

SENATE BILL REPORT

ESHB 1311

As of March 16, 2023

Title: An act relating to credit repair services performed by a credit services organization.

Brief Description: Addressing credit repair services performed by a credit services organization.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Reeves, Corry, Chapman, Reed and Cheney).

Brief History: Passed House: 3/6/23, 91-5.

Committee Activity: Business, Financial Services, Gaming & Trade: 3/16/23.

Brief Summary of Bill

- Removes the exemption for certain types of law practices from being defined as credit services organizations.
- Adds prohibited acts to the Credit Services Organization Act.
- Specifies conditions in which a consumer reporting agency, creditor, or collection agency do not need to communicate with a credit services organization.
- Requires credit services organizations to redact certain personal information of a consumer when sending written communication.
- Requires credit services organizations to receive explicit written approval from the consumer before using a consumer's signature for credit repair services.
- Requires credit services organizations to provide consumers with a notice about their ability to file complaints with the attorney general and their rights.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Background: In 1986, the Legislature established the Credit Services Organizations Act. A credit service organization (CSO) is regarded as a business that charges fees to customers in an effort to obtain an extension of credit, improve a person's credit rating or prevent foreclosure of a mortgage or security agreement. Under the CSO Act, a CSO means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that they can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:

- improving, saving, or preserving a buyer's credit record, history, or rating;
- obtaining an extension of credit for a buyer;
- stopping, preventing, or delaying the foreclosure of a deed of trust, mortgage, or other security agreement; or
- providing advice or assistance to a buyer with regard to any of these three types of services.

CSOs are not:

- persons authorized to make loans or extensions of credit;
- banks;
- credit unions;
- nonprofit organizations exempt from taxation under section 501(c)(3) of the internal revenue code;
- state licensed real estate brokers;
- entities licensed as a collection agency;
- any person licensed to practice law in this state if the person renders services within the course and scope of their practice as an attorney;
- broker-dealers registered with the securities and exchange commission or the commodity futures trading commission;
- consumer reporting agencies as defined in the Federal Fair Credit Reporting Act; or
- mortgage brokers.

Prohibited Actions. Under this chapter CSOs are prohibited from the following activities:

- charging or receiving money or other consideration prior to full and complete performance of services the CSO has agreed to do, unless the CSO has a \$10,000 surety bond, and is a company that can legally do business in the state of Washington;
- charging or receiving money or other consideration for referral of the buyer to a retail seller that will or may extend credit to the buyer;
- making or counseling a buyer to make untrue or misleading statements when a buyer is applying for credit; and
- making or using any untrue or misleading representations in the offer or sale of credit services.

Information Statements and Notice of Cancellation. Prior to the execution of a contract between a buyer and a CSO, the CSO must provide a buyer with an information statement.

This information statement must include:

- a statement of the buyer's right to review any file on the buyer maintained by any credit reporting agency;
- a statement that the buyer may review their consumer reporting agency file at no charge if the request is made within 30 days after receiving notice that credit has been denied; and
- the approximate price the buyer will be charged by the CSO to review their consumer reporting agency file.

Each contract for purchase services must include a notice of cancellation. A buyer has the right to cancel the contract at any time prior to midnight of the fifth day after the transaction.

Summary of Bill: Narrowing the Exemption for Attorneys from the Definition of Credit Services Organization. The exemption for attorneys from the definition of CSOs is narrowed by removing the exemption for law practices that primarily work with consumers to improve their credit rating, or assist consumers in obtaining an extension of credit. These type of law practices would be considered CSOs with this definitional change.

Additional Prohibited Credit Services Organization Actions. CSOs are prohibited from failing to provide a monthly statement to a consumer that details the services the CSO has performed on their behalf. This includes an accounting of any funds paid by a consumer and held or disbursed on the consumer's behalf.

The list of entities the CSO may not counsel or advise consumers to make untrue or misleading statements to is expanded to include creditors, collection agencies, and regulatory entities. CSOs cannot advise a consumer to submit a dispute without a good faith belief in the accuracy of the dispute.

CSOs are prohibited from sending communications to a consumer reporting agency, creditor, collection agency or regulatory entity without authorization from the consumer. CSOs cannot fail to make written communication sent on behalf of a consumer to the consumer.

