

HOUSE BILL REPORT

ESHB 1311

As Passed House:

March 6, 2023

Title: An act relating to credit repair services performed by a credit services organization.

Brief Description: Addressing credit repair services performed by a credit services organization.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Reeves, Corry, Chapman, Reed and Cheney).

Brief History:

Committee Activity:

Consumer Protection & Business: 1/20/23, 2/14/23 [DPS].

Floor Activity:

Passed House: 3/6/23, 91-5.

Brief Summary of Engrossed Substitute Bill

- Adds prohibited acts to the Credit Services Organization Act.
- Specifies situations when a consumer reporting agency, creditor, or collection agency do not need to communicate with a credit services organization.
- Requires credit services organizations to redact certain personal information of a consumer when sending written communication.
- Requires credit services organizations to receive explicit written approval from the consumer before using a consumer's signature for credit repair services.
- Requires credit services organizations to provide consumers with a notice about their ability to file complaints with the Attorney General and their rights.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Walen, Chair; Reeves, Vice Chair; McClintock, Assistant Ranking Minority Member; Chapman, Cheney, Connors, Donaghy, Hackney, Ryu, Santos and Volz.

Minority Report: Without recommendation. Signed by 2 members: Representatives Corry, Ranking Minority Member; Sandlin.

Staff: Megan Mulvihill (786-7304).

Background:

Washington's Credit Services Organization Act.

In 1986 the Legislature adopted the Credit Services Organization Act (Act). For a fee, these businesses generally offer to provide advice or assist individuals in improving their credit rating. Typically, this is done by advocating on a consumer's behalf by disputing false and negative information contained in a consumer's credit report.

The Act requires a credit services organization offering assistance for a fee to meet certain financial and disclosure requirements. A credit services organization is prohibited from charging or receiving any money prior to full and complete performance of the services it has agreed to perform for the consumer, unless the organization has obtained a surety bond for \$10,000. All contracts must be in writing and specify cancellation rights, payment terms, and a full description of the services to be performed.

The Act also grants the consumer a five-day period during which he or she may cancel the contract. Any contract provision waiving the rights granted under the Act is prohibited. Certain persons are made exempt from the Act, including various lenders, real estate brokers, securities broker-dealers, and attorneys. A violation of the Act constitutes a gross misdemeanor.

Federal Credit Repair Organizations Act.

The Credit Repair Organizations Act (CROA) is a consumer protection law that regulates credit repair companies by aiming to prevent misleading or false advertisement. The CROA lists several prohibited acts, such as demanding payment for services in advance and not providing a written contract outlining the services to be provided.

Summary of Engrossed Substitute Bill:

Prohibited Acts.

The list of prohibited practices under the Act is expanded to include that credit services organizations may not:

- fail to provide a monthly statement to the consumer detailing the services performed, including, if applicable, an accounting of any funds paid by a consumer and held or disbursed on the consumer's behalf, and copies of letters sent by the credit services organization on the consumer's behalf;
- send any communication to a consumer reporting agency, creditor, collection agency, or regulatory entity without the consumer's prior written authorization;
- fail to make a written communication on a consumer's behalf to any consumer reporting agency, creditor, collection agency, regulatory entity, or legal counsel; or
- fail to provide with the first written communication information sufficient to permit the consumer reporting agency, creditor, debt collector, or regulatory entity to investigate the account or accounts that are the subject of the written communication.

If a consumer provides prior consent, an activity undertaken to obtain a consumer's credit report and determine the consumer's needs for reinvestigation of accounts does not constitute services of a credit services organization for which a contract is required.

Communication Between a Consumer Reporting Agency, Creditor, or Collection Agency and the Credit Services Organization.

A consumer reporting agency, creditor, or collection agency that knows a consumer is represented by a credit services organization and knows, or can readily ascertain, the credit services organization's name and address must communicate with the credit services organization unless:

- the credit services organization fails to respond within 30 days to a communication from a consumer reporting agency, creditor, or collection agency; or
- the consumer expressly directs the consumer reporting agency, creditor, or collection agency not to communicate with the credit services organization.

A consumer reporting agency, creditor, or collection agency is not required to communicate with a credit services organization concerning an account that is subject to dispute if:

- the account has been paid, settled, or otherwise resolved and has been reported as paid, settled, or otherwise resolved on the consumer's credit report;
- the account has been removed from the consumer's credit report;
- the debt collector has provided to the credit services organization or to the consumer the verification information or documentation required under federal law for the account;
- the debt collector is a debt buyer and has provided to the credit services organization or to the consumer the information or documentation required under state law regarding the account; or
- the consumer reporting agency, creditor, or collection agency reasonably determines that the dispute is frivolous or irrelevant pursuant to federal law.

