

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1716 Session of  
1985

INTRODUCED BY RICHARDSON, COHEN, CARN, TRUMAN, OLIVER AND  
FATTAH, OCTOBER 2, 1985

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 2, 1985

AN ACT

1 Regulating credit services; prohibiting certain activities; and  
2 providing for certain information to be given to buyers, for  
3 the contents of contracts and for enforcement.

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17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

1 Section 1. Short title.

2 This act shall be known and may be cited as the Credit  
3 Services Act.

4 Section 2. Definitions.

5 The following words and phrases when used in this act shall  
6 have the meanings given to them in this section unless the  
7 context clearly indicates otherwise:

8 "Buyer." A natural person who is solicited to purchase or  
9 who purchases the services of a credit services organization.

10 "Credit services organization."

11 (1) A person who, with respect to the extension of  
12 credit by others, sells, provides or performs, or represents  
13 that he or she can or will sell, provide or perform, any of  
14 the following services, in return for the payment of money or  
15 other valuable consideration:

16 (i) Improving a buyer's credit record, history or  
17 rating.

18 (ii) Obtaining an extension of credit for a buyer.

19 (iii) Providing advice or assistance to a buyer with  
20 regard to either subparagraph (1) or (2).

21 (2) The term shall not include any of the following:

22 (i) Any person organized, chartered, or holding a  
23 license or authorization certificate to make loans or  
24 extensions of credit pursuant to the laws of the  
25 Commonwealth or the United States who is subject to  
26 regulation and supervision by an official or agency of  
27 the Commonwealth or the United States.

28 (ii) Any bank or savings and loan institution whose  
29 deposits or accounts are eligible for insurance by the  
30 Federal Deposit Insurance Corporation or the Federal

1 Savings and Loan Insurance Corporation.

2 (iii) Any nonprofit organization exempt from  
3 taxation under section 501(c)(3) of the Internal Revenue  
4 Code of 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.).

5 (iv) Any person licensed as a real estate broker  
6 where the person is acting within the course and scope of  
7 that license.

8 (v) Any person admitted to practice law in the  
9 Commonwealth where the person renders services within the  
10 course of such practice.

11 (vi) Any broker-dealer registered with the  
12 Securities and Exchange Commission or the Commodity  
13 Futures Trading Commission where the broker-dealer is  
14 acting within the course and scope of such regulation.

15 "Extension or credit." The right to defer payment of debt or  
16 to incur debt and defer its payment, offered or granted  
17 primarily for personal, family or household purposes.

18 Section 3. Prohibited activities.

19 A credit services organization, and its salespersons, agents  
20 and representatives who sell or attempt to sell the services of  
21 a credit services organization, shall not do any of the  
22 following:

23 (1) Charge or receive any money or other valuable  
24 consideration prior to full and complete performance of the  
25 services the credit services organization has agreed to  
26 perform for or on behalf of the buyer, unless the credit  
27 services organization has, in conformity with section 7,  
28 either obtained a surety bond issued by a surety company  
29 admitted to do business in this Commonwealth or established a  
30 trust account at a federally insured bank or savings and loan

1 association located in this Commonwealth. If a credit  
2 services organization is in compliance with this act, the  
3 salesperson, agents and representatives who sell the services  
4 of such organization shall not be required to obtain the  
5 surety bond or establish the trust account provided for by  
6 this act.

7 (2) Charge or receive any money or other valuable  
8 consideration solely for referral of the buyer to a retail  
9 seller who will or may extend credit to the buyer, if the  
10 credit which is or will be extended to the buyer is upon  
11 substantially the same terms as those available to the  
12 general public.

13 (3) Make, or counsel or advise any buyer to make, any  
14 statement which is untrue or misleading and which is known,  
15 or which by the exercise of reasonable care should be known,  
16 to be untrue or misleading, to a consumer credit reporting  
17 agency or to any person who has extended credit to a buyer or  
18 to whom a buyer is applying for an extension of credit, with  
19 respect to a buyer's creditworthiness, credit standing or  
20 credit capacity.

