

CHAPTER 2--CREDIT REPAIR ORGANIZATIONS(1)
SEC. 2451. REGULATION OF CREDIT REPAIR ORGANIZATIONS.

Title IV of the Consumer Credit Protection Act (Public Law 90-321, 82 Stat. 164) is amended to read as follows:

TITLE IV--CREDIT REPAIR ORGANIZATIONS''

Sec.

- 401. Short title.
- 402. Findings and purposes.
- 403. Definitions.
- 404. Prohibited practices.
- 405. Disclosures.
- 406. Credit repair organizations contracts.
- 407. Right to cancel contract.
- 408. Noncompliance with this title.
- 409. Civil liability.
- 410. Administrative enforcement.
- 411. Statute of limitations.
- 412. Relation to State law.
- 413. Effective date.

SEC. 401. SHORT TITLE.(2)

This title may be cited as the 'Credit Repair Organizations Act'.

SEC. 402. FINDINGS AND PURPOSES.(3)

(a) Findings.--The Congress makes the following findings:

- (1) Consumers have a vital interest in establishing and maintaining their credit worthiness and credit standing in order to obtain and use credit. As a result, consumers who have experienced credit problems may seek assistance from credit repair organizations which offer to improve the credit standing of such consumers.
- (2) Certain advertising and business practices of some companies engaged in the business of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters.

(b) *Purposes.*--The purposes of this title are--

- (1) to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and
- (2) to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.

SEC. 403. DEFINITIONS.(4)

For purposes of this title, the following definitions apply:

- (1) *Consumer.* -- The term 'consumer' means an individual.
- (2) *Consumer credit transaction.* -- The term 'consumer credit transaction' means any transaction in which credit is offered or extended to an individual for personal, family, or household purposes.
- (3) *Credit repair organization.* -- The term 'credit repair organization'--
 - (A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of--
 - (i) improving any consumer's credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i); and

(B) does not include--

(i) any nonprofit organization which is exempt from taxation under section 501(c)

(3) of the Internal Revenue Code of 1986;

(ii) any creditor (as defined in section 103 of the Truth in Lending Act),(5) with respect to any consumer, to the extent the creditor is assisting the consumer to restructure any debt owed by the consumer to the creditor; or

(iii) any depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act) or any Federal or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union.

(4) Credit.--The term 'credit' has the meaning given to such term in section 103(e) of this Act.(6)

SEC. 404. PROHIBITED PRACTICES.(7)

(a) *In General.*--No person may--

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness, credit standing, or credit capacity to--

(A) any consumer reporting agency (as defined in section 603(f) of this Act);(8) or

(B) any person--

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(2) make any statement, or counsel or advise any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to--

(A) any consumer reporting agency;

(B) any person--

(i) who has extended credit to the consumer; or (ii) to whom the consumer has applied or is applying for an extension of credit;

(3) make or use any untrue or misleading representation of the services of the credit repair organization; or

(4) engage, directly or indirectly, in any act, practice, or course of business that constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

(b) *Payment in Advance.*--No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

SEC. 405. DISCLOSURES.(9)

(a) *Disclosure Required.*--Any credit repair organization shall provide any consumer with the following written statement before any contract or agreement between the consumer and the credit repair organization is executed:

'Consumer Credit File Rights Under State and Federal Law

You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any "credit repair" company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact:

The Public Reference Branch
Federal Trade Commission
Washington, D.C. 20580.

(b) *Separate Statement Requirement.*--The written statement required under this section shall be provided as a document which is separate from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

(c) *Retention of Compliance Records.*--

(1) *In general.*--The credit repair organization shall maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

(2) *Maintenance for 2 years.*--The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer.

SEC. 406. CREDIT REPAIR ORGANIZATIONS CONTRACTS.(10)

(a) *Written Contracts Required.*--No services may be provided by any credit repair organization for any consumer--

(1) unless a written and dated contract (for the purchase of such services) which meets the requirements of subsection

(b) has been signed by the consumer; or

(2) before the end of the 3-business-day period beginning on the date the contract is signed.

(b) *Terms and Conditions of Contract.*--No contract referred to in subsection

(a) meets the requirements of this subsection unless such contract includes (in writing)--

(1) the terms and conditions of payment, including the total amount of all payments to be made by the consumer to the credit repair organization or to any other person;

(2) a full and detailed description of the services to be performed by the credit repair organization for the consumer, including--

(A) all guarantees of performance; and

(B) an estimate of-- (i) the date by which the performance of the services (to be performed by the credit repair organization or any other person) will be complete; or (ii) the length of the period necessary to perform such services;

(3) the credit repair organization's name and principal business address; and

(4) a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: 'You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right.'

SEC. 407. RIGHT TO CANCEL CONTRACT.(11)

(a) *In General.* -- Any consumer may cancel any contract with any credit repair organization without penalty or obligation by notifying the credit repair organization of the consumer's intention to do so at any time before midnight of the 3rd business day which begins after the date on which the contract or agreement between the consumer and the credit repair organization is executed or would, but for this subsection, become enforceable against the parties.

(b) *Cancellation Form and Other Information.* -- Each contract shall be accompanied by a form, in duplicate, which has the heading 'Notice of Cancellation' and contains in bold face type the following statement:

'You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the contract is signed by you.

To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to (name of credit repair organization) at (address of credit repair organization) before midnight on (date)

I hereby cancel this transaction,

(date)

(purchaser's signature).'

