



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

Although legislation was enacted in 1988 to regulate the business of credit assistance services, the businesses have proliferated in Michigan and have resulted in mounting criticisms of their advertising and business practices by consumers and government regulators. Not to be confused with debt management firms that dispense budgeting advice, distribute their client's payments to creditors, and thereby help to gradually improve their clients' credit records, these newer firms have mushroomed in the past thirteen years, and some say they are merely get-rich-quick schemes that prey upon the poor and the naive. In small ads placed in the personal columns of newspapers, these organizations, called "credit repair agencies," or "credit clinics," promise to "erase your bad debts" or "get you credit even if you've been turned down." Reportedly, a number of questionable tactics are employed by such firms in order to attract clients. It has been claimed that some use contracts that promise to do what is "legally possible" to have "derogatory items" removed from a client's credit profile; some promise their "best efforts" to produce an improved credit report for their clients. After leading clients to believe that they can have derogatory information removed from their credit file ("erase their bad debts"), credit repair agencies use a common strategy in their attempts to fulfill this promise: they repeatedly challenge information in a client's credit bureau file, in the hope that at some point the bureau will fail to make a response within the required 30 days and thus be required to delete the information from the file. Another tactic used by credit repair agencies is to sell goods to their client on credit in conjunction with the credit repair contract, with the understanding that this favorable credit information will be added to the information already on file at the credit bureau.

Credit repair firms, unfortunately, attract those consumers who can least afford to be taken advantage of. People with credit problems are often desperate for a solution, and the credit repair agencies apparently have had little problem finding clients willing to pay several hundred dollars in the belief that their credit records will be improved, or that they will be able to obtain formerly unavailable credit cards. Frequently, the agencies cannot deliver the services they advertise or promise to clients, and, in many cases, consumers could perform the same services for themselves at little or no cost. Furthermore, some of their tactics for improving an individual's credit history are less than scrupulous. In the first place, although consumers do have a right to challenge information contained in their credit file, the tactics used by repair agencies — that of bombarding credit bureaus repeatedly to challenge the information in a client's file — is of major concern to consumer reporting agencies because it is an overt attempt to bog down the system in paperwork and frustrate its ability to verify disputed information on a timely basis. In the second place, these agencies frequently advertise services which consumers could perform for

LICENSE CREDIT SERVICES ORGANIZATIONS

House Bill 5072 as introduced **RECEIVED**
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themselves at little or no cost: several out of state banks advertise new credit for a small annual fee. It has been pointed out that the violations the legislation intended to erase in last year's legislation regulating credit services organizations are increasing, rather than diminishing. Legislation has been proposed that would require licensure of these firms in an effort to discourage such firms from fraudulently offering services to consumers.

THE CONTENT OF THE BILL:

The bill would amend the Credit Services Act to require the licensing of credit services organizations. Under the bill, an application for a license would be made in writing to the commissioner of the Financial Institutions Bureau in the Department of Commerce, accompanied by a nonrefundable investigation fee of \$300, and financial statements showing that the applicant's net worth exceeded \$50,000. An applicant would also be required to include with the application a surety bond in the principal sum of \$10,000 and in an additional principal sum of \$3,000 for each of the applicant's offices and agencies at which business was to be conducted, up to a maximum of \$50,000. If the bond were for less than \$50,000, then the applicant would also be required to include a list of the locations, including agencies, at which the business would be conducted. The aggregate liability of the surety could not exceed the principal sum of the bond. A licensee could conduct business at more than one location within the state with the prior written approval of the commissioner. License fees would be \$250, payable within five days after the license was issued, and annually thereafter, on or before March 1 of each year. Employees, agents, or representatives acting for or on behalf of a licensee in providing credit services would not need to be licensed.

Under the bill, the commissioner of the Financial Institutions Bureau would be required to:

- Promulgate rules that are necessary to enforce the act and to ensure that relevant information is disclosed and made available to consumers.
- Investigate a applicant's financial responsibility, financial and business experience, character, and general fitness, and also the general fitness of the applicant's officers and directors, if considered necessary, before granting a credit services license.
- Subpoena witnesses, documents, and other evidence in matters over which he or she had jurisdiction, control, or supervision, and administer oaths and affirmations to persons who testify.
- Make application to Ingham County Circuit Court for an order requiring the attendance or testimony of a person who fails to comply with a subpoena issued by the commissioner or who refuses to testify.
- Issue and serve a notice of the charges against persons believed to be engaging in unsafe practices in conjunction with providing credit services, or those believed to be violating or failing to comply with the provisions of the act; conduct a hearing to determine

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whether a cease and desist order should be issued against the licensee; and issue the cease and desist order if any of the above charges are established or if the defendant or a representative fails to appear at the hearing.

- Make investigations and conduct hearings to determine whether a licensee or any other person has violated any of the provisions of the act, or whether a licensee had conducted business in such a manner as would justify license suspension or revocation.

Under the bill, a license could not be denied, suspended, or revoked unless the applicant or licensee received at least ten days' notice. The applicant or licensee could, within five days after receiving the notice, make written demand for a hearing by the commissioner. An applicant or licensee who was aggrieved by the commissioner's determination on the hearing would be entitled to a circuit court judicial review, if the appeal were filed within 30 days. Under the bill, violation of the act would be a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of \$100 to \$500, or both. Each transaction in violation of the act and each day that a violation continued would be considered a separate offense.

MCL 445.1702 et al.

FISCAL IMPLICATIONS:

According to the Department of Commerce, the bill has the potential to create enormous investigative and legal costs for the state. (11-1-89)

ARGUMENTS:

For:

By putting unscrupulous operators out of business, the bill would ease the unwarranted burden imposed on credit bureaus by credit repair firms that issue repeated challenges to accurately reported credit information. Such tactics endanger the integrity of credit records, for if a challenge is not answered in a reasonable period of time, by law, the challenged entry must be deleted. If credit repair services proliferate and successfully use this technique to "repair" clients' files, they will impair the integrity of credit information maintained by reputable credit agencies. Consumer reports will not present accurate profiles on some prospective customers and creditors will unknowingly extend credit to those who otherwise would fail to qualify. This adds to the risk of bad debt and ultimately to the cost of credit, a cost which is passed along to all consumers. Further, since some credit repair businesses take sizable prepayments in exchange for efforts that are almost always doomed to failure, and because many such businesses use highly questionable tactics to lure customers, the state has a legitimate reason to require them to be licensed. The bill would protect consumers and offer civil remedies and criminal penalties.

Against:

The bill would require the creation of a new regulatory program that would be housed in the Consumer Finance Division of the Department of Commerce, a division that has been the recipient in the past few years of more programs than it is equipped to either administer or fund effectively. Further, if, as some believe, these credit assistance agencies fail to apply for licenses, then the bill could incur enormous costs to the division in investigative and legal actions.

POSITIONS:

The Michigan Consumers Council supports the bill. (10-31-89)

The Associated Credit Bureaus of Michigan supports the bill. (11-1-89)

The City of Detroit's Department of Consumer Affairs supports the bill, since, in its experience, credit repair firms have posed a significant problem and there is a desperate need for the strongest possible control of these firms. (11-1-89)

The Michigan Bankers Association is not opposed to the bill. (11-1-89)