

Act No. 82
Public Acts of 1990
Approved by the Governor
May 25, 1990
Filed with the Secretary of State
May 25, 1990

STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990

Introduced by Reps. Profit, Law, Wallace and DeMars

ENROLLED HOUSE BILL No. 5072

AN ACT to amend the title and sections 2 and 3 of Act No. 361 of the Public Acts of 1988, entitled "An act to regulate the business of credit assistance services; to prescribe conditions for credit service contracts; and to provide for remedies and penalties," being sections 445.1702 and 445.1703 of the Michigan Compiled Laws; and to add sections 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, and 8.

The People of the State of Michigan enact:

Section 1. The title and sections 2 and 3 of Act No. 361 of the Public Acts of 1988, being sections 445.1702 and 445.1703 of the Michigan Compiled Laws, are amended and sections 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, and 8 are added to read as follows:

TITLE

An act to regulate and license the business of credit assistance services; to prescribe conditions for credit service contracts; to prescribe the duties of certain state agencies and departments; and to provide for remedies and penalties.

Sec. 2. As used in this act:

- (a) "Commissioner" means the commissioner of the financial institutions bureau.
- (b) "Credit services organization" means, except as otherwise provided in subdivision (c), a person who, in return for consideration, attempts to sell, provide, or perform 1 or more of the following:
 - (i) Improve a person's credit record, history, or rating.
 - (ii) Obtain an extension of credit.
 - (iii) Provide advice or assistance regarding either subparagraph (i) or (ii).
- (c) Credit services organization does not include any of the following:
 - (i) A person who is licensed in this state or otherwise authorized to make loans or extend credit under any state statute other than Act No. 326 of the Public Acts of 1966, being sections 438.31 to 438.33 of the Michigan Compiled Laws.
 - (ii) A federal or state chartered bank, credit union, or savings and loan institution or any solely owned subsidiary thereof.
 - (iii) A person licensed under the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.101 to 339.2721 of the Michigan Compiled Laws, when engaged in the regular course of business.
 - (iv) A person licensed to practice law in this state where the person renders services within the course of that person's practice as an attorney and does not engage in the business of a credit services organization on a regular and continuing basis.
 - (v) Judicial officers or others acting under court order.

(vi) A consumer reporting agency as defined in section 603 of the fair credit reporting act, Public Law 91-508, title 15 U.S.C. 1681a.

(vii) A debt management business licensed under the debt management act, Act No. 148 of the Public Acts of 1975, being sections 451.411 to 451.437 of the Michigan Compiled Laws.

(viii) An investment adviser or broker-dealer registered under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

(ix) A nonprofit corporation which is exempt from taxation pursuant to section 501c(3) of the United States internal revenue code, title 26 U.S.C. 501c(3).

(d) "Licensee" means a person licensed by the commissioner pursuant to this act.

(e) "Person" means an individual, corporation, partnership, or other business entity.

Sec. 3. A credit services organization, its salespersons, agents, and representatives shall not sell or attempt to sell the services of a credit services organization without first obtaining a license as provided in this act and shall not do any of the following:

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

(b) Make, counsel, or advise a person to make any 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 any person who has extended credit to the person or to whom the person is applying for an extension of credit, with respect to the person's creditworthiness, credit standing, or credit capacity.

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

(d) Require a person to purchase, rent, or lease any tangible goods as a condition for entering into a contract for credit services, whether or not the goods are to be provided by the credit services organization or any other business entity.

(e) Conduct the business of a credit services organization within the same office, room, suite, or place of business in which any other business is solicited or transacted.

(f) Require a person to waive a right provided by the act or any other right provided by law.

Sec. 3a. An application for a license to engage in the business of a credit services organization shall be made in writing and under oath to the commissioner in a form as he or she may prescribe. The application shall state the full name and business address of all of the following:

(a) The proprietor, if the applicant is an individual.

(b) Every member, if the applicant is a partnership or association, except that if the applicant is a joint stock association having 50 or more members, the name and business address need be given only for the association and each of its officers and directors.

(c) The corporation and each of its officers and directors, if the applicant is a corporation.

Sec. 3b. An application for a license shall be accompanied by an investigation fee of \$300.00. An investigation fee shall not be refunded.

Sec. 3c. An application for a license shall be accompanied by both of the following:

(a) Financial statements, reasonably satisfactory to the commissioner, showing the applicant's net worth exceeds \$50,000.00.

