

1991 Assembly Bill 802

Date of enactment: **April 27, 1992**
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1991 WISCONSIN ACT 244

AN ACT to amend 426.102; and to create subchapter V of chapter 422 and 426.102 (3) of the statutes, relating to: regulating credit services organizations and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Subchapter V of chapter 422 of the statutes is created to read:

CHAPTER 422 **SUBCHAPTER V**

CREDIT SERVICES ORGANIZATIONS

422.501 Definitions. In this subchapter:

(1) "Buyer" means a natural person or customer who is solicited to purchase or who purchases the services of a credit services organization.

(1m) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

(2) (a) "Credit services organization" means a person or merchant who, with respect to the extension of credit by others, sells, provides or performs, or represents that the person will sell, provide or perform, any of the following services in return for the payment of money or for other valuable consideration:

1. Improving a buyer's credit record, credit history or credit rating.
2. Arranging for or obtaining an extension of credit for a buyer.
3. Providing advice or assistance to a buyer with regard to subd. 1 or 2.

(b) "Credit services organization" does not include any of the following:

1. A person organized, chartered or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of this state or the United

States and who is subject to regulation and supervision by an official or agency of this state or the United States.

2. A bank or savings and loan association whose deposits or accounts are insured by the federal deposit insurance corporation, or a credit union whose deposits or accounts are insured by the national credit union administration.

3. A nonprofit organization described under section 501 (c) (3) of the internal revenue code and exempt from taxation under section 501 (a) of the internal revenue code.

4. A person licensed as an adjustment service company under s. 218.02 if the person is acting within the course and scope of that license.

5. A person licensed as a real estate broker or salesperson under ch. 452 if the person is acting within the course and scope of that license.

6. A person licensed to practice law in this state if the person is rendering services within the course and scope of his or her practice as an attorney at law.

7. A broker-dealer or agent licensed under s. 551.31 if the broker-dealer or agent is acting within the course and scope of that license.

8. A person registered as a mortgage banker, loan originator or loan solicitor under s. 440.72 if the person is acting within the course and scope of that registration.

9. A consumer reporting agency, if the consumer reporting agency is acting within the scope of assembling or evaluating consumer credit information on consumers for the purpose of furnishing consumer reports, as defined in 15 USC 1681a (d), to 3rd parties.

(3) “Extension of credit” means the right to defer payment of debt or to incur debt and defer its payment, that is offered or granted for debt that is incurred primarily for personal, family, household or agricultural purposes.

422.502 Registration requirements. (1) A person may not act as a credit services organization unless the person has been issued a certificate of registration from the administrator and the person has complied with the bond or letter of credit requirements under sub. (3).

(2) A person desiring to act as a credit services organization shall apply to the administrator for a certificate of registration on a form prescribed by the administrator and shall pay the administrator a registration fee of \$100.

(3) (a) A person desiring to act as a credit services organization shall obtain a surety bond that is issued by a surety company admitted to do business in this state or an irrevocable letter of credit from a federally insured bank or savings and loan association located in this state. The bond or letter of credit shall be in an amount equal to \$25,000.

(b) The credit services organization shall file a copy of the bond or letter of credit with the administrator.

(c) The bond or letter of credit shall be in favor of this state for the benefit of any person who is damaged by a violation of this subchapter. The bond or letter of credit shall also be in favor of any person damaged by a violation of this subchapter.

(d) A person claiming against the bond or letter of credit for a violation of this subchapter may maintain an action at law against the credit services organization and against the surety or financial institution. The surety or financial institution may be liable only for actual damages and not for punitive damages. The aggregate liability of the surety or financial institution to all persons damaged by a credit services organization’s violation of this subchapter may not exceed the amount of the bond or letter of credit.

(4) (a) A certificate of registration as a credit services organization expires on December 1 of the even-numbered year after issuance. A credit services organization may renew a certificate of registration by submitting to the administrator a renewal application and a \$100 renewal fee on or before the expiration date of the existing certificate of registration. A credit services organization shall refile a bond or letter of credit that satisfies sub. (3) as part of the renewal application.

422.503 Prohibited activities. (1) A credit services organization, and its salespersons, agents and representatives who offer or sell the services of the credit services organization, may not do any of the following:

(a) Charge or receive any money or other valuable consideration solely for referral of the buyer to a merchant who will or may extend credit to the buyer, if the credit extended to the buyer is upon substantially the

same terms as is credit that is available to the general public.

