

HOUSE BILL No. 5072

September 21, 1989, Introduced by Reps. Profit, Law, Wallace and DeMars and referred to the Committee on Consumers.

A bill to amend the title and sections 2 and 3 of Act No. 361 of the Public Acts of 1988, entitled "Credit services act," 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:

1 Section 1. The title and sections 2 and 3 of Act No. 361 of
2 the Public Acts of 1988, being sections 445.1702 and 445.1703 of
3 the Michigan Compiled Laws, are amended and sections 3a, 3b, 3c,
4 3d, 3e, 3f, 3g, 3h, 3i, and 8 are added to read as follows:

5	TITLE
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6 An act to regulate AND LICENSE the business of credit
7 assistance services; to prescribe conditions for credit service

1 contracts; TO PRESCRIBE THE DUTIES OF CERTAIN STATE AGENCIES AND
2 DEPARTMENTS; and to provide for remedies and penalties.

3 Sec. 2. As used in this act:

4 (A) "COMMISSIONER" MEANS THE COMMISSIONER OF THE FINANCIAL
5 INSTITUTIONS BUREAU.

6 (B) ~~(a)~~ "Credit services organization" means, except as
7 otherwise provided in subdivision ~~(b)~~ (C), a person who, in
8 return for consideration, attempts to sell, provide, or perform
9 or more of the following:

10 (i) Improve a person's credit record, history, or rating.

11 (ii) Obtain an extension of credit.

12 (iii) Provide advice or assistance regarding either subpara-
13 graph (i) or (ii).

14 (C) ~~(b)~~ Credit services organization does not include any
15 of the following:

16 (i) A person who is licensed in this state or otherwise
17 authorized to make loans or extend credit under any state statute
18 other than Act No. 326 of the Public Acts of 1966, being sections
19 438.31 to 438.33 of the Michigan Compiled Laws.

20 (ii) A federal or state chartered bank, credit union, or
21 savings and loan institution.

22 (iii) A person licensed under the occupational code, Act
23 No. 299 of the Public Acts of 1980, being sections 339.101 to
24 339.2721 of the Michigan Compiled Laws, when engaged in the regu-
25 lar course of business.

26 (iv) A person licensed to practice law in this state where
27 the person renders services within the course of that person's

1 practice as ~~a lawyer~~ AN ATTORNEY and does not engage in the
2 business of a credit services organization on a regular and con-
3 tinuing basis.

4 (v) Judicial officers or others acting under court order.

5 (vi) A consumer reporting agency as defined in section 603
6 of the fair credit reporting act, Public Law 91-508, title
7 15 U.S.C. 1681a.

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

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

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

18 (D) "LICENSEE" MEANS A PERSON LICENSED BY THE COMMISSIONER
19 PURSUANT TO THIS ACT.

20 (E) ~~(c)~~ "Person" means an individual, corporation, part-
21 nership, or other business entity.

22 Sec. 3. A credit services organization, its salespersons,
23 agents, and representatives ~~who~~ SHALL NOT sell or attempt to
24 sell the services of a credit services organization ~~—~~ WITHOUT
25 FIRST OBTAINING A LICENSE AS PROVIDED IN THIS ACT AND shall not
26 do any of the following:

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

6 (b) Make, counsel, or advise a person to make any statement
7 which is untrue or misleading, and which is known, or which by
8 the exercise of reasonable care should be known, to be untrue or
9 misleading, to a consumer credit reporting agency, or to any
10 person who has extended credit to the person or to whom the
11 person is applying for an extension of credit, with respect to
12 the person's creditworthiness, credit standing, or credit
13 capacity.

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

20 ~~(d) Transact business without having in force at all times~~
21 ~~a surety bond issued by a bonding company or insurance company~~
22 ~~authorized to do business in this state in the amount of~~
23 ~~\$10,000.00. The bond shall be for the benefit of citizens of~~
24 ~~this state who, through the purchase of credit services, become~~
25 ~~creditors or claimants against the credit services organization.~~

26 (D) ~~(e)~~ Require a person to purchase, rent, or lease any
27 tangible goods as a condition for entering into a contract —

1 for credit services, whether or not the goods are to be provided
2 by the credit services organization or any other business
3 entity.

