

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 579

By: Mazzei

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5
6 AS INTRODUCED

7 An Act relating to debtor and creditor; amending 24
8 O.S. 2001, Sections 132, as amended by Section 1,
9 Chapter 171, O.S.L. 2002, 133, 134, 135, 136, 137,
10 144 and 146 (24 O.S. Supp. 2008, Section 132), which
11 relate to the Credit Services Organization Act;
12 modifying and adding definitions; modifying certain
13 restriction; deleting certain exemption for
14 establishing a trust account; modifying requirements
15 for certain written information statement; modifying
16 requirements for contents of certain information
17 statement; modifying requirements for contents of
18 certain contracts; modifying requirements for certain
19 form of cancellation; adding fee for certain
20 licenses; providing for assessment of administrative
21 fee for certain returned checks; prohibiting
22 assessment under certain circumstances; modifying
23 requirements for certain licensees books and records;
24 creating the Oklahoma Credit Service Organization
Revolving Fund; providing for appropriation,
budgeting, expenditure and purpose of fund; providing
for certain payments from fund; making language
gender neutral; providing for codification; and
providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY 24 O.S. 2001, Section 132, as
23 amended by Section 1, Chapter 171, O.S.L. 2002 (24 O.S. Supp. 2008,
24 Section 132), is amended to read as follows:

1 Section 132. As used in the Credit Services Organization Act:

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

4 2. a. "Credit services organization" means any person who,

5 ~~with respect to the extension of credit by others,~~

6 sells, provides, performs, or represents that the

7 person can or will sell, provide, or perform, in

8 return for the payment of money or other valuable

9 consideration from any source, any of the following

10 ~~services more than twelve times in a calendar year to~~

11 a resident of Oklahoma by mail, brochure, telephone,

12 print, radio, television, Internet or any other means:

13 (1) improving a buyer's credit record, history, or
14 rating,

15 (2) obtaining an extension of credit for a buyer, ~~or~~

16 (3) providing advice or assistance to a buyer with
17 regard to division (1) or (2) of this

18 subparagraph,

19 (4) placing a fraud alert on the buyer with any of

20 the three major credit reporting bureaus,

21 (5) requesting the removal of a buyer from pre-

22 approved credit card lists,

23 (6) monitoring the Internet and any other source of

24 information for use of a buyer's private data,

- 1 (7) ordering credit reports for the buyer,
2 (8) canceling bank, credit union and credit card
3 accounts for a buyer if the buyer's bank or
4 credit union account information, credit or debit
5 card is lost or stolen,
6 (9) assisting a buyer in the replacement of lost or
7 stolen bank account information, credit union
8 account information, credit or debit cards, or
9 (10) providing any other assistance to a buyer if a
10 buyer's private data is stolen, including but not
11 limited to, hiring accountants, attorneys,
12 investigators and any other professionals for the
13 buyer,

14 b. "Credit services organization" does not include:

- 15 (1) any person authorized to make loans or extensions
16 of credit under the laws of this state or the
17 United States who is subject to regulation and
18 supervision by this state or the United States or
19 a lender approved by the United States Secretary
20 of Housing and Urban Development for
21 participation in any mortgage insurance program
22 under the National Housing Act,
23 (2) any bank, savings and loan institution or credit
24 union whose deposits or accounts are eligible for

1 insurance by the Federal Deposit Insurance
2 Corporation, the Federal Savings and Loan
3 Insurance Corporation, or the National Credit
4 Union Administration or a subsidiary of such
5 bank, savings and loan institution or credit
6 union,

7 (3) any nonprofit organization exempt from taxation
8 under Section 501(c)(3) of the Internal Revenue
9 Code,

10 (4) any person licensed as a real estate broker by
11 this state if the person is acting within the
12 course and scope of that license,

13 (5) any person licensed to practice law in this state
14 if the person renders services within the course
15 and scope of the practice of the person as an
16 attorney,

17 (6) any broker-dealer registered with the Securities
18 and Exchange Commission or the Commodity Futures
19 Trading Commission if the broker-dealer is acting
20 within the course and scope of that regulation,

21 (7) any consumer reporting agency as defined in the
22 Federal Fair Credit Reporting Act, 15 U.S.C.,
23 Sections 1681 through 1681t,
24

1 (8) any person authorized to file electronic income
2 tax returns who does not receive any

3 consideration for refund anticipation loans,

4 (9) any ~~residential~~ mortgage broker or mortgage loan
5 originator as defined in the Mortgage Broker
6 Licensure Act, or

7 (10) any insurance company, its affiliates and
8 subsidiaries, authorized to do business in this
9 state by the Insurance Commissioner, including
10 insurance agents licensed in this state if acting
11 within the course and scope of that license;

12 3. "Extension of credit" means the right to defer payment of
13 debt or to incur debt and defer its payment offered or granted
14 primarily for personal, family, or household purposes, or to anyone
15 whose principal occupation is agricultural in nature; and

16 4. "Administrator" means the Administrator of the Department of
17 Consumer Credit.