21 (4) Make or use any untrue or misleading representations  
22 in the offer or sale of the services of a credit services  
23 organization or engage, directly or indirectly, in any act,  
24 practice, or course of business which operates or would  
25 operate as a fraud or deception upon any person in connection  
26 with the offer or sale of the services of a credit services  
27 organization.

28 Section 4. Statement.

29 Prior to the execution of a contract or agreement between the  
30 buyer and a credit services organization or prior to the receipt

1 by the credit services organization of any money or other  
2 valuable consideration, whichever occurs first, the credit  
3 services organization shall provide the buyer a statement in  
4 writing, containing all the information required by section 5.  
5 The credit services organization shall maintain on file or  
6 microfilm for a period of two years an exact copy of the  
7 statement, personally signed by the buyer, acknowledging receipt  
8 of a copy of the statement.

9 Section 5. Contents of statement.

10 The information statement shall include all of the following:

11 (1) A complete and accurate statement of the buyer's  
12 right to review any file on the buyer maintained by any  
13 consumer credit reporting agency and the right of the buyer  
14 to receive a copy of that file. The statement shall include  
15 the statement that a copy of the buyer's file will be  
16 furnished free of charge by the consumer credit reporting  
17 agency, if requested, within 30 days of the buyer receiving  
18 notice of a denial of credit, and the approximate price the  
19 buyer will be charged by the credit reporting agency for a  
20 copy of the file.

21 (2) A complete and accurate statement of the buyer's  
22 right to dispute the completeness or accuracy of any item  
23 contained in any file on the buyer maintained by any consumer  
24 credit reporting agency.

25 (3) A complete and detailed description of the services  
26 to be performed by the credit services organization for or on  
27 behalf of the buyer and the total amount the buyer will have  
28 to pay, or become obligated to pay, for the services.

29 (4) If the credit services organization is required to  
30 obtain a surety bond or establish a trust account pursuant to

1 section 3, a statement setting forth both of the following:

2 (i) The buyer's right to proceed against the bond or  
3 trust account under the circumstances and in the manner  
4 set forth in section 7.

5 (ii) The name and address of the surety company  
6 which issued the bond, or the name and address of the  
7 depository and the trustee and the account number of the  
8 trust account.

9 Section 6. Contract.

10 (a) Contents.--Every contract between the buyer and a credit  
11 services organization for the purchase of the services of the  
12 credit services organization shall be in writing, shall be  
13 dated, signed by the buyer, and include all of the following:

14 (1) A conspicuous statement in size equal to at least  
15 10-point bold type, in immediate proximity to the space  
16 reserved for the signature of the buyer, as follows:

17 You, the buyer, may cancel this contract at any time  
18 prior to 12 midnight of the fifth day after the date  
19 of the transaction. See the attached notice of  
20 cancellation form for an explanation of this right.

21 (2) The terms and conditions of payment, including the  
22 total of all payments to be made by the buyer, whether to the  
23 credit services organization or to some other person.

24 (3) A full and detailed description of the services to  
25 be performed by the credit services organization for the  
26 buyer, including all guarantees and all promises of full or  
27 partial refunds, and the estimated date by which such  
28 services are to be performed or estimated length of time for  
29 performing such services.

30 (4) The credit services organization's principal

business address and the name and address of its agent, other than the Secretary of the Commonwealth, authorized to receive service of process.

(b) Copy.--A copy of the fully completed contract and all other documents the credit services organization requires the buyer to sign shall be given to the buyer at the time they are signed.

(c) Notice of cancellation.--The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain, in at least 10-point type, the following statement written in the same language as used in the contract:

Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within five days from the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 15 days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to \_\_\_\_\_ at

(name of seller)

\_\_\_\_\_

(address of seller) (place of business)

not later than 12 midnight \_\_\_\_\_.

