

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 1089 (Grayson) – As Introduced February 18, 2021

SUBJECT: Credit services organizations

SUMMARY: Establishes a licensing law for credit service organizations (CSOs) to take effect on January 1, 2023. This new licensing law incorporates existing provisions of the Credit Services Act of 1984 (Act) and adds new requirements and prohibitions for CSOs.

Specifically, **this bill:**

- 1) Prohibits a person from providing credit services in California without first obtaining a license with the Department of Financial Innovation and Protection (DFPI). Prohibits a city, county, or city and county from requiring licensure of CSOs.
- 2) Provides powers to the DFPI commissioner similar to those in Financial Code licensing laws administered by DFPI, including rulemaking authority; authority to prescribe the content of the licensing application and require applicants to apply through the Nationwide Multistate Licensing System & Registry; investigation and examination authority; and limited enforcement authority, which includes desist and refrain authority, the ability to order ancillary relief, and the ability to suspend or revoke a license.
- 3) Restricts a CSO from engaging in the following activities:
 - a) Counseling a consumer to make an untrue statement to a data furnisher.
 - b) Seeking to remove adverse information from the consumer's credit record that is known, or that by the exercise of reasonable care should be known, to be accurate and not obsolete.
 - c) Calling or submitting any communication to a consumer credit reporting agency, creditor, debt collector, or debt buyer without the consumer's knowledge and consent.
 - d) Calling or submitting any communication to a consumer reporting agency, creditor, debt collector, or debt buyer impersonating a consumer and failing to identify when the communication originates from the credit services organization.
 - e) Submitting a consumer's dispute to a consumer credit reporting agency, creditor, debt collector, or debt buyer more than 180 days after the account subject to the dispute has been removed.
 - f) Sending any communication, directly or indirectly, to any person on behalf of a consumer without disclosing the sender's identity, street address, telephone number, and facsimile number, and, if applicable, the name and street address of any parent organization of sender.

- g) Sending any communication on behalf of a consumer to any person other than the consumer without providing an exact copy of the communication to the consumer within five days thereafter. Sending, or causing to be sent, any communication on behalf of a consumer that includes a notary acknowledgment without complying with the applicable laws regarding notary acknowledgments.
 - h) Other activities already prohibited in existing law (see #4 in Existing Law section below).
- 4) Requires a consumer credit reporting agency, creditor, debt collector, or debt buyer to communicate with a CSO unless the CSO fails to respond within a reasonable period of time or the consumer expressly directs them not to communicate with the CSO.
 - 5) Requires a CSO, when sending a written communication that contains a consumer's personal information, to redact specified personal information, and extends the records retention requirement in current law from two years to four years.
 - 6) Requires a contract between a CSO and consumer to include specified information, including a list of the adverse information appearing on the consumer's credit report, a list of those accounts that the CSO will seek to delete or modify and, if applicable, a description of each modification sought and the anticipated payment required by the consumer to achieve each account deletion or modification. The contract must also include information already required in current law (see #5 in Existing Law section below).
 - 7) Provides for a civil penalty in the amount of at least \$100 and no greater than \$1,000 for a willful and knowing violation of the law by a CSO, which is in addition to any damages awarded pursuant to existing law.

EXISTING STATE LAW:

- 1) Establishes the "Credit Services Act of 1984" (Civil Code (CC) Section 1789.10, et seq.).
- 2) Defines "buyer" as a natural person who is solicited to purchase or who purchases the services of a credit services organization (CC Section 1789.12(c)).
- 3) Defines "credit services organization" as a person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that he or she can or will sell, provide or perform, any of the following services, in return for the payment of money or other valuable considerations:
 - a) Improving a buyer's credit record, history, or rating.
 - b) Obtaining a loan or other extension of credit for a buyer.
 - c) Providing advice or assistance to a buyer with regard to either paragraph (1) or (2) (CC Section 1789.12).
- 4) Prohibits CSOs from specified activities including, among others:

- a) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the CSO has agreed to perform for or on behalf of the buyer.
 - b) Make, or counsel or advise a buyer to make, a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer credit 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, such as statements concerning a buyer's identification, home address, creditworthiness, credit standing, or credit capacity.
 - c) Remove, or assist or advise the buyer to remove, adverse information from the buyer's credit record that is accurate and not obsolete.
 - d) Make or use untrue or misleading representations in the offer or sale of the services of a credit services organization, including guaranteeing or otherwise stating that the CSO is able to delete an adverse credit history, unless the representation clearly discloses, in a manner equally as conspicuous as the guarantee, that this can be done only if the credit history is inaccurate or obsolete and is not claimed to be accurate by the creditor who submitted the information.
 - e) Engage, directly or indirectly, in an act, practice, or course of business that operates or would operate as a fraud or deception upon a person in connection with the offer or sale of the services of a credit services organization.
 - f) Advertise or cause to be advertised, in any manner, the services of the credit services organization, without being registered with the Department of Justice (DOJ).
 - g) Submit a buyer's dispute to a consumer credit reporting agency without the buyer's knowledge (CC Section 1789.13).
- 5) Prohibits a CSO from providing a service to a buyer except pursuant to a written contract that must include a statement declaring the buyer's right to cancel the contract, the terms and conditions of payment, a full and detailed description of the services to be performed by the CSO, and the estimated date by which the services are to be performed (CC Section 1789.16).
 - 6) Requires, among other things, that a CSO register with the DOJ before conducting business in this state. The CSO applicant must, among other things, file a surety bond, pay a \$100 registration fee, and annually file a renewal registration application with the DOJ (CC Section 1789.25).
 - 7) Provides a private right of action for recovery of damages, or for injunctive relief, or both, related to a violation of the title. Entitles a prevailing plaintiff to reasonable attorney's fees and costs and authorizes a trial court to assess punitive damages (CC Section 1789.21).

