
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1716

Session of
1985

INTRODUCED BY RICHARDSON, COHEN, CARN, TRUMAN, OLIVER AND
FATTAH, OCTOBER 1, 1985

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 18, 1986

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

1 hereby enacts as follows:

2 Section 1. Short title.

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

5 Section 2. Definitions.

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

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

11 "Credit services organization."

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

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

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

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

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

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

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

1 Federal Deposit Insurance Corporation or the Federal
2 Savings and Loan Insurance Corporation.

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

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

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

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

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

19 Section 3. Prohibited activities.

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

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

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

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

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

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

29 (5) MAKE OR USE ANY ADVERTISEMENT THAT GUARANTEES THAT
30 THE BUYER WILL OBTAIN CREDIT.

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1 Section 4. Statement.

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

12 Section 5. Contents of statement.

13 The information statement shall include all of the following:

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

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

28 (3) A complete and detailed description of the services
29 to be performed by the credit services organization for or on
30 behalf of the buyer and the total amount the buyer will have

1 to pay, or become obligated to pay, for the services.

2 (4) If the credit services organization is required to
3 obtain a surety bond or establish a trust account pursuant to
4 section 3, a statement setting forth both of the following:

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

8 (ii) The name and address of the surety company
9 which issued the bond, or the name and address of the
10 depository and the trustee and the account number of the
11 trust account.

12 Section 6. Contract.

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

17 (1) A conspicuous statement in size equal to at least
18 10-point bold type, in immediate proximity to the space
19 reserved for the signature of the buyer, as follows:

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

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

27 (3) A full and detailed description of the services to
28 be performed by the credit services organization for the
29 buyer, including all guarantees and all promises of full or
30 partial refunds, and the estimated date by which such

1 services are to be performed or estimated length of time for
2 performing such services.

3 (4) The credit services organization's principal
4 business address and the name and address of its agent, other
5 than the Secretary of the Commonwealth, authorized to receive
6 service of process.

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

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

17 Notice of Cancellation

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

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

24 To cancel this contract, mail or deliver a signed and
25 dated copy of this cancellation notice, or any other written
26 notice, to _____ at

27 (name of
28 seller)

29 _____

30 (address of seller) (place of business)

1 not later than 12 midnight _____.

2 (date)

3 I hereby cancel this transaction.

4 _____

5 (date)

(purchaser's signature)

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

9 Section 7. Surety bond.

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

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

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

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

1 the amount of the trust account or bond.

2 (4) The bond or the trust account shall be in an amount
3 equal to 5% of the total amount of the fees charged buyers by
4 the credit services organization under the contracts entered
5 into between the credit services organization and such buyers
6 during the previous 12 months, but in no case shall the bond
7 be less than \$5,000 or more than \$25,000. The amount required
8 shall be adjusted once a year, no later than the tenth day of
9 the first month of the credit services organization's fiscal
10 year.

11 Section 8. Waivers and burden of proof.

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

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

20 Section 9. Enforcement.

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

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

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

4 Section 10. Damages.

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

12 Section 11. Construction of act.

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

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

21 Section 12. Effective date.

22 This act shall take effect in six months.