

Date of Hearing: March 21, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 2424 (Blanca Rubio) – As Introduced February 17, 2022

SUBJECT: Credit services organizations

SUMMARY: Expands the Credit Services Act of 1984 (Act) to add new requirements and prohibitions for credit service organizations (CSOs). Specifically, **this bill:**

- 1) Defines “consumer” as a natural person who is solicited to purchase or who purchases the services of a credit services organization. Replaces the term “buyer” used in existing law with “consumer” throughout the Credit Services Act of 1984.
- 2) Requires a CSO to provide a monthly statement to the consumer showing each service performed.
- 3) Prohibits a CSO from the following additional activities:
 - a) Failing to provide a monthly statement to the consumer detailing the services performed.
 - b) Counseling a consumer to make an untrue statement to a data furnisher.
 - c) Seeking to remove adverse information from the consumer’s credit record that is known to be accurate and not obsolete.
 - d) Calling or submitting any communication to a consumer credit reporting agency, creditor, debt collector, or debt buyer without the consumer’s prior written authorization, which may be located in the agreement or contract between the CSO and the consumer.
 - 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) Using an online electronic portal or electronic email system of the credit reporting agency, creditor, debt collector, or debt buyer to submit a dispute of the consumer or to request disclosure without the prior written authorization of the consumer, which may be located in the agreement or contract between the CSO and the consumer.
 - g) 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.
 - h) Failing to make written communication sent on behalf of a consumer to any person other than the consumer available to the consumer through the online portal.

- i) Failing to provide along with its first written communication to a credit reporting agency or data furnisher sufficient information to investigate a dispute of an account.
- 4) Require a consumer credit reporting agency, creditor, debt collector, or debt buyer to communicate with a CSO unless the following occurs:
 - a) The CSO fails to respond within 30 days to a communication from a consumer credit reporting agency, creditor, debt collector, or debt buyer.
 - b) The consumer expressly directs them not to communicate with the CSO.
- 5) Specifies that a consumer credit reporting agency, creditor, debt collector, or debt buyer is not required to communicate with a CSO concerning an account that is subject to a dispute if the following apply:
 - a) The account subject to the dispute has been paid, settled, or otherwise resolved and has been reported as such on the consumer's credit report.
 - b) The account subject to the dispute has been removed from the consumer's credit report.
 - c) The debt collector or debt buyer have provided to the CSO or to the consumer specified information or documentation.
 - d) The consumer credit reporting agency, creditor, or debt collector reasonably determines that the dispute is frivolous or irrelevant pursuant to specified federal law.
- 6) Requires a CSO to redact specified portions of personal information, such as a social security number and birth date, in written communications.
- 7) Extends the records retention requirement in current law from two years to four years.
- 8) 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 definition of each modification sought and the anticipated payment required by the consumer to achieve each account deletion or modification.
- 9) 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.
- 10) Requires the Department of Financial Protection and Innovation (DFPI) to maintain on a publicly available internet website a list of registered CSOs along with any complaints submitted by consumers regarding each CSO.

EXISTING 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).

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 2424 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

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

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 and entities supporting credit repair companies for violations of federal law, including against a number of California-based companies.² The CFPB actions are not 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 2021, CFPB filed an order against Burlington Financial to ban them from providing financial-advisory, debt relief, or credit repair service. CFPB notes that the company violated federal law by telling customers that it could restore their credit scores; CFPB's investigation found that many customers saw their credit scores worsen as a result of the company's services.⁴

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 establishment of the California Consumer Financial Protection Law (CCFPL) in 2020. 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. As part of DFPI's roll-out of the CCFPL, DFPI has identified its top priorities (debt settlement providers, student loan debt relief providers, and earned wage access providers), which do not include credit service

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

⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-company-and-its-owners-and-executives-for-deceptive-debt-relief-and-credit-repair-services/>

organizations. Nevertheless, DFPI's authority to take action against CSOs for unfair and deceptive practices is robust.

4) **Why do debt collectors care?**

This bill is sponsored by the California Association of Collectors (CAC), the state's largest organization of debt collectors. While the connection between debt collectors and CSOs may not be obvious, CSO activities have a material impact on the day-to-day operations of a debt collector. This is because debt collectors, as data furnishers, provide information related to a consumer's credit history to consumer credit reporting agencies like Equifax, Transunion, and Experian. When a data furnisher receives a dispute from a consumer, the furnisher is required under the Fair Credit Reporting Act (FCRA) to conduct a reasonable investigation, report results to the consumer within 30 days, and notify each credit reporting agency to which the furnisher provided inaccurate information if the investigation finds the information was inaccurate. Thus, the services that a CSO provides, by design, generate significant workload issues and complications for a debt collector (as well as possibly hinder collection efforts).