(c) *Consumer Copy of Contract Required.*--Any consumer who enters into any contract with any credit repair organization shall be given, by the organization--

(1) a copy of the completed contract and the disclosure statement required under section 405; and (2) a copy of any other document the credit repair organization requires the consumer to sign, at the time the contract or the other document is signed.

SEC. 408. NONCOMPLIANCE WITH THIS TITLE.(12)

(a) *Consumer Waivers Invalid.*--Any waiver by any consumer of any protection provided by or any right of the consumer under this title--

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(b) *Attempt To Obtain Waiver.*--Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this title shall be treated as a violation of this title.

(c) *Contracts Not in Compliance.*--Any contract for services which does not comply with the applicable provisions of this title--

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

SEC. 409. CIVIL LIABILITY.(13)

(a) *Liability Established.*--Any person who fails to comply with any provision of this title with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) Actual damages.--The greater of--

(A) the amount of any actual damage sustained by such person as a result of such failure; or

(B) any amount paid by the person to the credit repair organization.

(2) Punitive damages.--

(A) Individual actions.--In the case of any action by an individual, such additional amount as the court may allow.

(B) Class actions.--In the case of a class action, the sum of--

(i) the aggregate of the amount which the court may allow for each named plaintiff; and

(ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

(3) *Attorneys' fees*.--In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

(b) *Factors to Be Considered in Awarding Punitive Damages*.--In determining the amount of any liability of any credit repair organization under subsection (a)(2), the court shall consider, among other relevant factors--

(1) the frequency and persistence of noncompliance by the credit repair organization;

(2) the nature of the noncompliance;

(3) the extent to which such noncompliance was intentional; and

(4) in the case of any class action, the number of consumers adversely affected.

SEC. 410. ADMINISTRATIVE ENFORCEMENT. (14)

(a) *In General*.--Compliance with the requirements imposed under this title with respect to credit repair organizations shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.

(b) *Violations of This Title Treated as Violations of Federal Trade Commission Act*.--

(1) *In general*. -- For the purpose of the exercise by the Federal Trade Commission of the Commission's functions and powers under the Federal Trade Commission Act, any violation of any requirement or prohibition imposed under this title with respect to credit repair organizations shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act.

(2) *Enforcement authority under other law*. -- All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act shall be available to the Commission to enforce compliance with this title by any person subject to enforcement by the Federal Trade Commission pursuant to this subsection, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of any Federal Trade Commission trade regulation rule, without regard to whether the credit repair organization--

(A) is engaged in commerce; or

(B) meets any other jurisdictional tests in the Federal Trade Commission Act.

(c) *State Action for Violations*.--

(1) *Authority of states*. -- In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State--

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 409 as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of commission.--

(A) Notice to commission.--The State shall serve prior written notice of any civil action under paragraph

(1) upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) *Intervention.--*The Commission shall have the right--

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action; and

(iii) to file petitions for appeal.

(3) *Investigatory powers.* -- For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) *Limitation.* -- Whenever the Federal Trade Commission has instituted a civil action for violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this title that is alleged in that complaint.

SEC. 411. STATUTE OF LIMITATIONS.(15)

Any action to enforce any liability under this title may be brought before the later of-- (1) the end of the 5-year period beginning on the date of the occurrence of the violation involved; or (2) in any case in which any credit repair organization has materially and willfully misrepresented any information which-- (A) the credit repair organization is required, by any provision of this title, to disclose to any consumer; and (B) is material to the establishment of the credit repair organization's liability to the consumer under this title, the end of the 5-year period beginning on the date of the discovery by the consumer of the misrepresentation.

SEC. 412. RELATION TO STATE LAW.(16)

This title shall not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with any law of any State except to the extent that such law is inconsistent with any provision of this title, and then only to the extent of the inconsistency.

SEC. 413. EFFECTIVE DATE.(17)

This title shall apply after the end of the 6-month period beginning on the date of the enactment of the Credit Repair Organizations Act,(18) except with respect to contracts entered into by a credit repair organization before the end of such period."

1. Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). The amendments to the credit statutes are in Title II of the Act, entitled "Economic Growth and Regulatory Paperwork Reduction." The footnotes in this copy of the Act are not part of the Act, but are cross-references inserted by the FTC staff for the convenience of the reader.

2. To be codified as 15 U.S.C. § 1679.

3. To be codified as 15 U.S.C. § 1679a.

4. To be codified as 15 U.S.C. § 1679b.

5. Truth in Lending Act § 103(f) states in pertinent part: "The term 'creditor' refers only to creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. . . ."

6. TILA § 103(e) states: "The term 'credit' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment."

7. To be codified as 15 U.S.C. § 1679c.

8. Fair Credit Reporting Act (FCRA) § 603(f) states: "The term 'consumer reporting agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

9. To be codified as 15 U.S.C. § 1679d.

10. To be codified as 15 U.S.C. § 1679e.

11. To be codified as 15 U.S.C. § 1679f.

12. To be codified as 15 U.S.C. § 1679g.

13. To be codified as 15 U.S.C. § 1679h.

14. To be codified as 15 U.S.C. § 1679i.

15. To be codified as 15 U.S.C. § 1679j.

16. To be codified as 15 U.S.C. § 1679k.

17. To be codified as 15 U.S.C. § 1679l.

18. The statute was signed by the President on September 30, 1996.