It is not allowed to be considered a service of a CSO when a CSO seeks to obtain a credit report and the performance of other services necessary to determine the needs of a consumer for the reinvestigation of any accounts.

Communication Obligations of Consumer Reporting Agencies, Creditors, or Collection Agencies to a Credit Service Organization. If a consumer reporting agency, creditor, or collection agency knows that a consumer is represented by a CSO, they are permitted to communicate with that CSO unless:

- the CSO fails to respond within 30 days to communication from the consumer reporting agency, creditor, or collection agency; or

- the consumer expressly directs the consumer reporting agency, creditor, or collection agency not to communicate with the CSO.

A consumer reporting agency, creditor, or collection agency is not required to communicate with a CSO if:

- the account subject to the dispute has been paid, settled, or resolved;
- the account subject to the dispute has been removed from the consumer's credit report;
- the debt collector has provided to the CSO or to the consumer the verification information regarding the account in dispute;
- the debt collector is a debt buyer and has provided to the CSO or to the consumer the information or documentation regarding the account subject to the dispute; or
- the consumer reporting agency, creditor, or collection agency reasonably determines the dispute is frivolous or irrelevant.

Identity Theft Prevention. CSOs are directed to redact personal information of the consumer unless inclusion of the information is required by law. This includes:

- all except for the last four digits of the social security number;
- taxpayer identification number;
- financial account number;
- credit card number;
- debit card number; and
- month and year of the consumer's date of birth.

Credit Service Organization Recordkeeping Requirements. The period of time a CSO must maintain a file for a consumer is extended from two years to four years following the completion or termination of the CSO agreement.

Contents of the Information Statement. The information statement must include in 10 point type at the top of the statement an outline of how a CSO will work on behalf of a consumer. The notice will also include a statement directing consumers to reach out to the Office of the Attorney General if they have a complaint about fees charged by the CSO. The statement will also include the consumer's rights under federal and state law.

Credit Service Organization Contract Requirements. Contracts between a CSO and a consumer must include explicit written approval from the consumer that the CSO may use the consumer's signature to facilitate credit repair services. The duration of time under which a CSO provides a consumer credit services is limited to 180 days.

The "Notice of Cancellation" component of the contract is updated to provide for electronic means of communication as a way of cancelling. The duration of time a consumer has to cancel is modified to provide for midnight on the fifth day after the contract is executed. CSOs are required to provide cancellation instructions on its website that are easily understood and provide easily exercised cancellation instructions.

Attorney Fees. In case of an action by a consumer against a CSO, damages must be awarded in an amount not less than the amount of money the consumer paid to the CSO.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The problem we are trying to solve is having more transparency for consumers. These services help consumers improve their credit. It is stunning that these organizations can sign someone's name on their behalf. They shouldn't sign my name on my behalf when they have power of attorney. This process needs to be fully disclosed to the consumer. This would build a better relationship between CSO's and consumers. There is an epidemic of bad actors in the credit repair organizations space with some of them charging excessive costs back to the consumer. The bill prohibits repeated challenges on accounts that are frivolous. This bill provides reasonable protections that all good actors can follow. All businesses should treat people with honesty and transparency. This bill has a wide range of supporters. Letters have misspellings of names and it is often done on purpose. This makes it take longer to resolve an issue, which means more monthly fees for nefarious actors that profit from drawing these processes out.

CON: Our company has to sign on behalf of people because of federal law not allowing third parties. This bill makes it harder for consumers to contest account issues, and CSOs to operate efficiently. New contracts have to be redone every 180 days. 1 in 5 Americans have an error on their credit report. The average American cannot navigate credit bureau policies. Attorneys doing the same work should all be treated the same under the law.

Persons Testifying: PRO: Representative Kristine Reeves, Prime Sponsor; Kelsi Hamilton, Washington Collectors Assoc.; Mindy Chumbley, Washington Collectors Assoc.; Martin Lynch, Financial counseling Association of America; Antonio Ginatta, Columbia Legal Services.

CON: Brent Ludeman, Lexington Law; Melissa Gombosky, Progrexion.

Persons Signed In To Testify But Not Testifying: No one.