In its letter of support, CAC notes the following:

Often the services offered or provided are cookie cutter actions that a consumer could take without paying significant fees to a credit repair agency. In many circumstances, the activities may be counterproductive to a consumer's credit report. For example, the primary service provided to consumers consists of simply generating robo letters, sent purportedly from the consumer and without disclosing the identity of the real sender. In reality, these letters, which claim to have consumers' signatures, are not actually signed by consumers, they do not include a valid credit dispute, and they raise financial privacy and data security concerns. The Consumer Financial Protection Bureau (CFPB) has issued a warning about credit repair agencies and has shut down certain California credit repair companies for lying to consumers

5) **This bill's impact on CSOs.**

Opponents representing the credit repair industry contend this bill will greatly hinder their ability to serve customers and impose a number of new restrictions that benefit debt collectors at the expense of consumers. Opponents identify two priority concerns with the bill's current language:

First, opponents argue this bill leverages existing federal law to allow debt collectors to more easily ignore valid credit disputes sent from a CSO on behalf of a consumer. FCRA's requirement that a data furnisher, such as a debt collector, investigate direct disputes from consumers does not apply if the furnisher "reasonably determines that the dispute is frivolous or irrelevant" or if the notice of dispute is sent by a CSO. Therefore, by requiring a CSO to identify itself rather than send a dispute using the consumer's name, opponents argue, AB 2424 essentially gives a data furnisher a free pass to ignore otherwise valid dispute communication. While this provision likely results in significant complications for CSOs and the methods they sometimes use to serve their clients, it is also consistent with Congressional

intent since FCRA explicitly states that a credit score dispute sent by a CSO does not require a response.

Second, opponents contend that AB 2424 will place the burden on a CSO to know if a particular item on a credit report is accurate or not, rather than on the data furnisher. The bill requires a CSO to include in its contract with a consumer a full and detailed description of the services to be performed, including a list of the inaccurate or obsolete adverse information appearing on the credit report. This is a reasonable concern, and there is not a compelling argument for why such a contract should include this information if the point of the service that CSO provides is to get that information from a data furnisher. To the extent a CSO provides a valuable service, it is assisting a consumer with navigating an enormously convoluted and, in some cases, hostile credit reporting process. It is incorrect to assume that the customer knows precisely which item in their credit report is incorrect, rather than just knowing that *something* is wrong.

6) What about the consumer attorneys?

The Consumer Attorneys of California (CAOC) writes a letter expressing concern about AB 2424, stating that the bill's definitions could apply the bill's prohibitions and protections to consumer attorneys that fight for consumers." CAOC is not directly opposing AB 2424, and the provisions in the bill that are causing confusion were actually established in the Credit Services Act of 1984. But, as noted above, the Act is fairly weak and has not been enforced. By updating the Act and strengthening its protections, AB 2424 could cause confusion for consumer attorneys doing credit service on behalf of clients.

7) Proposed committee amendments.

The committee recommends the following amendments:

- a) Amend 1789.16(a)(3) as follows in response to the concern that AB 2424 puts the burden of proof on a CSO for identifying which information is inaccurate rather than on a data furnisher:

A full and detailed description of the services to be performed by the credit services organization for the consumer, including a list of the ~~inaccurate or obsolete adverse~~ information appearing on the consumer's credit report which the credit services organization will seek to delete or modify, ~~the basis for the deletion or modification~~, and, if applicable, a description of each modification sought and the anticipated payment required by the consumer to achieve each account deletion or modification, all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or the estimated length of time for performing the services, not to exceed 180 days, or a shorter period consistent with the purposes of this title as may be prescribed by the Department of Financial Protection and Innovation.

- b) Amend (e) (5) as follows to address concerns expressed by COAC:

Any attorney licensed to practice law in this state, where the attorney renders services within the course and scope of the practice of law, unless the attorney is

an employee of, or otherwise directly affiliated with, a credit services organization. This includes attorneys that regularly engage in litigation in furtherance of assisting consumers with credit issues.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Collectors (Sponsor)
California Association of Collectors, INC
California Bankers Association
California Chamber of Commerce
Encore Capital Group, INC.
Greenpath Financial Wellness
Money Management International, INC.
The Financial Counseling Association of America
UCSB INC.

Oppose

African American Employment Coalition
California League of United Latin American Citizens
California State Council of Service Employees International Union (SEIU California)
Lexington Law Firm
National Asian American Coalition
National Diversity Coalition
Progrexion

Other

Consumer Attorneys of California

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