; and

(2) fully discloses any litigation or unresolved complaint relating to the operation of the organization filed with a governmental authority of this state or contains a notarized statement that there has been no litigation or unresolved complaint of that type.

(b) The organization shall keep a copy of the registration statement in its files.

(c) The secretary of state may not require an organization to provide information other than information contained in the registration statement.

(d) A registration certificate expires on the first anniversary of its date of issuance. A registered credit services organization may renew a registration certificate by filing a renewal application, in the form prescribed by the secretary of state, and paying the renewal fee.

Amendment by Acts 1997, 75th Leg., ch. 576, Sec. 2 V.T.C.A., Government Code Sec. 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 2 of Acts 1997, 75th Leg., ch. 576, eff. Sept. 1, 1997, amends subsecs. (e) to (g) of V.T.C.A., Bus. & C. Sec. 18.05 [now this section] without reference to the repeal of said section by Acts 1997, 75th Leg., ch. 1008, Sec. 6(c). As so amended, Sec. 18.05(e) to (g) reads:

"(e) A certificate of registration issued under this chapter is valid for one year after its date of issuance. A registered credit services organization may renew its registration by filing an application for renewal in the form prescribed by the secretary of state accompanied by the renewal fee.

"(f) The secretary of state may charge each credit services organization that files a registration statement or a renewal application 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.

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

§393.102. UPDATE OF REGISTRATION STATEMENT. A credit services organization shall update information contained in the registration statement not later than the 90th day after the date on which the information changes.

§393.103. INSPECTION OF REGISTRATION STATEMENT. A credit services organization shall allow a consumer to inspect the registration statement on request.

§393.104. FILING FEE. The secretary of state may charge a credit services organization a reasonable fee to cover the cost of filing the registration statement in an amount not to exceed \$100.

See italicized note following V.T.C.A., Finance Code §393.101.

§393.105. DISCLOSURE STATEMENT. Before executing a contract with a consumer or receiving valuable consideration from a consumer, a credit services organization shall provide the consumer with a document containing:

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

(2) an explanation of the consumer's right to proceed against the surety bond or account obtained under Section 393.302;

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

(4) a complete and accurate statement of the consumer's right to review information on the consumer maintained in a file by a consumer reporting agency, as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 *et seq.*);

(5) a statement that information in the consumer's file is available for review:

(A) without charge on request made to the consumer reporting agency not later than the 30th day after the date on which the agency receives notice the consumer has been denied credit; and

(B) for a minimal charge at any other time;

(6) a complete and accurate statement of the consumer's right to dispute directly with a consumer reporting agency the completeness or accuracy of an item contained in the consumer's file maintained by the agency;

(7) a statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) a complete and accurate statement explaining:

(A) when consumer information becomes obsolete; and

(B) that a consumer reporting agency is prevented from issuing a report containing obsolete information; and

(9) a complete and accurate statement of the availability of nonprofit credit counseling services.

§393.106. COPY OF DISCLOSURE STATEMENT. A credit services organization shall keep in its files a copy of a document required under Section 393.105, signed by the consumer, acknowledging receipt, until the second anniversary of the date on which the organization provides the document.

Subchapter C. Contract for Services

§393.201. FORM AND TERMS OF CONTRACT. (a) Each contract for the purchase of the services of a credit services organization by a consumer must be in writing, dated, and signed by the consumer.

(b) In addition to the notice required by Section 393.202, the contract must:

(1) contain the payment terms, including the total payments to be made by the consumer, whether to the organization or to another person;

(2) fully describe the services the organization is to perform for the consumer, including each guarantee and each promise of a full or partial refund and the estimated period for performing the services, not to exceed 180 days;

(3) contain the address of the organization's principal place of business; and

(4) contain the name and address of the organization's agent in this state authorized to receive service of process.

§393.202. NOTICE OF CANCELLATION. (a) The contract must conspicuously state the following, in type that is boldfaced, capitalized, underlined, or otherwise distinguished from the surrounding written material and in immediate proximity to the space reserved for the consumer's signature: "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."

(b) The contract must have attached two easily detachable copies of a cancellation notice. 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)"

§393.203. ISSUANCE OF CONTRACT AND OTHER DOCUMENTS. A credit services organization shall give to the consumer, when the document is signed, a copy of the completed contract and any other document the organization requires the consumer to sign.

§393.204. BREACH OF CONTRACT. The breach by a credit services organization of a contract under this chapter, or of an obligation arising from a contract under this chapter, is a violation of this chapter.

Subchapter D. Prohibitions and Restrictions

§393.301. REPRESENTATIVE. In this subchapter, a representative of a credit services organization includes:

(1) a salesperson, agent, or other representative of the organization; and

(2) an independent contractor who sells or attempts to sell the services of the organization.

§393.302. CHARGE OR RECEIPT OF CONSIDERATION BEFORE COMPLETION OF SERVICES. A credit services organization or a representative of the organization may charge or receive from a consumer valuable consideration before completely performing all the services the organization has agreed to perform for the consumer only if the organization has obtained a surety bond for each of its locations or established and maintained a surety account for each of its locations in accordance with Subchapter E.

