

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2424 (Blanca Rubio)
Version: June 9, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
ME

SUBJECT

Credit services organizations

DIGEST

This bill further regulates credit services organizations by amending the Act that currently regulates them, the Credit Services Act.

EXECUTIVE SUMMARY

Credit Services Organizations (CSOs) offer to improve a consumer's credit profile in exchange for a fee. CSOs are covered by the Credit Services Act of 1984 (Act). Companies covered by the Act are required to register with the California Department of Justice prior to engaging with California consumers and are required to, among other things, renew their registration annually.

There have been reports of for profit CSOs engaging in practices that negatively impact consumers. Consumers who hire CSOs are in distress. They are in positions of vulnerability as they owe money or are not receiving credit because they have erroneous entries on their credit reports.

This bill, as proposed to be amended in Committee, seeks to further enhance protections of those consumers who seek the help of CSOs. The bill does so by enhancing the legal obligations CSOs have towards consumers. These include, but are not limited to, disclosure requirements, document retention requirements, and increased protections of consumer personal information.

The bill is sponsored by the California Association of Collectors and the Financial Counseling Association of America, a trade association that represents 24 non-profit consumer credit counseling agencies. There is no known opposition to the bill as proposed to be amended. The bill passed out of the Assembly with no "no" votes. Should this bill pass out of this Committee, it will next be reviewed by the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Credit Services Act of 1984 (Act) and regulates CSO activities. (Civ. Code § 1789.10 et seq.)
- 2) Explains that the purpose of the Act is to provide prospective consumers of CSOs with the information necessary to make an intelligent decision regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices. (Civ. Code § 1789.11 (b).)
- 3) Defines a CSO as a person who, for payment, performs specified credit-related services, such as improving a buyer’s credit record and obtaining loans, but excludes specified persons and institutions, including an attorney licensed to practice law in this state rendering services within the course and scope of the practice of law unless the attorney is an employee of, or otherwise directly affiliated with, a CSO. Clarifies that attorneys, as specified, and others, such as non-profit organizations, as specified, are not CSOs. (Civ. Code §1789.12.)
- 4) Defines “buyer” as a natural person who is solicited to purchase or who purchases the services of a CSO. (Civ. Code § 1789.12 (c).)
- 5) Requires CSOs to obtain a surety bond, as specified, before conducting business and to register with the Attorney General, subject to a fee of \$100. (Civ. Code § 1789.18 and § 1789.25.)
- 6) Requires the Attorney General registration application to contain specified disclosures including a full and complete disclosure of any litigation commenced against the CSO or any resolved or unresolved complaint that relates to the operation of the CSO that is filed with the Attorney General or any other governmental authority of this state, any other state, or the federal government. Each resolved complaint identified must include a brief description of the resolution. The CSO must alternatively declare under penalty of perjury that no litigation has been commenced and there are no unresolved complaints. (Civ. Code § 1789.25.)
- 7) Prohibits CSOs (and their salespersons, agents, representatives, and independent contractors) who sell or attempt to sell the services of a CSO from engaging in a series of activities including, among other things:
 - a) charging or receiving any money or other valuable consideration prior to full and complete performance of the services the CSO has agreed to perform for or on behalf of the buyer;
 - b) failing to perform the agreed services within six months following the date the consumer signs the contract for those services;

