

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 865 Session of  
1991

INTRODUCED BY SALVATORE, APRIL 3, 1991

REFERRED TO BANKING AND INSURANCE, APRIL 3, 1991

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 (i) or (ii).

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 this  
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 (vii) Any consumer reporting agency as defined in  
16 the Fair Credit Reporting Act (Public Law 91-508, 15  
17 U.S.C. § 1681 et seq.).

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

21 Section 3. Prohibited activities.

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

26 (1) Charge or receive any money or other valuable  
27 consideration prior to full and complete performance of the  
28 services the credit services organization has agreed to  
29 perform for or on behalf of the buyer, unless the credit  
30 services organization has, in conformity with section 7,

1     either obtained a surety bond issued by a surety company  
2     admitted to do business in this Commonwealth or established a  
3     trust account at a federally insured bank or savings and loan  
4     association located in this Commonwealth. If a credit  
5     services organization has obtained a surety bond or  
6     established a trust account, the salesperson, agents and  
7     representatives who sell the services of such organization  
8     shall not be required to obtain the surety bond or establish  
9     the trust account provided for by this act.

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

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

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

(5) Make or use an advertisement which guarantees that the buyer will obtain credit.

Section 4. Information sheet.

Prior to the execution of a contract or agreement between the buyer and a credit services organization or prior to the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer a statement, in writing, containing all the information required by section 5.

The credit services organization shall maintain on file or microfilm for a period of three years an exact copy of the information sheet, personally signed by the buyer, acknowledging receipt of a copy of the information sheet.

Section 5. Contents of information sheet.

The information sheet shall include all of the following:

(1) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by any consumer credit reporting agency and the right of the buyer to receive a copy of that file. The information sheet shall include the statement that a copy of the buyer's file will be furnished by the consumer credit reporting agency, and the approximate price the buyer will be charged by the credit reporting agency for a copy of the file. The information sheet shall also include a statement that information in a consumer's credit file will be provided free of charge by the consumer credit reporting agency to the consumer by telephone after written request within 30 days of the consumer's receiving a denial of credit notice.

(2) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item

1 contained in any file on the buyer maintained by any consumer  
2 credit reporting agency.

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

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

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

13 (ii) The name and address of the surety company  
14 which issued the bond, or the name and address of the  
15 depository and the trustee and the account number of the  
16 trust account.

17 Section 6. Contract.

18 (a) Contents.--Every contract between the buyer and a credit  
19 services organization for the purchase of the services of the  
20 credit services organization shall be in writing, shall be  
21 dated, shall be signed by the buyer and shall include all of the  
22 following:

23 (1) A conspicuous statement in size equal to 10-point  
24 bold type or the size type used for the contract provisions,  
25 whichever is larger, in immediate proximity to the space  
26 reserved for the signature of the buyer, as follows:

27 You, the buyer, may cancel this contract at any time  
28 prior to 12 midnight of the fifth day after the date  
29 of the transaction. See the attached notice of  
30 cancellation form for an explanation of this right.



To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to (name of seller) at

.....

(address of seller) (place of business)  
not later than 12 midnight (date).

I hereby cancel this transaction.

.....

(date) (purchaser's signature)

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

#### Section 7. Surety bond.

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

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

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

(3) Any person claiming against the bond or trust account for a violation of this act 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



1 for actual damages and not the punitive damages permitted  
2 under section 10. The aggregate liability of the surety or  
3 trustee to all persons damaged by a credit services  
4 organization's violation of this act shall in no event exceed  
5 the amount of the trust account or bond.

6 (4) The bond or the trust account shall be in an amount  
7 equal to 5% of the total amount of the fees charged buyers by  
8 the credit services organization under the contracts entered  
9 into between the credit services organization and such buyers  
10 during the previous 12 months, but in no case shall the bond  
11 be less than \$5,000 nor more than \$25,000. The amount  
12 required shall be adjusted once a year, no later than the  
13 tenth day of the first month of the credit services  
14 organization's fiscal year.

15 Section 8. Waivers and burden of proof.

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

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

24 Section 9. Enforcement.

25 A violation of any provision of this act shall be deemed to  
26 be a violation of the act of December 17, 1968 (P.L.1224,  
27 No.387), known as the Unfair Trade Practices and Consumer  
28 Protection Law.

29 Section 10. Damages.

30 Any buyer injured by a violation of this act or by the credit

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

7 Section 11. Construction of act.

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

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

16 Section 12. Effective date.

17 This act shall take effect in six months.