4 (E) ~~(f)~~ Conduct the business of a credit services organi-
5 zation within the same office, room, suite, or place of business
6 in which any other business is solicited or transacted.

7 (F) ~~(g)~~ Require a person to waive a right provided by the
8 act or any other right provided by law.

9 SEC. 3A. AN APPLICATION FOR A LICENSE TO ENGAGE IN THE
10 BUSINESS OF A CREDIT SERVICES ORGANIZATION SHALL BE MADE IN WRIT-
11 ING AND UNDER OATH TO THE COMMISSIONER IN A FORM AS HE OR SHE MAY
12 PRESCRIBE. THE APPLICATION SHALL STATE THE FULL NAME AND BUSI-
13 NESS ADDRESS OF ALL OF THE FOLLOWING:

14 (A) THE PROPRIETOR, IF THE APPLICANT IS AN INDIVIDUAL.

15 (B) EVERY MEMBER, IF THE APPLICANT IS A PARTNERSHIP OR ASSO-
16 CIATION, EXCEPT THAT IF THE APPLICANT IS A JOINT STOCK ASSOCIA-
17 TION HAVING 50 OR MORE MEMBERS, THE NAME AND BUSINESS ADDRESS
18 NEED BE GIVEN ONLY FOR THE ASSOCIATION AND EACH OF ITS OFFICERS
19 AND DIRECTORS.

20 (C) THE CORPORATION AND EACH OF ITS OFFICERS AND DIRECTORS,
21 IF THE APPLICANT IS A CORPORATION.

22 SEC. 3B. AN APPLICATION FOR A LICENSE SHALL BE ACCOMPANIED
23 BY AN INVESTIGATION FEE OF \$300.00. AN INVESTIGATION FEE SHALL
24 NOT BE REFUNDED.

25 SEC. 3C. AN APPLICATION FOR A LICENSE SHALL BE ACCOMPANIED
26 BY BOTH OF THE FOLLOWING:

1 (A) FINANCIAL STATEMENTS, REASONABLY SATISFACTORY TO THE
2 COMMISSIONER, SHOWING THE APPLICANT'S NET WORTH EXCEEDS
3 \$50,000.00.

4 (B) A SURETY BOND ISSUED BY A BONDING COMPANY OR INSURANCE
5 COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE, IN THE PRINCIPAL
6 SUM OF \$10,000.00 AND IN AN ADDITIONAL PRINCIPAL SUM OF \$3,000.00
7 FOR EACH OFFICE AND FOR EACH AGENCY OF THE APPLICANT IN THIS
8 STATE AT WHICH THE BUSINESS IS TO BE CONDUCTED, BUT IN NO EVENT
9 SHALL THE BOND BE REQUIRED TO BE IN EXCESS OF \$50,000.00. IF THE
10 BOND ACCOMPANYING THE APPLICATION IS IN A PRINCIPAL SUM OF LESS
11 THAN \$50,000.00, THE APPLICATION SHALL BE ACCOMPANIED BY A LIST
12 OF THE LOCATIONS, INCLUDING AGENCIES, AT WHICH THE BUSINESS IS TO
13 BE CONDUCTED. THE BOND SHALL BE IN FORM SATISFACTORY TO THE COM-
14 MISSIONER AND SHALL RUN TO THE COMMISSIONER FOR THE BENEFIT OF
15 ANY RESIDENTS WHO, THROUGH DOING BUSINESS WITH THE APPLICANT OR
16 ITS AGENTS LOCATED IN THIS STATE, ARE CREDITORS OF OR CLAIMANTS
17 AGAINST THE APPLICANT OR ITS AGENTS TO SECURE THE FAITHFUL PER-
18 FORMANCE OF THE OBLIGATIONS OF THE APPLICANT AND THE AGENTS OF
19 THE APPLICANT WITH RESPECT TO PROVIDING SERVICES AS A CREDIT
20 SERVICES ORGANIZATION. THE AGGREGATE LIABILITY OF THE SURETY
21 SHALL NOT EXCEED THE PRINCIPAL SUM OF THE BOND.