- c) submitting a consumer's dispute to a consumer credit reporting agency without the consumer's knowledge;
 - d) using a consumer credit reporting agency's telephone system or toll-free telephone number to represent the caller as the buyer in submitting a dispute of a consumer or requesting disclosure without prior authorization of the consumer;
 - e) advertising CSO services without being registered with the Department of Justice;
 - f) engaging, directly or indirectly, in an act, practice, or course of business that operates or would operate as a fraud or deception upon a person in connection with the offer or sale of the services of a CSO;
 - g) removing, or assisting or advising the consumer to remove, adverse information from the their credit record which is accurate and not obsolete;
 - h) making or using untrue or misleading representations in the offer or sale of the services of a CSO, as specified; and
 - i) making or counseling or advising a consumer to make a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer credit reporting agency or to a person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, such as statements concerning a consumer's identification, home address, creditworthiness, credit standing, or credit capacity. (Civ. Code § 1789.13.)
- 8) Provides that prior to the execution of a contract or agreement between the consumer and CSO, the CSO shall provide the consumer a statement in writing, containing specified information. Requires the CSO to maintain an exact copy of the statement personally signed by the buyer that acknowledges receipt for a period of two years. (Civ. Code § 1789.14.)
- 9) The required information statement shall be printed in at least 10-point boldface type and shall include all of the following:
- a) a complete and detailed description of the services to be performed by the CSO for or on behalf of the consumer and the total amount the consumer will have to pay, or become obligated to pay, for the services;
 - b) the consumer's right to proceed against the bond and the name and address of the company which issued the bond;
 - c) a complete and accurate statement of the availability of non-profit credit counseling services; and
 - d) a specified statement or alternative statement approved by the Department of Justice that indicates various consumer rights that includes, among other things:
 - i. that the consumer has a right to obtain a copy of their credit file from a consumer credit reporting agency;
 - ii. that they have a right to dispute inaccurate information by contacting the consumer credit reporting agency directly, but may not have

- accurate, current, and verifiable information removed from their credit report;
 - iii. that under the Federal Fair Credit Reporting Act, the consumer credit reporting agency must remove accurate, negative information from their report only if it is over seven years old and bankruptcy information, as specified;
 - iv. that they have a right to cancel the contract with the CSO for any reason within five working days from the date it was signed;
 - v. that the consumer has a right to sue the CSO if it misleads the consumer. (Civ. Code § 1789.15.)
- 10) Prohibits the CSO from providing any service to a consumer except pursuant to a written contract that is required to contain specified information including, among other things, the terms and conditions of payment with the total of all payments to be made by the consumer, and a full and detailed description of the services to be performed by the CSO for the consumer. (Civ. Code § 1789.16.)
- 11) Authorizes a buyer of services who is injured by a CSO's violation of the act, or its breach of contract, to bring an action for damages or injunctive relief, as specified. (Civ. Code § 1789.17.)
- 12) Authorizes any person, including a consumer credit reporting agency, to bring an action to recover actual damages and to obtain injunctive relief due to a violation of the Act. A prevailing plaintiff may also recover reasonable attorney fees and costs. The trial court may also assess punitive damages. (Civ. Code § 1789.21.)
- 13) Provides that any person who violates any provision of the Act is guilty of a misdemeanor. Provides that the duty to institute actions for violation of the Act, including in equity proceedings to restrain and enjoin such violations, is vested in the Attorney General, district attorneys, and city attorneys. (Civ. Code § 1789.20.)
- 14) Provides that the provisions of the Act and remedies provided in the Act are not exclusive and do not relieve the parties from compliance with any other applicable provision of law or relief through other remedies. (Civ. Code § 1789.22.)
- 15) Establishes the Credit Repair Organizations Act (15 U.S.C. §§ 1679-1679j) which prohibits untrue or misleading representations and requires certain affirmative disclosures in the offering or sale of "credit repair" services.

This bill, as proposed to be amended:

- 1) Replaces the term "buyer" with the term "consumer" for purposes of describing a person utilizing the services of a CSO and prescribes other definitions in this regard.

- 2) Prohibits a CSO from calling or submitting any communication to a consumer credit reporting agency, creditor, debt collector, or debt buyer without the prior written authorization of the consumer. A relevant authorization in the agreement or contract between a consumer and a CSO is sufficient for this purpose.
- 3) Prohibits a credit services organization from using the online electronic portal, electronic mail system, or telephone system of a credit reporting agency, creditor, debt collector, or debt buyer to submit a dispute of a consumer or to request disclosure without the prior written authorization of the consumer. A relevant authorization in the agreement or contract between a consumer and a CSO is sufficient for the purpose of compliance.
- 4) Provides that the CSO is in violation of the Act if they fail to make a written communication sent on behalf of a consumer to any credit reporting agency, data furnisher, or legal counsel available to the consumer, as specified.
- 5) Provides that the prohibition on CSOs counseling a consumer to make untrue statements also applies to other specified parties.
- 6) Revises disclosure that a CSO consumer contract must include and revises information that must be provided before a CSO contract is executed, including a notice regarding the filing of complaints with the Attorney General. Requires the information statement and contract to inform the consumer that the contract can be canceled before midnight on the 5th working day after the consumer signs it.
- 7) Prohibits a CSO from providing any service to a consumer except pursuant to a written contract that complies with various requirements, including that it contain a full detailed description of the services to be performed by the CSO for the consumer, including a list of the information appearing on the consumer's credit report that the credit services organization will seek a reasonable reinvestigation as described in 15 U.S.C. Section 1681i.
- 8) Provides, however, that the seeking to obtain, or obtaining of, a consumer's credit report and the performance of other services necessary to determine the needs of a consumer for the reinvestigation of any accounts shall not constitute services of a CSO for which a contract is required pursuant to Civil Code section 1789.16(a), provided such activity is undertaken with the consumer's prior written electronic or recorded oral consent.
- 9) Requires a CSO to provide a consumer a monthly statement detailing the services performed, and requires the CSO to perform services agreed upon within 180 days of contracting for those services.