(b) Make, or counsel or advise any buyer to make, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer’s credit worthiness, credit standing or credit capacity.

(c) Make or use any untrue or misleading representations in the offer or sale of the services of the credit services organization or engage, directly or indirectly, in any act, practice or course of business that 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.

(2) A violation of this section is subject to s. 425.305.

422.504 Information statement. (1) Before the execution of a contract or agreement between the buyer and a credit services organization or before the credit services organization receives from the buyer any money or other valuable consideration, the credit services organization shall provide the buyer a written statement that includes all of the information required under sub. (2). The credit services organization shall maintain for a period of 2 years an exact copy of the statement that is signed by the buyer to acknowledge receipt of the statement.

(2) The information statement under sub. (1) shall include all of the following information:

(a) Notice of the buyer’s right to review any file on the buyer maintained by a consumer reporting agency; the buyer’s right to obtain a copy of that file; the approximate price the buyer may be charged by the consumer reporting agency for a copy of the file; and the buyer’s right to obtain a copy of the buyer’s file free of charge from the consumer reporting agency if the buyer requests the copy within 30 days after the buyer receives notice of a denial of credit.

(b) Notice of the buyer’s right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by a consumer reporting agency.

(c) A description of the services to be performed by the credit services organization for or on behalf of the buyer and the total amount the buyer will be charged for the services.

(d) Notice of the buyer’s right to proceed against the bond or letter of credit obtained by the credit services organization, a description of procedures that the buyer is to follow to proceed against the bond or letter of credit, and the name and address of the surety company that issued the bond or the name and address of the financial institution that issued the letter of credit.

(3) A violation of this section is subject to s. 425.305.

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422.505 Contracts. (1) Every contract between a buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, shall be dated and shall be signed by the buyer. The contract shall include all of the following:

(a) A conspicuous statement, in not less than 10-point boldface type and in immediate proximity to the space reserved for the signature of the buyer, as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE 5TH DAY AFTER THE DATE OF THE TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person.

(c) A description of the services to be performed by the credit services organization for or on behalf of the buyer, including all guarantees or promises of full or partial refunds, and the estimated date by which such services are to be performed or the estimated length of time for performing such services.

(d) The credit services organization's principal business address and the name and address of its agent in this state, other than the secretary of state, who is authorized to receive service of process.

(e) A conspicuous statement, in not less than 8-point boldface type, as follows: "THIS CREDIT SERVICES ORGANIZATION IS REGISTERED BY THE OFFICE OF THE COMMISSIONER OF BANKING, P.O. BOX 7876, MADISON, WISCONSIN 53707."

(f) Any disclosures required under subch. III.

(2) (a) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain the following statement in not less than 10-point type and written in the same language as used in the contract:

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, within 5 days after the date on which the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 15 days following receipt by (name of credit services organization) of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to (name of credit services organization) at (address of credit services organization), (place of business, if different from address) not later than midnight (date). I hereby cancel this transaction.

....
(Date)

....
(Buyer's signature)

(b) A copy of the fully completed contract and any other document the credit services organization requires the buyer to sign shall be given to the buyer at the time the contract or document is signed.

(3) A credit services organizations's breach of a contract under this section or of any obligation arising from such a contract is a violation of this subchapter.

(4) A violation of this section is subject to s. 425.305.

422.506 Waiver. (1) A waiver by a buyer of any provision of this subchapter shall be void and unenforceable. An attempt by a credit services organization to have a buyer waive any right under this subchapter is a violation of this subchapter.

(2) A violation of this section is subject to s. 425.305.

SECTION 2. 426.102 of the statutes is amended to read:

426.102 Applicability. This chapter applies to persons who do any of the following in this state:

(1) Make or solicit consumer approval transactions (s. 423.201) or consumer credit transactions or modifications thereof; ~~or~~

(2) Directly collect payments from or enforce rights against customers arising from such consumer approval transactions or consumer credit transactions, wherever made.

SECTION 3. 426.102 (3) of the statutes is created to read:

426.102 (3) Act as a credit services organization, as defined in s. 422.501 (2).

SECTION 4. Initial applicability. This act first applies to a contract between a buyer and a credit services organization that is entered into, extended, renewed or modified on the effective date of this SECTION.

SECTION 5. Effective date. This act takes effect on the first day of the 3rd month beginning after publication.