22 SEC. 3D. UPON THE FILING OF THE APPLICATION, THE PAYMENT OF
23 THE INVESTIGATION FEE, AND THE APPROVAL BY THE COMMISSIONER OF
24 THE BOND DELIVERED PURSUANT TO SECTION 3C, THE COMMISSIONER SHALL
25 INVESTIGATE THE FINANCIAL RESPONSIBILITY, FINANCIAL AND BUSINESS
26 EXPERIENCE, CHARACTER, AND GENERAL FITNESS OF THE PERSON AND, IF
27 HE OR SHE CONSIDERS IT ADVISABLE, THE GENERAL FITNESS OF THE

1 PERSON'S OFFICERS AND DIRECTORS, AND IF HE OR SHE FINDS THESE
2 FACTORS AND QUALITIES MEET THE REQUIREMENTS OF THIS ACT AND ARE
3 SUCH AS TO REASONABLY WARRANT THE BELIEF THAT THE PERSON'S BUSI-
4 NESS WILL BE CONDUCTED HONESTLY, FAIRLY, EQUITABLY, CAREFULLY,
5 EFFICIENTLY, AND IN A MANNER COMMANDING THE CONFIDENCE AND TRUST
6 OF THE COMMUNITY, THE COMMISSIONER SHALL ISSUE TO THE PERSON A
7 LICENSE TO ENGAGE IN THE BUSINESS OF CREDIT SERVICES SUBJECT TO
8 THIS ACT.

9 SEC. 3E. A LICENSEE SHALL PAY TO THE COMMISSIONER WITHIN 5
10 DAYS AFTER THE ISSUANCE OF THE LICENSE, AND ANNUALLY THEREAFTER
11 ON OR BEFORE MARCH 1 OF EACH YEAR, A LICENSE FEE OF \$250.00.

12 SEC. 3F. WITH THE PRIOR WRITTEN APPROVAL OF THE COMMISSION-
13 ER, A LICENSEE MAY CONDUCT BUSINESS AT MORE THAN 1 LOCATION
14 WITHIN THIS STATE AND THROUGH OR BY MEANS OF EMPLOYEES, AGENTS,
15 OR REPRESENTATIVES AS THE LICENSEE MAY DESIGNATE AND APPOINT FROM
16 TIME TO TIME. A LICENSE UNDER THIS ACT IS NOT REQUIRED OF AN
17 EMPLOYEE, AGENT, OR REPRESENTATIVE WHO IS ACTING FOR OR ON BEHALF
18 OF A LICENSEE IN PROVIDING CREDIT SERVICES.

19 SEC. 3G. A LICENSEE SHALL CONSPICUOUSLY AND CONTINUOUSLY
20 POST AT THE PLACE OF BUSINESS THE GRANTED LICENSE WHICH SHALL
21 STATE THE NAME OF THE LICENSEE AND THE ADDRESS OF THE BUSINESS.

22 SEC. 3H. (1) A LICENSE SHALL NOT BE DENIED, SUSPENDED, OR
23 REVOKED EXCEPT ON NOT LESS THAN 10 DAYS' NOTICE TO THE APPLICANT
24 OR LICENSEE SETTING FORTH IN WRITING THE REASONS FOR THE DENIAL,
25 SUSPENSION, OR REVOCATION. WITHIN 5 DAYS AFTER RECEIPT OF THE
26 NOTICE, THE APPLICANT OR LICENSEE MAY MAKE WRITTEN DEMAND FOR A
27 HEARING. THE COMMISSIONER WITH REASONABLE PROMPTNESS SHALL HEAR