- 10) Prohibits a CSO from submitting a dispute to a consumer credit reporting agency, creditor, debt collector, or debt buyer more than 180 days after the disputed account has been removed.
- 11) Requires a consumer credit reporting agency, creditor, debt collector, or debt buyer that knows that a consumer is represented by a CSO to communicate with the CSO, except as specified.
- 12) Requires a CSO to redact specified information in certain written communications.
- 13) Requires a CSO to maintain certain information on file for 4 years.
- 14) Provides that the Department of Justice shall maintain a list of the CSOs that are registered in this state on a publicly available internet website.
- 15) Clarifies that attorneys that regularly engage in litigation in furtherance of assisting consumers with credit issues are not CSOs for purposes of the Act.
- 16) Makes conforming and nonsubstantive changes to the Act.

COMMENTS

1. Need to further regulate CSOs

According to the author:

Under current law, disclosures and descriptions of services to be rendered by a Credit Repair Organization are insufficient for the modern marketplace. Too many consumers in California are purchasing an opaque service without truly understanding the impact, or lack thereof, that the service will have on their credit scores. AB 2424 will bring much needed disclosure and transparency to the credit repair industry. Federal and State regulators continue to find that [CSOs] are overcharging consumers and not providing added value.

The California Association of Collectors, a co-sponsor of the bill, explains:

Since its passage, the 1984 Act has not been substantially updated to reflect the advanced marketplace and new technologies of today [.] Marketing strategies from organizations subject to the 1984 Act have also evolved and “credit repair” has entered the lexicon of advertising seeking to profit from consumers with offers of credit repair services.

Often the services offered or provided are cookie cutter actions that a consumer could take without paying significant fees to a credit repair agency. In many

circumstances the activities may be counterproductive to a consumer's credit report.

Assembly Bill 2424 will help ensure that fees paid by consumers for credit repair services have a better chance of resulting in an improved credit file. By requiring enhanced descriptions to consumers of services to be performed, itemized receipts and copies of all letters sent on a consumer's behalf, this bill will bring credit repair services into the 21st century.

Financial Counseling Association of America is a co-sponsor of this bill. They represent 24 non-profit consumer credit counseling agencies and explain they "provide a variety of free and low-cost services to financially challenged California residents."

The Financial Counseling Association of America explains:

Most of the complaints their counselors hear come from consumers who had been strung along for months while an endless cycle of form letters were sent to the credit bureaus - oftentimes for accounts that had already been removed from the credit report. All letters challenging what appear to be inaccurate credit report entries can be sent within a few weeks. Nevertheless, consumers commonly complain to us and to the BBB that they've been charged nearly \$100 per month *for months on end*, for such needlessly repetitive services.

The author also highlights the following as justification for this bill:

In 2016 the federal Consumer Financial Protection Bureau (CFPB) issued a consumer advisory, which was updated in December 2019, related to credit repair companies. The advisory warns consumers that credit repair companies "developed creative marketing tactics to target you. Sometimes this marketing includes confusing and misleading messaging aimed at taking advantage when you're just trying to get your financial life back on track." The advisory states that credit repair companies often charge high fees for services that consumers can often perform themselves, and some companies make false or misleading statements about the services they offer.

