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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991



ENROLLED

Com. Sub. for
HOUSE BILL No. 2632

(By ~~Mr.~~ Del. Susman + Rutledge)



Passed March 8, 1991

In Effect July 1, 1991 ~~Passage~~

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COMMITTEE SUBSTITUTE
FOR
H. B. 2632
(By DELEGATES SUSMAN AND RUTLEDGE)

[Passed March 8, 1991; in effect July 1, 1991.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-c, relating to the regulation of credit services organizations; definitions; conduct prohibited; requiring a bond or surety account; registration with secretary of state, disclosure statement; form and terms of contracts; waiver action for damages; criminal penalties; examinations; and providing that the remedies are cumulative.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-c, to read as follows:

ARTICLE 6C. CREDIT SERVICES ORGANIZATIONS.

§46A-6C-1. Definitions.

- 1 (1) "Buyer" means an individual who is solicited to
2 purchase or who purchases the services of a credit
3 services organization as defined in section two of this
4 article.
- 5 (2) "Consumer reporting agency" has the meaning

6 assigned by Section 603(f), Fair Credit Reporting Act
7 (15 U.S.C. Section 1681a(f)).

8 (3) "Extension of credit" means the "right to defer
9 payment of debt or to incur debt and defer its payment
10 offered or granted primarily for personal, family,
11 household or agriculture purposes."

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

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

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

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

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

11 (b) The following are exempt from this article:

12 (1) A person authorized to make loans or extension of
13 credit under the law of this state or the United States
14 who is subject to regulation and supervision by this state
15 or the United States, or a lender approved by the United
16 States secretary of housing and urban development for
17 participation in a mortgage insurance program under
18 the National Housing Act (12 U.S.C. Section 1701 et
19 seq.);

20 (2) A bank or savings and loan association whose
21 deposit or accounts are eligible for insurance by the
22 federal deposit insurance corporation or the federal
23 savings and loan insurance corporation, or a subsidiary
24 of such a bank or savings and loan association;

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

26 (4) A nonprofit organization exempt from taxation
27 under Section 501(c)(3) of the Internal Revenue Code of
28 1986;

29 (5) A person licensed as a real estate broker or

30 salesman under the Real Estate Brokers License Act
31 acting within the course and scope of that license;

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

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

39 (8) A consumer reporting agency;

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

42 (10) A person licensed to practice public accounting
43 in this state acting within the course and scope of the
44 person's practice as an accountant.

§46A-6C-3. Prohibited conduct.

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

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

17 (2) Charge a buyer or receive from a buyer money or
18 other valuable consideration solely for referral of the
19 buyer to a retail seller who will or may extend credit
20 to the buyer if the credit that is or will be extended to
21 the buyer is substantially the same as that available to
22 the general public from other sources;

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

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

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

34 (4) Engage, directly or indirectly, in an unfair or
35 deceptive act, practice, or course of business in connec-
36 tion with the offer or sale of the services of a credit
37 services organization;

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

45 (6) Advertise or cause to be advertised, in any manner
46 whatsoever, the services of a credit services organization
47 without filing a registration statement with the secre-
48 tary of state, unless otherwise provided by this chapter.

§46A-6C-4. Bond; surety account.

1 (a) This section applies to a credit services organiza-
2 tion required by section three of this code to obtain a
3 surety bond or establish a surety account.

4 (b) If a bond is obtained, a copy of it shall be filed
5 with the secretary of state. If a surety account is
6 established, notification of the depository, the trustee,
7 and the account number shall be filed with the secretary
8 of state.

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

12 surety account must also be in favor of any person
13 damaged by such a violation.

14 (d) Any person claiming against the bond or surety
15 account for a violation of this article may maintain an
16 action at law against the credit services organization
17 and against the surety or trustee. The surety or trustee
18 shall be liable only for damages awarded under section
19 nine of this article and not the punitive damages
20 permitted under that section. The aggregate liability of
21 the surety or trustee to all persons damaged by a credit
22 services organization's violation of this chapter may not
23 exceed the amount of the surety account or bond.