- 8) Provides that any person who violates any provision of this title is guilty of a misdemeanor (CC Section 1789.20).

EXISTING FEDERAL LAW:

Establishes the Credit Repair Organizations Act (15 U.S.C. §§ 1679-1679j) which prohibits untrue or misleading representations and requires certain affirmative disclosures in the offering or sale of "credit repair" services.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1) PURPOSE

According to the author:

Under current law, disclosures and descriptions of services to be rendered by a Credit Repair Organization are insufficient for the modern marketplace. Too many consumers in California are purchasing an opaque service without truly understanding the impact, or lack thereof, that the service will have on their credit scores. AB 1089 seeks to bring much needed disclosure and transparency to the credit repair industry.

2) BACKGROUND

Credit repair companies offer to improve a consumer's credit profile in exchange for a fee. Due to this activity, credit repair companies are covered by the Credit Services Act of 1984 (Act), a state law that also covers businesses that help consumers to obtain loans or other extensions of credit. Companies covered by the Act are required to register with the California Department of Justice (DOJ) prior to engaging with California consumers and to renew their registration annually. As of 2019, 53 entities registered with DOJ as CSOs.

In 2016 the federal Consumer Financial Protection Bureau (CFPB) issued a consumer advisory, which was updated in December 2019, related to credit repair companies.¹ The advisory warns consumers that credit repair companies "developed creative marketing tactics to target you. Sometimes this marketing includes confusing and misleading messaging aimed at taking advantage when you're just trying to get your financial life back on track." The advisory states that credit repair companies often charge high fees for services that consumers can often perform themselves, and some companies make false or misleading statements about the services they offer.

The CFPB has also taken enforcement actions against credit repair companies for violations of federal law, including against four California-based companies.² The CFPB actions are not

¹https://files.consumerfinance.gov/f/documents/092016_cfpb_ConsumerAdvisory.pdf

²<https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-actions-against-credit-repair-companies-charging-illegal-fees-and-misleading-consumers/>

limited to fines, but also include shutting companies down and banning them from providing any credit repair services.³ In May 2019, the CFPB filed suit against Lexington Law and CreditRepair.com. In the complaint, the CFPB claims that Lexington Law relied on an expansive network of online lead generators that “used deceptive, bait advertising to generate referrals to Lexington Law’s credit repair service.”

In November 2019, Google announced that ads for credit repair services would no longer be allowed to serve on its advertising platform. The policy applies globally to all accounts that advertise these services directly, to lead generators, and to entities who connect consumers with third party services. In the updated policy, Google states that the company wants “consumers to make informed decisions about the services offered to help them address bad credit,” and in order to protect users from harmful practices, an outright ban on credit repair advertisements is appropriate.

3) CHANGING LANDSCAPE FOR STATE OVERSIGHT

State oversight of credit repair companies historically has been weak. The Act does not provide the Attorney General with authority to impose administrative fines or other sanctions against registered credit repair companies. Additionally, the Act provides no authority for a state agency to examine the books and records of a registered credit repair company to check for compliance with the law, either on a routine basis or in the event of a complaint received from a consumer. Furthermore, the law does not require the Attorney General to maintain a publicly available database of registered credit repair companies, which would allow consumers to verify that they are engaging with a company that complies with the registration requirement.

However, oversight of these companies may change in the near future as a result of the newly enacted California Consumer Financial Protection Law (CCFPL). AB 1864 (Limon), Chapter 157, Statutes of 2020, established the CCFPL and provides DFPI with the authority to regulate a broad market of consumer financial products and services, including CSOs.

We do not know yet the full impact of AB 1864 on CSOs. DFPI is in the early stages of implementing the CCFPL. During legislative hearings in 2020, the Commissioner testified that the first year of implementation would be focused on hiring key staff and the registration of newly covered persons would likely commence in FY 2022-23. According to the department’s website, the department intends to file the proposed registration rulemaking package with the Office of Administrative Law by the end of 2021

4) LICENSURE REQUIREMENTS AND NEXT STEPS FOR THIS BILL

This bill is a follow-up to AB 699 (Grayson), of the 2019-20 Legislative Session, which failed to advance in the Senate Judiciary Committee. AB 699 expanded upon the Act and included many of the protections and restrictions also proposed by this bill. However, one key difference between this bill and AB 699 is the inclusion of a new licensing requirement for CSOs.

The proposed licensing program has significant implications for the scope of this oversight effort and for DFPI. Licensing laws are the primary mechanism that states use to supervise and regulate providers of financial services and products. In California, DFPI administers licensing laws that cover a variety of businesses, including banks, credit unions, money transmitters, debt collectors, finance lenders and brokers, student loan servicers, and payday lenders. While the details of each licensing law differ, the laws generally provide DFPI with the authority to establish minimum requirements for receiving a license, establish requirements and prohibitions that a licensee must comply with, authorize DFPI to examine a licensee for compliance, and authorize DFPI to take enforcement actions when a violation is discovered.

Licensing is also administratively burdensome and costly. Moreover, because this bill does not explicitly exempt a CSO from the purview of the CCFPL, this bill in effect would require dual oversight duties that DFPI must carry out on the same financial service. Finally, it is unclear if a full licensure program is necessary given that DFPI is in the initial stages of implementing the CCFPL.

In response to these concerns, the author has committed to removing the licensing provisions from this bill. As the bill moves through the legislative process, the committee is available to assist with drafting a new version that establishes similar protections and oversight without the proposed licensing structure.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of Collectors, Inc.
Encore Capital Group, Inc.
The Association of Credit and Collection Professionals
USCB, Inc

Opposition

Lexington Law Firm

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