The CFPB has also taken enforcement actions against credit repair companies for violations of federal law, including against four California-based companies. The CFPB actions are not limited to fines, but also include shutting companies down and banning them from providing any credit repair services. In May 2019, the CFPB filed suit against Lexington Law and CreditRepair.com. In the complaint, the CFPB claims that Lexington Law relied on an expansive network of online lead generators that "used deceptive, bait advertising to generate referrals to Lexington Law's credit repair service."

In November 2019, Google announced that ads for credit repair services would no longer be allowed to serve on its advertising platform. The policy applies

globally to all accounts that advertise these services directly, to lead generators, and to entities who connect consumers with third party services. In the updated policy, Google states that the company wants “consumers to make informed decisions about the services offered to help them address bad credit,” and in order to protect users from harmful practices, an outright ban on credit repair advertisements is appropriate.

State oversight of credit repair companies historically has been weak. The Act does not provide the Attorney General with authority to impose administrative fines or other sanctions against registered credit repair companies.

Additionally, the Act provides no authority for a state agency to examine the books and records of a registered credit repair company to check for compliance with the law, either on a routine basis or in the event of a complaint received from a consumer. Furthermore, the law does not require the Attorney General to maintain a publicly available database of registered credit repair companies, which would allow consumers to verify that they are engaging with a company that complies with the registration requirement.

The California Bankers Association explains the following in support of the bill:

The existing federal Fair Credit Reporting Act grants consumers the right to the dispute and resolution of inaccurate credit reporting, independently and free of charge. The Federal Trade Commission (FTC) provides a sample dispute letter on its website for consumers who believe they have found information that is inaccurate on their credit report. By law, credit bureaus must investigate any disputed information and may contact the creditor to confirm the obligation, determining whether the report is in fact inaccurate.

Consumers who have been injured by a violation of the Act or breach of contract by a CSO may recover actual damages and obtain injunctive relief, and may recover reasonable attorney’s fees and costs under Civil Code section 1789.25.

2. The bill as proposed to be amended has no known opposition and enhances protections for consumers seeking the services of CSOs

There is opposition to the bill in print. However, opponents have agreed to remove their opposition to the bill as proposed to be amended in Committee. The African American Empowerment Coalition, who is opposed to the bill in print, writes that consumers rely on CSOs to help level the playing field and fight back against debt collectors. They write the following:

Consumers often find it difficult to navigate the complicated credit correction system on their own, and need to rely on assistance from professionals, non-profits, or faith-based organizations. In-fact, over 50% of consumers who recognize there are errors on their credit scores, give up because they find the

system too difficult to navigate. Add to this the inherent difficulties of navigating the system if you are a non-English language or limited-English language speaker, a victim of the digital divide, or elderly, and the result is a no-win situation for consumers in their battle against debt-collectors.

Services provided by credit repair organizations, non-profits, and faith-based organizations are the one tool that consumers have in their arsenal, to level the uneven playing field and fight back against debt-collectors. Credit repair organizations, non-profits, and faith-based organizations have resolved hundreds of thousands of erroneous credit score items on Californian consumer's credit reports, thereby helping them secure lower interest rates and build their credit. This bill [in print] will not help consumers and will only ensure that the one tool consumers have to battle against debt collectors is taken from them.

The African American Empowerment Coalition has removed their opposition to the bill as proposed to be amended in Committee. Progrexion and Lexington Law, who are opposed to the bill in print, assert that it is an attempt by creditors to make it harder for consumers to correct erroneous entries on the credit reports and make it easier for debt collectors to collect disputed debt. They also note that the bill in print is impossible to comply with because it includes conflicting provisions that both prohibit a CSO from providing a consumer services before a contract is entered into and requires a CSO to include a detailed description in the contract of what accounts the CSO will contest on behalf of a consumer. Neither the author nor the sponsors intended this result and have agreed to amendments that, among other things, do away with this inconsistency.

The bill, as proposed to be amended continues to enhance protections for consumers who are considering contracting with CSOs as well as for consumers who enter into a contract with a CSO. It does this by amending the Act to, among other things: impose additional disclosure requirements on CSOs; add to the list of activities CSOs are prohibited from engaging in; enhance privacy protocols and record retention period. The amendments retain the robust additional protections of the bill in print while at the same time resolving the workability issues that have been raised.