18 5. "Person" means a natural person, corporation, company,
19 limited liability corporation, partnership or association.

20 6. "Private data" means any information concerning a buyer's
21 identity, including but not limited to, a driver license number,
22 social security number or any other type of government issued
23 identification, birth date, bank account information, credit union

1 account information, credit card information, debit card information
2 or any other type of financial information.

3 SECTION 2. AMENDATORY 24 O.S. 2001, Section 133, is
4 amended to read as follows:

5 Section 133. A credit services organization, its salespersons,
6 agents, and representatives, and independent contractors who sell or
7 attempt to sell the services of a credit services organization may
8 not do any of the following:

9 1. Charge or receive any money or other valuable consideration
10 prior to full and complete performance of the services the credit
11 services organization has agreed to perform for the buyer, unless
12 the credit services organization has obtained a surety bond of Ten
13 Thousand Dollars (\$10,000.00) issued by a surety company admitted to
14 do business in this state ~~and established a trust account at a~~
15 ~~federally insured bank or savings and loan association located in~~
16 ~~this state;~~

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

22 3. Make or counsel or advise any buyer to make any statement
23 that is untrue or misleading or that should be known by the exercise
24 of reasonable care to be untrue or misleading, to a credit reporting

1 agency or to any person who has extended credit to a buyer or to
2 whom a buyer is applying for an extension of credit with respect to
3 a buyer's credit worthiness, credit standing, or credit capacity; or

4 4. Make or use any untrue or misleading representations in the
5 offer or sale of the services of a credit services organization or
6 engage, directly or indirectly, in any act, practice, or course of
7 business that operates or would operate as fraud or deception upon
8 any person in connection with the offer or sale of the services of a
9 credit services organization.

10 SECTION 3. AMENDATORY 24 O.S. 2001, Section 134, is
11 amended to read as follows:

12 Section 134. If a credit services organization is in compliance
13 with paragraph 1 ~~of Section 3 of this act~~ of Section 133 of this
14 title, the salesperson, agent, or representative who sells the
15 services of that organization is not required to obtain a surety
16 bond ~~and establish a trust account~~. Provided, however, ~~said~~ such
17 organization or entity shall be responsible for the acts of their
18 employees or agents performed within the scope of their employment.

19 SECTION 4. AMENDATORY 24 O.S. 2001, Section 135, is
20 amended to read as follows:

21 Section 135. ~~Before the execution of a contract or agreement~~
22 ~~between the buyer and a credit services organization or before the~~
23 ~~receipt by the credit services organization of any money or other~~
24 ~~valuable consideration, whichever occurs first, the credit services~~

1 ~~organization shall provide the buyer with a statement, in writing,~~
2 ~~containing all the information required by Section 6 of this act.~~
3 ~~The credit services organization shall maintain on file for a period~~
4 ~~of two (2) years an exact copy of the statement, personally signed~~
5 ~~by the buyer, acknowledging receipt of a copy of the statement A~~
6 credit services organization shall provide or make available to the
7 buyer the information required by Section 136 of this title at the
8 time the buyer signs or electronically accepts a contract or
9 agreement with the credit services organization.

10 SECTION 5. AMENDATORY 24 O.S. 2001, Section 136, is
11 amended to read as follows:

12 Section 136. The information statement required pursuant to
13 ~~Section 5 of this act~~ Section 135 of this title shall include all of
14 the following:

- 15 1. a. if applicable, a complete and accurate statement of
16 the buyer's right to review any file on the buyer
17 maintained by any consumer reporting agency, as
18 provided under the Federal Fair Credit Reporting Act,
19 15 U.S.C., Sections 1681 through 1681t,
20 b. a statement that the buyer may review his or her
21 consumer reporting agency file at no charge if a
22 request is made to the consumer credit reporting
23 agency within thirty (30) days after receiving notice
24 that credit has been denied, and

1 c. the approximate price the buyer will be charged by the
2 consumer reporting agency to review his or her
3 consumer reporting agency file;

4 2. A If applicable, a complete and accurate statement of the
5 buyer's right to dispute the completeness or accuracy of any item
6 contained in any file on the buyer maintained by any consumer
7 reporting agency;

8 3. A complete and detailed description of the services to be
9 performed by the credit services organization for the buyer and the
10 total amount the buyer has paid or will have to pay, or become
11 obligated to pay, for the services;

12 4. A statement asserting the buyer's right to proceed against
13 the bond ~~or trust account~~ required under ~~Section 3 of this act~~
14 Section 133 of this title; and