1 AND DETERMINE THE MATTER AS PROVIDED BY THE ADMINISTRATIVE
2 PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969,
3 BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS.
4 IF THE APPLICANT OR LICENSEE CONSIDERS ITSELF AGGRIEVED BY THE
5 ORDER OF THE COMMISSIONER, THE APPLICANT OR LICENSEE MAY APPEAL
6 WITHIN 30 DAYS FROM THE DATE OF THE ORDER TO THE CIRCUIT COURT IN
7 THE MANNER PROVIDED BY ACT NO. 306 OF THE PUBLIC ACTS OF 1969,
8 AND IS ENTITLED TO THE SAME JUDICIAL REVIEW AS PROVIDED IN THAT
9 ACT. IF AN APPEAL IS TAKEN FROM AN ORDER REVOKING A LICENSE, THE
10 EFFECT OF THE ORDER MAY BE STAYED BY THE COURT PENDING THE FINAL
11 DETERMINATION OF THE APPEAL.

12 (2) THE COMMISSIONER MAY MAKE INVESTIGATIONS AND CONDUCT
13 HEARINGS AS THE COMMISSIONER CONSIDERS NECESSARY TO DETERMINE
14 WHETHER A LICENSEE OR ANY OTHER PERSON HAS VIOLATED ANY OF THE
15 PROVISIONS OF THIS ACT, OR WHETHER A LICENSEE HAS CONDUCTED BUSI-
16 NESS IN SUCH A MANNER AS WOULD JUSTIFY SUSPENSION OR REVOCATION
17 OF ITS LICENSE.

18 (3) THE COMMISSIONER MAY SUBPOENA WITNESSES AND DOCUMENTS,
19 PAPERS, BOOKS, RECORDS, AND OTHER EVIDENCE IN A MATTER OVER WHICH
20 THE COMMISSIONER HAS JURISDICTION, CONTROL, OR SUPERVISION. THE
21 COMMISSIONER MAY ADMINISTER OATHS AND AFFIRMATIONS TO A PERSON
22 WHOSE TESTIMONY IS REQUIRED.

23 (4) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED BY
24 THE COMMISSIONER OR TO TESTIFY WITH RESPECT TO ANY MATTER CON-
25 CERNING WHICH THE PERSON MAY BE LAWFULLY QUESTIONED, THE CIRCUIT
26 COURT FOR INGHAM COUNTY, ON APPLICATION OF THE COMMISSIONER, MAY