24 (e) The bond or the surety account shall be in the
25 amount of fifteen thousand dollars.

26 (f) A depository holding money in a surety account
27 under this chapter may not convey money in the account
28 to the credit services organization that established the
29 account or a representative of the credit services
30 organization unless the credit services organization or
31 representative presents a statement issued by the
32 secretary of state indicating that section five of this code
33 has been satisfied in relation to the account. The
34 secretary of state may conduct investigations and
35 require submission of information as necessary to
36 enforce this subsection.

§46A-6C-5. Registration.

1 (a) A credit services organization shall file a registra-
2 tion statement with the secretary of state before
3 conducting business in this state. The registration
4 statement must contain:

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

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

11 (b) The registration statement must also contain
12 either:

13 (1) A full and complete disclosure of any litigation or
14 unresolved complaint filed with a governmental author-
15 ity of this state relating to the operation of the credit
16 services organization; or

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

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

25 (d) Each credit services organization registering
26 under this section shall maintain a copy of the registra-
27 tion statement in the files of the credit services
28 organization. The credit services organization shall
29 allow a buyer to inspect the registration statement on
30 request.

31 (e) The secretary of state may charge each credit
32 services organization that files a registration statement
33 with the secretary of state a reasonable fee not to exceed
34 one hundred dollars to cover the cost of filing. The
35 secretary of state may not require a credit services
36 organization to provide information other than that
37 provided in the registration statement.

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

§46A-6C-6. Disclosure statement.

1 (a) Before executing a contract or agreement with a
2 buyer or receiving money or other valuable considera-
3 tion, a credit services organization shall provide the
4 buyer with a statement in writing, containing:

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

8 (2) A statement explaining the buyer's right of
9 proceed against the bond or surety account required by

10 section three of this article;

11 (3) The name and address of the surety company that
12 issued the bond, or the name and address of the
13 depository and the trustee, and the account number of
14 the surety account;

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

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

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

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

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

37 (9) A complete and accurate statement of the availa-
38 bility of nonprofit credit counseling services.

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

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

1 (a) Each contract between the buyer and a credit
2 services organization for the purchase of the services of

3 the credit services organization must be in writing,
4 dated, signed by the buyer, and must include:

5 (1) A statement in type that is boldfaced, capitalized,
6 underlined, or otherwise set out from surrounding
7 written materials so as to be conspicuous, in immediate
8 proximity to the space reserved for the signature of the
9 buyer, as follows: "You, the buyer, may cancel this
10 contract at any time before midnight of the third day
11 after the date of the transaction. See the attached notice
12 of cancellation form for an explanation of this right";

13 (2) The terms and conditions of payment, including
14 the total of all payments to be made by the buyer,
15 whether to the credit services organization or to another
16 person;

17 (3) A full and detailed description of the services to
18 be performed by the credit services organization for the
19 buyer, including all guarantees and all promises of full
20 or partial refunds, and the estimated length of time, not
21 to exceed one hundred eighty days, for performing the
22 services; and

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

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

30 "Notice of Cancellation

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

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

37 To cancel this contract, mail or deliver a signed dated
38 copy of this cancellation notice, or other written notice
39 to:

40 (name of seller) at (address of seller) (place of business)
41 not later than midnight (date)

42 I hereby cancel this transaction.

43 (date)

44 (purchaser's signature)"

45 (c) The credit services organization shall give to the
46 buyer a copy of the completed contract and all other
47 documents the credit services organization requires the
48 buyer to sign at the time they are signed.

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

§46A-6C-8. Waiver.

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

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

§46A-6C-9. Action for damages.

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

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

§46A-6C-10. Criminal penalty.

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

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

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

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§46A-6C-12. Remedies cumulative.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Somer Heck
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

Harold E. Adams
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Keith Brundette
.....
President of the Senate

Dyl C. Cole
.....
Speaker of the House of Delegates

The within *is approved* this the *2nd*
day of *April*, 1991.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/91

Time 4:55 pm