(date)

I hereby cancel this transaction.

1 \_\_\_\_\_  
2 (date) (purchaser's signature)

3 (d) Effect of breach.--The seller's breach of a contract  
4 under this act or of any obligation arising therefrom shall  
5 constitute a violation of this act.

6 Section 7. Surety bond.

7 If a credit services organization is required to obtain a  
8 surety bond or establish a trust account pursuant to section 3,  
9 the following procedures shall be applicable:

10 (1) If a bond is obtained, a copy of it shall be filed  
11 with the Department of State. If a trust account is  
12 maintained, notification of the depository, the trustee and  
13 the account number shall be filed with the Department of  
14 State.

15 (2) The bond or trust account required shall be in favor  
16 of the Commonwealth for the benefit of any person who is  
17 damaged by any violation of this act. The bond or trust  
18 account shall also be in favor of any person damaged by such  
19 practices.

20 (3) Any person claiming against the bond or trust  
21 account for a violation of this act may maintain an action at  
22 law against the credit services organization and against the  
23 surety or trustee. The surety or trustee shall be liable only  
24 for actual damages and not the punitive damages permitted  
25 under section 10. The aggregate liability of the surety or  
26 trustee to all persons damaged by a credit services  
27 organization's violation of this act shall in no event exceed  
28 the amount of the trust account or bond.

29 (4) The bond or the trust account shall be in an amount  
30 equal to 5% of the total amount of the fees charged buyers by



1 the credit services organization under the contracts entered  
2 into between the credit services organization and such buyers  
3 during the previous 12 months, but in no case shall the bond  
4 be less than \$5,000 or more than \$25,000. The amount required  
5 shall be adjusted once a year, no later than the tenth day of  
6 the first month of the credit services organization's fiscal  
7 year.

8 Section 8. Waivers and burden of proof.

9 (a) Waiver.--Any waiver by a buyer of the provisions of this  
10 act shall be deemed contrary to public policy and shall be void  
11 and unenforceable. Any attempt by a credit services organization  
12 to have a buyer waive rights given by this act shall constitute  
13 a violation of this act.

14 (b) Burden of proof.--In any proceeding involving this act,  
15 the burden of providing an exemption or an exception from a  
16 definition is upon the person claiming it.

17 Section 9. Enforcement.

18 (a) Penalty.--Any person who violates any provision of this  
19 act commits a misdemeanor of the third degree. This subsection  
20 shall not apply to a seller's breach of a contract subject to  
21 this act.

22 (b) Enforcement responsibility.--The duty to institute  
23 actions for violation of this act, including equity proceedings  
24 to restrain and enjoin such a violation, is hereby vested in the  
25 Attorney General and district attorneys. The Attorney General or  
26 any district attorney may prosecute misdemeanor actions or  
27 institute equity proceedings, or both.

28 (c) Construction of section.--This section shall not be  
29 deemed to prohibit the enforcement by any person of any right  
30 provided by this or any other law.

1 Section 10. Damages.

2 Any buyer injured by a violation of this act or by the credit  
3 services organization's breach of a contract subject to this act  
4 may bring any action for recovery of damages. Judgment shall be  
5 entered for actual damages, but in no case less than the amount  
6 paid by the buyer to the credit services organization, plus  
7 reasonable attorney fees and costs. An award, if the trial court  
8 deems it proper, may be entered for punitive damages.

9 Section 11. Construction of act.

10 (a) Act not exclusive.--The provisions of this act are not  
11 exclusive and do not relieve the parties or the contracts  
12 subject thereto from compliance with any other applicable  
13 provision of law.

14 (b) Remedies cumulative.--The remedies provided in this act  
15 for violation of any section of this act shall be in addition to  
16 any other procedures or remedies for any violation or conduct  
17 provided for in any other law.

18 Section 12. Effective date.

19 This act shall take effect in six months.