(b) A surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of \$10,000.00 and in an additional principal sum of \$3,000.00 for each office and for each agency of the applicant in this state at which the business is to be conducted, but in no event shall the bond be required to be in excess of \$50,000.00. If the bond accompanying the application is in a principal sum of less than \$50,000.00, the application shall be accompanied by a list of the locations, including agencies, at which the business is to be conducted. The bond shall be in form satisfactory to the commissioner and shall run to the commissioner for the benefit of any residents who, through doing business with the applicant or its agents located in this state, are creditors of or claimants against the applicant or its agents to secure the faithful performance of the obligations of the applicant and the agents of the applicant with respect to providing services as a credit services organization. The aggregate liability of the surety shall not exceed the principal sum of the bond.

Sec. 3d. Upon the filing of the application, the payment of the investigation fee, and the approval by the commissioner of the bond delivered pursuant to section 3c, the commissioner shall investigate the financial responsibility, financial and business experience, character, and general fitness of the person and, if he or she considers it advisable, the general fitness of the person's officers and directors, and if he or she finds these factors and qualities meet the requirements of this act and are such as to reasonably warrant the belief that the person's business will be conducted honestly, fairly, equitably, carefully, efficiently, and in a manner commanding the confidence and trust of the community, the commissioner shall issue to the person a license to engage in the business of credit services subject to this act.

Sec. 3e. (1) A licensee shall pay to the commissioner within 5 days after the issuance of the license, and annually thereafter on or before March 1 of each year, a license fee of \$250.00.

(2) All fees and expenses provided for in this act shall be paid into the state treasury and credited to the financial institutions bureau to be used for the operation of the financial institutions bureau.

Sec. 3f. With the prior written approval of the commissioner, a licensee may conduct business at more than 1 location within this state and through or by means of employees, agents, or representatives as the licensee may designate and appoint from time to time. A license under this act is not required of an employee, agent, or representative who is acting for or on behalf of a licensee in providing credit services.

Sec. 3g. A licensee shall conspicuously and continuously post at the place of business the granted license which shall state the name of the licensee and the address of the business.

Sec. 3h. (1) A license shall not be denied, suspended, or revoked except on not less than 10 days' notice to the applicant or licensee setting forth in writing the reasons for the denial, suspension, or revocation. Within 5 days after receipt of the notice, the applicant or licensee may make written demand for a hearing. The commissioner with reasonable promptness shall hear and determine the matter as provided by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. If the applicant or licensee considers itself aggrieved by the order of the commissioner, the applicant or licensee may appeal within 30 days from the date of the order to the circuit court in the manner provided by Act No. 306 of the Public Acts of 1969, and is entitled to the same judicial review as provided in that act. If an appeal is taken from an order revoking a license, the effect of the order may be stayed by the court pending the final determination of the appeal.

(2) The commissioner may make investigations and conduct hearings as the commissioner considers necessary to determine whether a licensee or any other person has violated any of the provisions of this act, or whether a licensee has conducted business in such a manner as would justify suspension or revocation of its license.

(3) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence in a matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(4) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

(5) If, in the opinion of the commissioner, a person or licensee is engaging in, or has engaged in, or the commissioner has reasonable cause to believe that the person or licensee is about to engage in, an unsafe or unsound practice in conjunction with providing credit services, to the detriment of the people of the state, or the commissioner has reasonable cause to believe the licensee has, is, or is about to violate or fail to comply with this act or a rule promulgated under this act, the commissioner may issue and serve upon the person or licensee a notice of the charges regarding the unsafe or unsound practice, violation, or failure to comply. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice, violation, or failure and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist from the practice, violation, or failure to comply should issue against the licensee. The hearing shall be not earlier than 5 days nor later than 10 days after service of the notice unless an earlier or a later date is set by the commissioner at the request of the person or licensee. Unless the person or licensee appears at the hearing personally or by a duly authorized representative, the person or licensee shall be considered to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at the hearing, the commissioner finds that an unsafe or unsound practice, violation, or failure to comply specified in the notice of charges has been established, the commissioner may issue and serve upon the person or licensee an order to cease and desist from any practice, violation, or failure to comply. The order may also require or recommend that the person or licensee take affirmative action to correct the conditions resulting from any practice, violation, or failure to comply.

(6) A cease and desist order issued under subsection (5) shall become effective at the expiration of 5 days after service of the order upon the licensee, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain in effect and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

Sec. 3i. The commissioner shall promulgate rules that are necessary for the enforcement of this act in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The commissioner shall also promulgate rules that are necessary to ensure that relevant information is disclosed and made available to consumers as required by this act.

Sec. 8. A person who violates this act is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not less than \$100.00 or more than \$500.00, or both. Each transaction in violation of this act and each day that a violation continues shall be a separate offense.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.