SUPPORT

California Association of Collectors (co-sponsor)
Financial Counseling Association of America (co-sponsor)
California Bankers Association
California Chamber of Commerce
Encore Capital Group
GreenPath, Inc.
Money Management International, Inc.
National Foundation for Credit Counseling
USCB, Inc.

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1089 (Grayson, 2021) was substantially similar to AB 2424. This bill died in the Assembly Appropriations Committee.

AB 699 (Grayson, 2020) was substantially similar to AB 2424. This bill died in the Assembly Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 10, Noes 0)

Assembly Banking and Finance Committee (Ayes 9, Noes 0)

AMENDMENTS¹

Amend the current bill in the specified sections as denoted by underlines (additions) and strikeouts (removals) as follows:

Amend Civil Code Section 1789.13 (f) as follows:

(f) ~~Seek to remove, or assist or advise the consumer to remove or seek to remove, adverse information from the consumer's credit record that is known to the credit services organization to be accurate and not obsolete.~~ Remove, or assist or advise the consumer to remove, adverse information from the consumer's credit record that is accurate or not obsolete.

Amend Civil Code Section 1789.13 (n) as follows:

(n) Submit a consumer's dispute to a consumer credit reporting agency, creditor, debt collector, or debt buyer more than 180 days after the account subject to the dispute has been removed from the consumer's credit report.

Amend Civil Code Section 1789.13 (o) as follows:

(o) Use the online electronic portal, electronic mail system, or telephone system of a consumer credit reporting agency, creditor, debt collector, or debt buyer to submit a dispute of a consumer or to request disclosure without the prior written authorization of the consumer. A relevant authorization in the agreement or contract between a consumer and a credit services organization is sufficient for the purpose of this subdivision.

Amend Civil Code Section 1789.13 (u) as follows:

(u) Fail to make a written communication sent on behalf of a consumer to any credit reporting agency, data furnisher, or legal counsel for either of the foregoing available to the consumer. ~~person other than the consumer available to the consumer through the online portal.~~

Amend Civil Code Section 1789.13 (v) as follows:

(v) Fail to provide along with its first written communication, to a credit reporting agency or data furnisher any sufficient information to investigate a dispute of an account, including, but not limited to, any pertinent information and copies of any documents that are available to it concerning the disputed item an account.

Amend Civil Code Section 1789.13 (w) as follows:

¹ These amendments may include nonsubstantive changes suggested by the Office of Legislative Counsel.

(w) The seeking to obtain, or the obtaining of, a consumer's credit report and the performance of other services necessary to determine the needs of a consumer for the reinvestigation of any accounts shall not constitute services of a credit services organization for which a contract is required pursuant to section 1789.16(a), provided such activity is undertaken with the consumer's prior written, electronic, or recorded oral consent.

Amend Civil Code Section 1789.16 (a)(3) as follows:

(3) A full and detailed description of the services to be performed by the credit services organization for the consumer, including a list of the information appearing on the consumer's credit report that the credit services organization will seek a reasonable reinvestigation as described in 15 U.S.C. Section 1681i, ~~to delete or modify, and, if applicable, a description of each modification sought and the anticipated payment required by the consumer to achieve each account deletion or modification, all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or the estimated length of time for performing the services, not to exceed 180 days, or a shorter period consistent with the purposes of this title as may be prescribed by the Department of Justice.~~

Amend Civil Code Sections 1789.21 (b) & (c) as follows:

~~(b) Any credit services organization that willfully and knowingly violates this title with respect to any consumer, in addition to any damages awarded pursuant to subdivision (a), shall also be liable to the consumer, in an individual action, for a civil penalty of not less than one hundred dollars (\$100) and not greater than one thousand dollars (\$1,000), to be determined by the court.~~

~~(c)~~ (b) Any person, including, but not limited to, a consumer credit reporting agency, as defined in subdivision (d) of Section 1785.3, and any consumer of, or user of, a consumer credit report under the Consumer Credit Reporting Agencies Act (Title 1.6 (commencing with Section 1785.1)), and any furnisher of credit information under the Consumer Credit Reporting Agencies Act, may bring an action for the recovery of damages or for injunctive relief, or both, for a violation of this title. Any person bringing such an action who prevails in the action shall be entitled to reasonable attorney's fees and costs.