

"AN ACT TO REGULATE CREDIT SERVICE ORGANIZATIONS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This Act may be known and cited as the "Credit Services Organizations Act of 1987".

SECTION 2. As used in this Act:

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

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

- (i) Improve a buyer's credit record, history, or rating;
- (ii) Obtain an extension of credit for a buyer; or
- (iii) Provide advice or assistance to a buyer with regard to either (a)(i) or (a)(ii) of this subsection.

(b) "Credit services organization" does not include:

(i) Any person or entity authorized to make loans or extensions of credit under the laws of this State or the United States who is subject to regulation and supervision by this State or the United States or a lender approved by the United States Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(ii) Any bank, savings bank, or savings and loan institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or a subsidiary of such bank, savings bank, or savings and loan institution;

(iii) Any credit union, federal credit union, or out-of-state credit union doing business in this State;

(iv) Any nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(v) Any person licensed as a real estate broker by this State if the person is acting within the course and scope of that license;

(vi) Any person licensed as a collection agency under the laws of this State if acting within the course and scope of that license;

(vii) Any person licensed to practice law in this State if the person renders services within the course and scope of his or her practice as an attorney;

(viii) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation; or

(ix) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C. Secs. 1681 through 1681t.

(3) "Extension of credit" means 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.

SECTION 3. A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may 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 the buyer, unless the credit services organization has obtained a surety bond of ten thousand dollars (\$10,000) issued by a surety company admitted to do business in this State and established a trust account at a federally insured bank or savings and loan association located in this State;

(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 that 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 that is untrue or misleading or that should be known by the exercise of reasonable care to be untrue or misleading, to a 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 credit worthiness, 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 that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization.

SECTION 4. If a credit services organization is in compliance with Section 3(1) of this Act, the salesperson, agent, or representative who sells the services of that organization is not required to obtain a surety bond and establish a trust account.

SECTION 5. Before the execution of a contract or agreement between the buyer and a credit services organization or before 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 with a statement in writing, containing all the information required by Section 6 of this Act. The credit services organization shall maintain on file for a period of two (2) years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

SECTION 6. The information statement required under Section 5 of this Act shall include all of the following:

(1) (a) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act, 15 U.S.C. Secs. 1681 through 1681t;

(b) A statement that the buyer may review his or her consumer reporting agency file at no charge if a request is made to the consumer credit reporting agency within thirty (30) days after receiving notice that credit has been denied; and

(c) The approximate price the buyer will be charged by the consumer reporting agency to review his or her consumer reporting agency file;

(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 reporting agency;

(3) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the

buyer will have to pay, or become obligated to pay, for the services;

(4) A statement asserting the buyer's right to proceed against the bond or trust account required under Section 3 of this Act; and

(5) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee and the account number of the trust account.

SECTION 7. (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include all of the following:

(a) A conspicuous statement in bold face type, 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 midnight of the fifth 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 some other person;

(c) 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 the services are to be performed, or estimated length of time for performing the services;

(d) The credit services organization's principal business address and the name and address of its agent in the State authorized to receive service of process;

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" that shall be attached to the contract, be easily detachable, and contain in bold face 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 this contract, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed 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 midnight ____ (date)_____

I hereby cancel this transaction,
____(date)_____

____(purchaser's signature)_"

The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

SECTION 8. (1) Any waiver by a buyer of any part of this Act is void. Any attempt by a credit services organization to have a buyer waive rights given by this Act is a violation of this Act.

(2) In any proceeding involving this Act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(3) Any person who violates this Act is guilty of a Class A misdemeanor. Any court of competent jurisdiction in this State may restrain and enjoin any violation of this Act.

(4) This section shall not limit or restrict the right of any person to

pursue any appropriate remedy at law for a violation of this Act.

(5) A violation of this Act by a credit services organization is an unfair business practice as provided in Chapter 19.86 RCW.

SECTION 9. (1) Any buyer suffering damages as a result of a violation of this Act by any credit services organization may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(2) The remedies provided under this Act are in addition to any other procedures or remedies for any violation or conduct otherwise provided by law.

SECTION 10. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: 3/19/87
