

Act No. 160
Public Acts of 1994
Approved by the Governor
June 12, 1994
Filed with the Secretary of State
June 13, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Randall, Middaugh, Gnodtke and Rhead

ENROLLED HOUSE BILL No. 5293

AN ACT to prohibit certain methods, acts, and practices of credit services organizations to prescribe remedies and penalties and to repeal certain acts and parts of acts

The People of the State of Michigan enact

Sec 1 This act shall be known and may be cited as the credit services protection act

Sec 2 As used in this act

(a) Buyer means a person who is solicited to purchase or who purchases the services of a credit services organization

(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) The improvement of a person's credit record, history, or rating

(ii) The obtaining of an extension of credit

(iii) Advice or assistance regarding the improvement or repair of a person's credit record, history, or rating

(iv) Advice or assistance regarding the obtaining of an extension of credit

(v) Advice or assistance regarding foreclosure of a real estate mortgage

(vi) Serve as an intermediate between a debtor and a creditor on behalf of the debtor regarding credit that was extended prior to any agreement to have the credit services organization serve as an intermediate

(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 while engaged in the regular course of business under that 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, savings bank, or savings and loan institution, an entity of the federally chartered farm credit system, 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 if 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) A judicial officer or other person acting under court order

(vi) A consumer reporting agency as defined in section 603 of the fair credit reporting act title VI of the consumer credit protection act Public Law 90 321 15 U S C 1681a while engaged in the regular course of the credit reporting business

(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 while engaged in the regular course of business under the debt management act

(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 that is exempt from taxation under section 501c(3) of the United States internal revenue code title 26 U S C 501c(3)

(x) A finance subsidiary of a manufacturing corporation

(d) Extension of credit means the right to defer payment of debt or to incur debt

(e) Person means an individual partnership corporation association or other legal entity

Sec 3 A credit services organization a salesperson agent or representative of a credit services organization or an independent contractor who sells or attempts to sell the services of a credit services organization shall not do any of the following

(a) Charge or receive from a buyer who is seeking a loan or extension of credit any money or other valuable consideration before the closing of the loan or extension of credit

(b) Charge a buyer or receive from a buyer of services money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer

(c) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral to a retail seller who will or may extend credit to the buyer if the credit that is or may be extended to the buyer is substantially the same as that available to the general public

(d) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization

(e) Engage directly or indirectly in a fraudulent or deceptive act practice or course of business in connection with the offer or sale of the services of a credit services organization including but not limited to both of the following

(i) Guaranteeing or otherwise stating that the organization is able to delete an adverse credit history unless the representation clearly discloses in a manner equally as conspicuous as the guarantee that this can be done only if the credit history is inaccurate or obsolete and is not claimed to be accurate by the creditor who submitted the information

(ii) Guaranteeing or otherwise stating that the organization is able to obtain an extension of credit regardless of the buyer's previous credit problems or credit history unless the representation clearly discloses in a manner equally as conspicuous as the guarantee the eligibility requirements for obtaining an extension of credit

(f) Fail to perform the agreed services within 90 days following the date the buyer signs the contract for services

(g) Counsel or advise a buyer to make a statement that is known or should be known to be untrue or misleading to a consumer credit reporting agency a person who has extended credit to a buyer or to a person to whom the buyer is applying for an extension of credit

(h) Remove assist or advise the buyer to remove adverse information from the buyer's credit record which is accurate and not obsolete

(i) Create assist or advise the buyer to create a new credit record by using a different name address social security number or employer identification number

(j) Submit a buyer's dispute to a consumer credit reporting agency without the buyer's knowledge

(k) Provide a service to a buyer that is not pursuant to a written contract that complies with this section

Sec 4 (1) Except as provided in subsection (2) the attorney general a county prosecutor or a buyer may bring an action to do 1 or more of the following

(a) Enjoin a person who is engaged or is about to engage in a method act or practice that violates this act

(b) Obtain a declaratory judgment that a method act or practice violates this act

(c) Recover actual damages consisting of an amount not less than the amount paid by the buyer to the credit services organization plus reasonable attorney fees and court costs The court may also award the buyer any punitive damages that it considers proper

(2) A person shall not bring an action under this act more than 4 years after the date of execution of the contract for services to which the action relates

(3) In an action under this act the burden of proving an exemption under section 2(c) is on the person claiming the exemption

(4) This act does not limit or prohibit any other legal remedy available to the attorney general a county prosecutor or a buyer

Sec 5 (1) 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 more than \$10 000 00 or both Each transaction in violation of this act constitutes a separate offense

(2) A credit services organization that violates this act is barred from recovering any fees or other charges from a buyer

Sec 6 Act No 361 of the Public Acts of 1988 being sections 445 1701 to 445 1708 of the Michigan Compiled Laws is repealed

This act is ordered to take immediate effect

Co Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor