

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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House Bill 5072 (Substitute S-1 as reported by the Committee of the Whole)

Sponsor: Representative Kirk A. Profit

House Committee: Consumers

Senate Committee: Commerce and Technology

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Date Completed: 5-3-90

**RATIONALE**

In 1988, the Legislature enacted the Credit Services Act to regulate credit services organizations, which are businesses that for a fee attempt to improve a person's credit record, history, or rating, obtain an extension of credit, or provide advice or assistance regarding either activity. The Act prohibits these firms from taking certain actions, and requires them to obtain a surety bond, give their clients a statement of clients' rights, and include certain information in their contracts, but does not require them to be licensed. The Act was passed in response to reports that the firms were using questionable tactics both to attract clients, such as promising to do what is "legally possible" to have "derogatory items" removed from a client's file; and to render their services, such as repeatedly challenging information in a client's credit bureau file in the hope that the bureau eventually will fail to make a timely response and thus be required to delete the information. Despite the legislation, however, these businesses apparently have proliferated in Michigan and have resulted in mounting criticism of their advertising and business practices by consumers and government regulators. Bombarding credit bureaus is of major concern to consumer reporting agencies because it bogs down the system in paperwork and frustrates the bureaus' ability to verify disputed information on a timely basis. Further, it is reported that credit services organizations frequently advertise services that consumers could perform themselves for little or no cost. It has been suggested, therefore, that the State needs to exert greater control over these firms, such as requiring them to be licensed.

**CONTENT**

**The bill would amend the Credit Services Act to do the following:**

- **Require credit services organizations to be licensed by the Financial Institutions Bureau (FIB), pay a \$300 investigation fee upon application for licensure, and pay a \$250 annual license fee.**
- **Delete the current \$10,000 surety bond requirement, and require applicants for licensure to obtain a surety bond of \$10,000 plus \$3,000 for each office and agency in the State, up to a maximum of \$50,000.**
- **Require the Commissioner of the FIB to investigate applicants, and authorize the Commissioner to investigate violations, revoke or suspend licenses, and issue cease and desist orders.**
- **Make violation of the Act a misdemeanor.**

**Licensure**

The bill would prohibit a credit services organization, its salespersons, agents, and representatives from selling or attempting to sell the services of the organization without first obtaining a license. A license application would have to be made in writing and under oath to the FIB Commissioner, and state the full name and business address of the proprietor, every member of a partnership or association (although a joint stock association with at least 50 members would have to list only the association and each of its officers and

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directors), or the corporation and each of its officers and directors, depending upon the form of the organization.

An application would have to be accompanied by a \$300 nonrefundable investigation fee; financial statements showing that the applicant's net worth exceeded \$50,000; and a surety bond in the principal sum of \$10,000 plus an additional principal sum of \$3,000 for each office and agency of the applicant in this State at which business was to be conducted, although a bond could not be required to be over \$50,000. If the bond were under \$50,000, the application would have to be accompanied by a list of the locations, including agencies, where business was to be conducted. The bond would have to be issued by a bonding company or insurance company authorized to do business in Michigan; be in a form satisfactory to the Commissioner; and run to the Commissioner for the benefit of any residents who, through doing business with the applicant or its agents in the State, were creditors of or claimants against the applicant or its agents. The aggregate liability of the surety could not exceed the principal sum of the bond.

Upon the filing of an application, the payment of the investigation fee, and the approval of the bond, the Commissioner would have to investigate the financial responsibility, financial and business experience, character, and general fitness of the applicant and, if the Commissioner considered it advisable, the general fitness of the applicant's officers and directors. If he or she found that these factors and qualities met the Act's requirements and would reasonably warrant the belief that the business would be conducted honestly, fairly, equitably, carefully, efficiently, and in a manner commanding the confidence and trust of the community, the Commissioner would have to issue a license to engage in the business of credit services.

Within five days after a license was issued, and annually thereafter on or before March 1, a licensee would have to pay to the Commissioner a license fee of \$250. A licensee would have to post the license conspicuously and continuously at the place of business. With the prior written approval of the Commissioner, a licensee could conduct business at more than one location within the State and through employees,

agents, or representatives. A license would not be required of an employee, agent, or representative acting for or on behalf of a licensee.

The bill would require that all fees and expenses provided for in the Act be paid into the State Treasury and credited to the FIB to be used for its operation.

#### License Denial/Suspension/Revocation

A license could not be denied, suspended, or revoked except on at least 10 days' written notice to the applicant or licensee, giving the reasons for the denial, suspension, or revocation. Within five days after receiving the notice, the applicant or licensee could make a written demand for a hearing. The Commissioner, with reasonable promptness, would have to hear and determine the matter as provided by the Administrative Procedures Act (APA). An applicant or licensee aggrieved by the Commissioner's order could appeal to the circuit court within 30 days of the order's date, and would be entitled to the same judicial review as provided in the APA. If an appeal were taken from a revocation order, the effect of the order could be stayed by the court pending the final determination of the appeal.

