WEST VIRGINIA CODE CHAPTER 46A ARTICLE 6C

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§46A-6C-1. Definitions.

(1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization as defined in section two of this article.

(2) "Consumer reporting agency" has the meaning assigned by Section 603(f), Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)).

(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, household or agriculture purposes.

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§46A-6C-2. Credit services organization.

(a) A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

(1) Improving a buyer's credit record, history or rating;

(2) Obtaining an extension of credit for a buyer; or

(3) Providing advice or assistance to a buyer with regard to subdivision (1) or (2) of this subsection.

(b) The following are exempt from this article:

(1) A person authorized to make loans or extension of credit under the law 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 a mortgage insurance program under the National Housing Act (12 U. S. C. Section 1701, et seq.);

(2) A bank or savings and loan association whose deposit 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 a bank or savings and loan association;

(3) A credit union doing business in this state;

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;

(5) A person licensed as a real estate broker or salesman under the Real Estate Brokers License Act acting within the course and scope of that license;

(6) A person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

(7) A broker-dealer registered with the securities and exchange commission or the commodity future trading commission acting within the course and scope of that regulation;

(8) A consumer reporting agency;

(9) A person whose primary business is making loans secured by liens on real property;

(10) A person whose primary business is the retail sale of automobiles and trucks: Provided, That the person is not extending credit for a buyer, excluding assignments; and

(11) A person licensed to practice public accounting in this state acting within the course

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and scope of the person's practice as an accountant.

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§46A-6C-3. Prohibited conduct.

A credit services organization, a salesperson, agency or representative of a credit services organization or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with section four of this article a surety bond in the amount required by section four of this article issued by a surety company authorized to do business in this state or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in which the amount required is held in trust as required by section four of this article;

(2) Charge a buyer or receive from a buyer 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 substantially the same as that available to the general public from other sources;

(3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:

(A) Guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

(B) Guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit.

(4) Engage, directly or indirectly, in an unfair or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization;

(5) Make, or advise a buyer to make a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

(6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the Secretary of State, unless otherwise provided by this chapter.

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§46A-6C-4. Bond; surety account.

(a) This section applies to a credit services organization required by section three of this article to obtain a surety bond or establish a surety account.

(b) If a bond is obtained, a copy of it shall be filed with the Secretary of State. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the Secretary of State.

(c) The bond or surety account required must be in favor of the state of the benefit of any person who is damaged by any violation of this article. The bond or surety account must also be in favor of any person damaged by such a violation.

(d) Any person claiming against the bond or surety account for a violation of this article 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 damages awarded under section nine of this article and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter may not exceed the amount of the surety account or bond.

(e) The bond or the surety account shall be in the amount of $15,000.

(f) A depository holding money in a surety account under this chapter may not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the Secretary of State indicating that section five of this article has been satisfied in relation to the account. The Secretary of State may conduct investigations and require submission of information as necessary to enforce this subsection.

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§46A-6C-5. Registration.

(a) A credit services organization shall file a registration statement with the Secretary of State before conducting business in this state. The registration statement shall contain:

(1) The name and address of the credit services organization; and

(2) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

(b) The registration statement shall also contain either:

(1) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

(2) A notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

(c) The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

(d) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(e) The Secretary of State may charge each credit services organization that files a registration statement with the Secretary of State a reasonable fee not to exceed $100 to cover the cost of filing. The Secretary of State may not require a credit services organization to provide information other than that provided in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state fund, general revenue and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(f) The bond or surety account shall be maintained until two years after the date that the credit services organization ceases operations.

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§46A-6C-6. Disclosure statement.

(a) Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(2) A statement explaining the buyer's right of proceed against the bond or surety account required by section three of this article;

(3) 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 surety account;

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided by the Fair Credit Reporting Act. (15 U.S.C. Sec. 1681 et seq.);

(5) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty days after the date of receipt of notice that credit has been denied, and that the buyer's file is available for a minimal charge at any other time;

(6) A complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) A complete and accurate statement of when consumer information becomes obsolete, and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

(b) The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

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§46A-6C-7. Form and terms of contract.

(a) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must include:

(1) A statement in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written materials so as to be conspicuous, 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 third 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 another 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 length of time, not to exceed one hundred eighty days, for performing the services; and

(4) The address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service or process.

(b) The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

"Notice of Cancellation

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

If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or 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)"

(c) The credit services organization shall give to the buyer a copy of the completed contract

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and all other documents the credit services organization requires the buyer to sign at the time they are signed.

(d) The breach by a credit services organization of a contract under this article, or of any obligation arising from this article, is an unfair or deceptive act or practice.

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§46A-6C-8. Waiver.

(a) A credit services organization may not attempt to cause a buyer to waive a right under this article.

(b) A waiver by a buyer of any part of this article is void.

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§46A-6C-9. Action for damages.

(a) A buyer injured by a violation of this article may bring any action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

(b) The buyer may also be awarded punitive damages.

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§46A-6C-10. Criminal penalty.

A person who violates the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $1,000, imprisoned in the county jail not more than one year, or both fined and imprisoned.

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§46A-6C-11. Burden of proving exemption.

In an action under this article, the burden of proving an exemption under section two of this article is on the person claiming the exemption.

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§46A-6C-12. Remedies cumulative.

The remedies provided by this article are in addition to other remedies provided by law.

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