Redacting Requirement.

When a credit services organization sends a written communication by any means that contains a consumer's personal information, the credit services organization must redact

certain personal information unless the inclusion of the full number or date is otherwise required by law, legally permissible, and required to achieve the objective.

Records.

Credit services organizations are required to maintain files of statements provided to consumers for four years after the completion or termination of the credit services organization agreement.

Notice Requirements.

In addition to existing requirements, information statements provided to consumers before a contract is signed or money is exchanged must also include a conspicuous statement in boldface 10-point type at the top of the information statement that clearly outlines to the consumer how the credit services organization will act on behalf of the consumer, including that with explicit approval, the credit services organization may use the consumer's signature. The information statement must also include a notice about the consumer's right to file complaints with the Attorney General's Office about services provided or fees charged. The notice must include a list of various consumer rights, such as the right to obtain a free copy of their credit report, the right to dispute inaccurate information by contacting the consumer reporting agency directly, and the right to cancel the contract with the credit services organization for any reason before midnight on the fifth working day after it is signed.

Contract Modifications.

In addition to other requirements, the contracts used by credit services organizations must include explicit written approval from the consumer to use the consumer's signature to facilitate credit repair services. The timeframe for which a credit services organization may contract for is limited to 180 days.

The Notice of Cancellation form that must accompany a credit services organization's contract is modified. The cancellation may occur before midnight on the fifth working day after the contract is signed, and the consumer may deliver the notice of cancellation via electronic or physical means. In addition, it is not necessary for a consumer to use the sample form to cancel a contract, and the credit services organization must provide easily understood and exercised cancellation instructions on its website.

Right to Damages.

Rather than just the consumer bringing action for a violation, any person injured by a violation may bring action for recovery of actual damages and reasonable attorney's fees and costs. If a consumer brings forward an action, damages must be awarded in an amount not less than the amount paid by the consumer to the credit services organization.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Act is a good consumer protection law that has been around for awhile. There are some exceptions built into the Act, such as for attorneys, but there are now law firms whose main line of business is to provide credit repair services. However, these law firms are not subject to the regulations under the Act. Credit services organizations can help restore a person's credit, but they can also cause a lot of harm. There are bad actors in any industry who will take advantage of consumers by requiring multiple fees and making false promises only for consumers to find out months later that there is no relief. Debt collection is one of the most regulated industries, yet the credit repair industry has no such oversight. Collection agencies have to provide monthly accounting statements and have prohibited practices. Credit repair services should have similar regulations. Credit services organizations can charge exorbitant fees, falsify identity theft claims, and fill out forms on a consumer's behalf without the consumer's knowledge. It is not always clearly disclosed that the credit services organization will sign an individual's name and act as the consumer. Later, the individual may be surprised to receive forms with their signature on them. Better disclosures will help consumers understand the scope of what they are signing up for. California passed a similar bill to regulate credit repair services. Credit services organizations should be subject to transparency and fairness so Washington consumers are protected.

(Opposed) Section 2(f) of the bill conflicts with federal law and would put credit repair organizations out of business. Federal law has a provision that allows collection agencies, credit reporting agencies, and creditors to ignore correspondence by a credit repair organization, and this legislation will trigger this anti-consumer protection loophole. The contract between a credit services organization and an individual states that the organization will be sending letters in the individual's name because of the federal law. Nonprofit organizations made sure to include a carve out for their attorneys in the bill. Certain credit services organizations help repair the credit of foster youth before they age out of foster care free of charge. Some organizations also help sex trafficking victims. It is audacious for debt collectors who write and harass their consumers to claim that they can speak in the best interest of those being hurt. This is anti-consumer legislation that will negatively affect consumers who have the right to seek credit repair assistance. This is a smokescreen to allow credit reporting agencies and credit bureaus to reject consumer disputes. The legislation is really getting rid of credit repair services, which will seriously impact consumers. Similar legislation that has been rejected in every state that it has been introduced in.

Persons Testifying: (In support) Representative Kristine Reeves, prime sponsor; Mindy Chumbley and Kelsi Hamilton, Washington Collectors Association; Andrew Roskam; Martin Lynch, Financial Counseling Association of America; and Antonio Ginatta,

Columbia Legal Services.

(Opposed) Melissa Gombosky, Progrexion; Christian Caballero, Lexington Law; Andre Chapple, African American Empowerment Coalition; and Michael Claunch, American Association of Consumer Credit Professionals.

Persons Signed In To Testify But Not Testifying: None.