1 ISSUE AN ORDER REQUIRING THE ATTENDANCE OF THE PERSON AND THE
2 GIVING OF TESTIMONY OR PRODUCTION OF EVIDENCE.

3 (5) IF, IN THE OPINION OF THE COMMISSIONER, A PERSON OR
4 LICENSEE IS ENGAGING IN, OR HAS ENGAGED IN, OR THE COMMISSIONER
5 HAS REASONABLE CAUSE TO BELIEVE THAT THE PERSON OR LICENSEE IS
6 ABOUT TO ENGAGE IN, AN UNSAFE OR UNSOUND PRACTICE IN CONJUNCTION
7 WITH PROVIDING CREDIT SERVICES, TO THE DETRIMENT OF THE PEOPLE OF
8 THE STATE, OR THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE
9 THE LICENSEE HAS, IS, OR IS ABOUT TO VIOLATE OR FAIL TO COMPLY
10 WITH THIS ACT OR A RULE PROMULGATED UNDER THIS ACT, THE COMMIS-
11 SIONER MAY ISSUE AND SERVE UPON THE PERSON OR LICENSEE A NOTICE
12 OF THE CHARGES REGARDING THE UNSAFE OR UNSOUND PRACTICE, VIOLA-
13 TION, OR FAILURE TO COMPLY. THE NOTICE SHALL CONTAIN A STATEMENT
14 OF THE FACTS CONSTITUTING THE ALLEGED UNSAFE OR UNSOUND PRACTICE,
15 VIOLATION, OR FAILURE AND SHALL FIX A TIME AND PLACE AT WHICH A
16 HEARING WILL BE HELD TO DETERMINE WHETHER AN ORDER TO CEASE AND
17 DESIST FROM THE PRACTICE, VIOLATION, OR FAILURE TO COMPLY SHOULD
18 ISSUE AGAINST THE LICENSEE. THE HEARING SHALL BE NOT EARLIER
19 THAN 5 DAYS NOR LATER THAN 10 DAYS AFTER SERVICE OF THE NOTICE
20 UNLESS AN EARLIER OR A LATER DATE IS SET BY THE COMMISSIONER AT
21 THE REQUEST OF THE PERSON OR LICENSEE. UNLESS THE PERSON OR
22 LICENSEE APPEARS AT THE HEARING PERSONALLY OR BY A DULY AUTHO-
23 RIZED REPRESENTATIVE, THE PERSON OR LICENSEE SHALL BE CONSIDERED
24 TO HAVE CONSENTED TO THE ISSUANCE OF THE CEASE AND DESIST ORDER.
25 IN THE EVENT OF SUCH CONSENT, OR IF UPON THE RECORD MADE AT THE
26 HEARING, THE COMMISSIONER FINDS THAT AN UNSAFE OR UNSOUND
27 PRACTICE, VIOLATION, OR FAILURE TO COMPLY SPECIFIED IN THE NOTICE

1 OF CHARGES HAS BEEN ESTABLISHED, THE COMMISSIONER MAY ISSUE AND
2 SERVE UPON THE PERSON OR LICENSEE AN ORDER TO CEASE AND DESIST
3 FROM ANY PRACTICE, VIOLATION, OR FAILURE TO COMPLY. THE ORDER
4 MAY ALSO REQUIRE OR RECOMMEND THAT THE PERSON OR LICENSEE TAKE
5 AFFIRMATIVE ACTION TO CORRECT THE CONDITIONS RESULTING FROM ANY
6 PRACTICE, VIOLATION, OR FAILURE TO COMPLY.

7 (6) A CEASE AND DESIST ORDER ISSUED UNDER SUBSECTION (5)
8 SHALL BECOME EFFECTIVE AT THE EXPIRATION OF 5 DAYS AFTER SERVICE
9 OF THE ORDER UPON THE LICENSEE, EXCEPT IN THE CASE OF AN ORDER
10 ISSUED UPON CONSENT WHICH SHALL BECOME EFFECTIVE AT THE TIME
11 SPECIFIED IN THE ORDER, AND SHALL REMAIN IN EFFECT AND ENFORCE-
12 ABLE AS PROVIDED IN THE ORDER, EXCEPT TO THE EXTENT IT IS STAYED,
13 MODIFIED, TERMINATED, OR SET ASIDE BY ACTION OF THE COMMISSIONER
14 OR A REVIEWING COURT.

15 SEC. 31. THE COMMISSIONER SHALL PROMULGATE RULES THAT ARE
16 NECESSARY FOR THE ENFORCEMENT OF THIS ACT IN ACCORDANCE WITH THE
17 ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC
18 ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN
19 COMPILED LAWS. THE COMMISSIONER SHALL ALSO PROMULGATE RULES THAT
20 ARE NECESSARY TO ENSURE THAT RELEVANT INFORMATION IS DISCLOSED
21 AND MADE AVAILABLE TO CONSUMERS AS REQUIRED BY THIS ACT.

22 SEC. 8. A PERSON WHO VIOLATES THIS ACT IS GUILTY OF A MIS-
23 DEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR
24 A FINE OF NOT LESS THAN \$100.00 OR MORE THAN \$500.00, OR BOTH.
25 EACH TRANSACTION IN VIOLATION OF THIS ACT AND EACH DAY THAT A
26 VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE.