CREDIT SERVICES ACT

Act of 1992, P.L. 1144, No. 150

AN ACT

Regulating credit services; prohibiting certain activities; providing for certain information to be given to buyers, for the contents of contracts and for enforcement; prohibiting advance fees by loan brokers; and providing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Credit Services Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advance fee." Any funds or consideration assessed or collected prior to closing of a loan by a loan broker.

"Borrower." A person obtaining or desiring to obtain a loan of money, a credit card or line of credit for personal, family or household purposes.

"Buyer." A natural person who is solicited to purchase or who purchases the services of a credit services organization.

"Credit services organization."

(1) A person who, with respect to the extension of credit by others, sells, provides or performs or represents that he or she can or will sell, provide or perform any of the following services in return for the payment of money or other valuable consideration:
   - (i) Improving a buyer's credit record, history or rating.
   - (ii) Obtaining an extension of credit for a buyer.
   - (iii) Providing advice or assistance to a buyer with regard to either subparagraph (i) or (ii).

(2) The term shall not include any of the following:
   - (i) Any person organized, chartered or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of the Commonwealth or the United States who is subject to regulation and supervision by an official or agency of the Commonwealth or the United States.
   - (ii) Any bank, bank and trust company, trust company, savings bank, Federal savings and loan association or savings bank located in this Commonwealth or savings association or any subsidiary or affiliate of such institution whose deposits are eligible for insurance by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Pennsylvania Savings Association Insurance Corporation.
   - (iii) Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. ' 1 et seq.).
   - (iv) Any person licensed as a real estate broker where the person is acting within the course and scope of that license.
   - (v) Any person admitted to practice law in this Commonwealth where the person renders services within the course of such practice.
   - (vi) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of such regulation.
   - (vii) Any consumer reporting agency as defined in the Fair Credit Reporting Act (Public Law 91-508, 15 U.S.C. ' 1681 et seq.).

"Extension of credit." The right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family or household purposes.

"Loan broker."

(1) A person who:
   - (i) For or in expectation of a consideration fee arranges or attempts to arrange or offers to fund a loan of money, a credit card or line of credit for personal, family or household purposes.

(ii) For or in expectation of a consideration fee assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit or related guarantee, enhancement or collateral of any kind or nature.

(iii) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers.

(iv) Holds himself out as a loan broker.

(2) The term shall not include:

(i) Any person organized, chartered, exempt from licensure under statute or holding a license or authorization certificate to make loans or provide credit pursuant to the laws of the Commonwealth or the United States who is subject to regulation and supervision by an official or agency of the Commonwealth or the United States.

(ii) Any bank, bank and trust company, trust company, savings bank, Federal savings and loan association or savings bank located in this Commonwealth, or savings association or any subsidiary or affiliate of such institution, whose deposits are eligible for insurance by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Pennsylvania Savings Association Insurance Corporation.

(iii) Any person licensed as a mortgage broker under the act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers Act.

(iv) Any person who is not required to obtain a license as a mortgage banker by reason of the exceptions contained in section 3(b) of the Mortgage Bankers and Brokers Act.

(v) Any person licensed as a real estate broker where the person is acting within the course and scope of that license.

(vi) Any person admitted to practice law in this Commonwealth where the person renders services within the course of such practice.

(vii) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of such regulation.

"Principal." Any officer, director, partner, joint venturer, branch manager or other person with similar managerial or supervisory responsibilities for a loan broker.

Section 3. Prohibited activities.

A credit services organization and its salespersons, agents and representatives who sell or attempt to sell the services of a credit services organization shall not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for or on behalf of the buyer unless the credit services organization has, in conformity with section 7, either obtained a surety bond issued by a surety company admitted to do business in this Commonwealth or established a trust account at a bank, bank and trust company, trust company, savings bank, Federal savings and loan association or savings bank located in this

Commonwealth or savings association or any subsidiary or affiliate of such institution whose deposits are eligible for insurance by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Pennsylvania Savings Association Insurance Corporation. If a credit services organization has obtained a surety bond or established a trust account, the salesperson, agents and representatives who sell the services of such organization shall not be required to obtain the surety bond or establish the trust account provided for by this act.

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

(3) 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 credit 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 creditworthiness, credit standing or credit capacity.

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

(5) Make or use an advertisement which guarantees that the buyer will obtain credit.

Section 4. Information sheet.

Prior to the execution of a contract or agreement between the buyer and a credit services organization or prior to the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer a statement in writing containing all the information required by section 5. The credit services organization shall maintain on file or microfilm for a period of three years an exact copy of the information sheet, personally signed by the buyer, acknowledging receipt of a copy of the information sheet.

Section 5. Contents of information sheet.

The information sheet shall include all of the following:

(1) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by any consumer credit reporting agency and the right of the buyer to receive a copy of that file. The information sheet shall include the statement that a copy of the buyer's file will be furnished by the consumer credit reporting agency, and the approximate price the buyer will be charged by the credit reporting agency for a copy of the file. The information sheet shall also include a statement that information in a consumer's credit file will be provided free of charge by the consumer credit reporting agency to the consumer by telephone after written request within 30 days of the consumer's receiving a denial of credit notice.

(2) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by any consumer credit reporting agency.

(3) A complete and detailed 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 have to pay or become obligated to pay for the services.

(4) If the credit services organization is required to obtain a surety bond or establish a trust account pursuant to section 3, a statement setting forth both of the following:

(i) The buyer's right to proceed against the bond or trust account under the circumstances and in the manner set forth in section 7.

(ii) The name and address of the surety company which issued the bond or the name and address of the depository and the trustee and the account number of the trust account.

Section 6. Contract.

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

(1) A conspicuous statement in size equal to 10-point bold type or the size type used for the contract provisions, whichever is larger, 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 prior to 12 midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.

(2) 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 some other person.

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

(4) The credit services organization's principal business address and the name and address of its agent, other than the Secretary of the Commonwealth, authorized to receive service of process.

(b) Copy.-- A copy of the fully completed contract and all other documents the credit services organization requires the buyer to sign shall be given to the buyer at the time they are signed.

(c) Notice of cancellation.-- 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, in at least 10-point type, the following statement written in the same language as used in the contract:

Notice of Cancellation

You may cancel this contract without any penalty or obligation within five days from the date the contract is signed.
If you cancel, any payment made by you under this contract will be returned within 15 days following receipt by the seller 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 seller) at

.....
.
(address of seller) (place of business)

not later than 12 midnight (date).

I hereby cancel this transaction.

.....
(purchaser's signature) (date)

(d) Effect of breach.-- The seller's breach of a contract under this act or of any obligation arising therefrom shall constitute a violation of this act.

Section 7. Surety bond.

If a credit services organization is required to obtain a surety bond or establish a trust account pursuant to section 3, the following procedures shall be applicable:

(1) If a bond is obtained, a copy of it shall be filed with the Department of State. If a trust account is maintained, notification of the depository, the trustee and the account number shall be filed with the Department of State.

(2) The bond or trust account required shall be in favor of the Commonwealth for the benefit of any person who is damaged by any violation of this act. The bond or trust account shall also be in favor of any person damaged by such practices.

(3) Any person claiming against the bond or trust account for a violation of this act may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for actual damages and not the punitive damages permitted under section 11. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this act shall in no event exceed the amount of the trust account or bond.

(4) The bond or the trust account shall be in an amount equal to 5% of the total amount of the fees charged buyers by the credit services organization under the contracts entered into between the credit services organization and such buyers during the previous 12 months, but in no case shall the bond be less than $5,000 nor more than $25,000. The amount required shall be adjusted once a year, no later than the tenth day of the first month of the credit services organization's fiscal year.

Section 8. Restrictions on loan brokers.

(a) Registration requirement.-- Loan brokers shall be registered with the Department of Banking pursuant to regulations promulgated by the department.

(b) Registration fee.-- Loan brokers seeking to be registered by the department shall pay to the department an annual registration fee of $300.

(c) Prohibited acts.-- No loan broker shall:

(1) Assess or collect an advance fee from a borrower to provide services as a loan broker.

(2) Make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a loan broker or engage directly or indirectly in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of services of a loan broker, notwithstanding the absence of reliance by the buyer.

(3) Make or use any false or deceptive representation in its business dealings with a State agency or conceal a material fact from a State agency.

(d) Responsibility of principal.-- Each principal of a loan broker may be held responsible for the actions of a loan broker, including its agents or employees in the course of business of the loan broker.

Section 9. Waivers and burden of proof.

(a) Waiver.-- Any waiver by a buyer or borrower of the provisions of this act shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by a credit services organization or a loan broker to have a buyer or borrower waive rights given by this act shall constitute a violation of this act.

(b) Burden of proof.-- In any proceeding involving this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

Section 10. Enforcement.

(a) Unfair trade practice.-- A violation of any provision of this act shall be deemed to be a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(b) Criminal offense.-- Any person who violates section 8(c) commits a felony of the third degree.

Section 11. Damages.

Any buyer or borrower injured by a violation of this act or by the credit services organization's or loan broker's breach of a contract subject to this act may bring an action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer or borrower to the credit services organization or loan broker, plus reasonable attorney fees and costs. An award, if the trial court deems it proper, may be entered for punitive damages.

Section 12. Construction of act.

(a) Act not exclusive.-- The provisions of this act are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with any other applicable provision of law.

(b) Remedies cumulative.-- The remedies provided in this act for violation of any section of this act shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

Section 13. Effective date.

This act shall take effect as follows:

(1) This section and sections 2, 8 and 10(b) shall take effect immediately.

(2) The remainder of this act shall take effect in six months.