The Commissioner would be authorized to do the following: make investigations and conduct hearings as he or she considered necessary to determine whether a licensee or another person had violated the Credit Services Act, or whether a licensee had conducted business in a manner that would justify license suspension or revocation; subpoena witnesses and documents, papers, books, records, and other evidence in a matter over which he or she had jurisdiction, control, or supervision; administer oaths and affirmations to a witness; and apply to the Ingham County Circuit Court for an order requiring the attendance of a person and the giving of testimony or production of evidence, if a person failed to testify or to comply with a subpoena.

#### Cease and Desist Order

If the Commissioner believed that a person or licensee was engaging in, had engaged in, or was 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 if the Commissioner had reasonable cause to believe that the licensee had, was, or was about to violate or fail to comply with the Act or a rule promulgated under it, the Commissioner could 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 would have to state the facts constituting the alleged practice, violation, or failure, and fix a time and place for a hearing to determine whether a cease and desist order should be issued against the licensee. The hearing could not be earlier than five or later than 10 days after service of the notice unless an earlier or later date were set by the Commissioner at the person's request. Unless the person or licensee appeared at the hearing personally or by an authorized representative, he or she would be considered to have consented to the issuance of the order. In the event of such consent, or if the Commissioner found, upon the record made at the hearing, that an unsafe or unsound practice, violation, or failure to comply had been established, the Commissioner could issue and serve upon the person or licensee an order to cease and desist from any practice, violation, or failure to comply. The order also could require or recommend that the person or licensee take affirmative action to correct the conditions resulting from any practice, violation, or failure.

A cease and desist order would become effective at the expiration of five days after its service upon the licensee, although an order issued upon consent would take effect at the time specified in the order. An order would remain in effect and enforceable as provided in the order, except to the extent that it was stayed, modified, terminated, or set aside by the Commissioner or a reviewing court.

#### Misdemeanor

A violation of the Act would be a misdemeanor punishable by imprisonment for up to 90 days, or a fine of not less than \$100 or more than \$500, or both. Each transaction in violation of the Act and each day that a violation continued would be a separate offense.

#### Rules

The Commissioner would be required to promulgate rules necessary for the Act's enforcement and necessary to ensure that relevant information was disclosed and made available to consumers as required in the Act.

#### Exemption

Currently, the Act exempts Federal- or State-chartered banks, credit unions, and savings and loan institutions. The bill also would exempt solely owned subsidiaries of any of those financial institutions.

MCL 445.1702 et al.

#### SENATE COMMITTEE ACTION

The Senate Committee on Commerce and Technology adopted a substitute to exempt from the Act solely owned subsidiaries of financial institutions. The Senate Committee of the Whole adopted an amendment to direct fee revenue to the FIB

#### FISCAL IMPACT

The bill would have a net fiscal cost to the State of approximately \$57,950 in the first year and \$29,450 in each subsequent year and an indeterminate fiscal impact on local government.

The Financial Institutions Bureau estimates that there are eight or nine credit services organizations that would apply for licensure. If nine organizations were to apply and pay the \$300 nonrefundable investigation fee, \$2,700 in one-time revenue would be generated for the State. Assuming seven organizations qualified for licensure, an additional \$1,750 revenue to the State would be generated annually by the license fee.

The FIB estimates that it would need an additional 2.0 FTEs in the first year of licensure to investigate the organizations, promulgate rules, and develop the application forms, and 1.0 FTE in the subsequent years. The FTE cost to the State would be approximately \$62,400 in the first year and \$31,200 in each subsequent year.

The number of violations of the Act that would

result in circuit court action, imprisonment, or a fine cannot be determined; therefore, the cost to local governments cannot be determined.

## **ARGUMENTS**

### **Supporting Argument**

So-called "credit repair" firms prey upon the consumers who can least afford to be taken advantage of. People with credit problems often are desperate for a solution, and these agencies apparently have little difficulty finding clients willing to pay several hundred dollars in the belief that their credit record will be improved, or that they will be able to obtain formerly unavailable credit. Reportedly, the agencies often 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. By putting unscrupulous operators out of business, the bill would ease the unwarranted burden imposed on credit bureaus by firms that issue repeated challenges to accurately reported credit information. Such tactics endanger the integrity of credit records, for a challenged entry must be deleted if a challenge is not answered in a reasonable period of time. If credit repair services proliferate and successfully use this technique to "repair" clients' files, they will impair the reliability of credit information maintained by reputable credit agencies. Consumer reports will not present accurate profiles on some prospective clients, 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, which is passed along to all consumers. Further, since some credit repair firms take sizable prepayments in exchange for efforts that may be doomed to certain failure, and because many such businesses use highly questionable tactics to lure customers, the State has a legitimate interest in requiring them to be licensed. The bill would protect consumers and offer administrative remedies and criminal penalties.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.