Amendment by Acts 1997, 75th Leg., ch. 576, Sec. 1 V.T.C.A., Government Code Sec. 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 1 of Acts 1997, 75th Leg., ch. 576, eff. Sept. 1, 1997, amends V.T.C.A., Bus. & C. Sec. 18.03 [now this section] without reference to the repeal of said section by Acts 1997, 75th Leg., ch. 1008, Sec. 6(c). As so amended, Sec. 18.03 reads:

"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 for each of its locations 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 for each of its locations 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, including:

"(A) guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

"(B) guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;

"(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;

"(5) make, or advise a buyer to make, a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit; or

"(6) advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the secretary of state, unless otherwise provided by this chapter."

§393.303. CHARGE OR RECEIPT OF CONSIDERATION FOR REFERRAL. A credit services organization or a representative of the organization may not charge or receive from a consumer valuable consideration solely for referring the consumer to a retail seller who will or may extend to the consumer credit that is substantially the same as that available to the public.

§393.304. FALSE OR MISLEADING REPRESENTATION OR STATEMENT. A credit services organization or a representative of the organization may not:

(1) make or use a false or misleading representation in the offer or sale of the services of the organization, including:

(A) guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses this can be done only if the credit history is inaccurate or obsolete; and

(B) guaranteeing an extension of consumer credit regardless of the person's credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension; or

(2) make, or advise a consumer to make, a statement relating to a consumer's credit worthiness, credit standing, or credit capacity that the person knows, or should know by the exercise of reasonable care, to be false or misleading to a:

(A) consumer reporting agency; or

(B) person who has extended consumer credit to a consumer or to whom a consumer is applying for an extension of consumer credit.

§393.305. FRAUDULENT OR DECEPTIVE CONDUCT. A credit services organization or a representative of the organization may not directly or indirectly engage in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of the services of the organization.

§393.306. ADVERTISING SERVICES WITHOUT FILING REGISTRATION STATEMENT. A credit services organization or a representative of the organization may not advertise the services of the organization if the organization has not filed a registration statement required by Subchapter B.

§393.307. CAUSING WAIVER PROHIBITED. A credit services organization may not attempt to cause a consumer to waive a right under this chapter.

Subchapter E. Surety Bond; Surety Account

§393.401. SURETY BOND. (a) The surety bond of a credit services organization must be issued by a surety company authorized to do business in this state.

(b) A copy of the bond shall be filed with the secretary of state.

§393.402. SURETY ACCOUNT. (a) The surety account of a credit services organization must be held in trust at a federally insured bank or savings association located in this state.

(b) The name of the depository and the trustee and the account number of the surety account must be filed with the secretary of state.

§393.403. AMOUNT OF SURETY BOND OR ACCOUNT. The surety bond or account of a credit services organization must be in the amount of \$10,000.

§393.404. BENEFICIARY OF SURETY BOND OR ACCOUNT. The surety bond or account of a credit services organization must be in favor of:

(1) this state for the benefit of a person damaged by a violation of this chapter; and

(2) a person damaged by a violation of this chapter.

§393.405. CLAIM AGAINST SURETY BOND OR ACCOUNT. (a) A person making a claim against a surety bond or account of a credit services organization for a violation of this chapter may file suit against:

(1) the organization; and

(2) the surety or trustee.

(b) A surety or trustee is liable only for actual damages, reasonable attorney's fees, and court costs awarded under Section 393.503(a).

(c) The aggregate liability of a surety or trustee for an organization's violation of this chapter may not exceed the amount of the surety bond or account.

§393.406. TERM OF SURETY BOND OR ACCOUNT. The surety bond or account of a credit services organization must be maintained until the second anniversary of the date on which the organization ceases operations.

§393.407. PAYMENT OF MONEY IN SURETY ACCOUNT TO CREDIT SERVICES ORGANIZATION. (a) A depository may not pay money in a surety account to the credit services organization that established the account or a representative of the organization unless the organization or representative presents a statement issued by the secretary of state indicating that the requirement of Section 393.406 has been satisfied in relation to the account.

(b) The secretary of state may conduct an investigation and require information to be submitted as necessary to enforce this section.

Subchapter F. Criminal Penalties and Civil Remedies

§393.501. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this chapter is a Class B misdemeanor.

§393.502. INJUNCTIVE RELIEF. A district court on the application of the attorney general or a consumer may enjoin a violation of this chapter.

§393.503. DAMAGES. (a) A consumer injured by a violation of this chapter is entitled to recover:

(1) actual damages in an amount not less than the amount the consumer paid the credit services organization;

(2) reasonable attorney's fees; and

(3) court costs.

(b) A consumer who prevails in an action under this section may also be awarded punitive damages.

§393.504. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

§393.505. STATUTE OF LIMITATIONS. An action under Section 393.503 or 393.504 must be brought not later than the fourth anniversary of the date on which the contract to which the action relates is executed.