15 5. The name and address of the surety company that issued the
16 bond, ~~or the name and address of the depository and the trustee and~~
17 ~~the account number of the trust account.~~

18 SECTION 6. AMENDATORY 24 O.S. 2001, Section 137, is
19 amended to read as follows:

20 Section 137. A. Each contract or agreement between the buyer
21 and a credit services organization for the purchase of the services
22 of the credit services organization shall be in writing, dated,
23 signed or accepted electronically by the buyer, and include the
24 following:

1 1. A conspicuous statement in bold face type, in immediate
2 proximity to the space reserved for the signature or acceptance of
3 the buyer, as follows: "You, the buyer, may cancel this contract or
4 agreement at any time prior to midnight of the fifth day after the
5 date of the transaction. See the ~~attached~~ notice of cancellation
6 form for an explanation of this right";

7 2. The terms and conditions of payment, including the total of
8 all payments to be made by the buyer, whether to the credit services
9 organization or to some other person;

10 3. A full and detailed description of the services to be
11 performed by the credit services organization for the buyer,
12 including all guarantees and all promises of full or partial
13 refunds, ~~and the estimated date by which the services are to be~~
14 ~~performed, or estimated length of time for performing the services;~~
15 and

16 4. The credit services organization's principal business
17 address which shall be the actual office location of the
18 organization and the name and address of its agent in the state
19 authorized to receive service of process.

20 B. The contract or agreement shall be accompanied by a
21 ~~completed form in duplicate, captioned "Notice of Cancellation"~~
22 notice of cancellation that shall be ~~attached to~~ included with the
23 contract, ~~be easily detachable, or agreement~~ and shall contain in
24

1 bold face type the following statement written in the same language
2 as used in the contract or agreement:

3 "Notice of Cancellation

4 You may cancel this contract or agreement, without any
5 penalty or obligation, within five (5) days from the date the
6 contract or agreement is signed.

7 If you cancel any payment made by you under this contract
8 or agreement, it will be returned within ten (10) days following
9 receipt by the seller of your cancellation notice.

10 To cancel this contract or agreement, mail, email or
11 deliver a signed dated copy of this cancellation notice, or any
12 other written notice to

13 (name of seller) at (address of seller)
14 (place of business) not later than midnight (date)

15 I hereby cancel this transaction,
16 (date)

17 (purchaser's signature) "

18 C. The credit services organization shall give or make
19 available to the buyer a copy of the completed contract or agreement
20 and all other documents the credit services organization requires
21 the buyer to sign or accept at the time they are signed or accepted.

22 SECTION 7. AMENDATORY 24 O.S. 2001, Section 144, is
23 amended to read as follows:

1 Section 144. A. Each license shall state the name of the
2 license and the address of which the business is to be conducted.
3 The license shall be displayed at the place of business named in the
4 license. The license shall not be transferable or assignable except
5 upon approval by the Administrator.

6 B. A separate license shall be required for each credit service
7 organization operated pursuant to the Credit Services Organization
8 Act.

9 The Administrator may issue more than one license to any one
10 person upon compliance with the provisions of the Credit Services
11 Organization Act as to each license. A licensee desiring to move
12 his or her credit service operation to another location shall give
13 thirty (30) days' written notice to the Administrator, who shall
14 amend the license accordingly.

15 C. Each license shall remain in full force and effect until
16 relinquished, suspended, revoked or expired. Every licensee, on or
17 before December 1 of each year, shall pay the Administrator One
18 Hundred Dollars (\$100.00) for each license held by ~~him~~ the licensee
19 as the annual fee for the succeeding calendar year. If the annual
20 fee remains unpaid fifteen (15) days after written notice of
21 delinquency has been given to the licensee by the Administrator, the
22 license shall thereupon expire, but expiration shall not occur
23 before December 31 of any year for which an annual fee has been
24 paid.

1 D. The fee for a duplicate or amended license shall be Twenty-
2 five Dollars (\$25.00).

3 E. There shall be assessed, in addition to any other penalties
4 provided for by law, an administrative service fee of Twenty-five
5 Dollars (\$25.00) for any check returned to the Department of
6 Consumer Credit or any agent of the Department. However, the fee
7 provided in this subsection shall not be assessed for any check
8 returned because of "insufficient funds" unless the check has been
9 presented to the bank two times and payment declined by the bank.

10 SECTION 8. AMENDATORY 24 O.S. 2001, Section 146, is
11 amended to read as follows:

12 Section 146. A. At such times as the Administrator may deem
13 necessary, the Administrator or his or her duly authorized
14 representative may make an examination of the place of business of
15 each licensee and may inquire into and examine the transactions,
16 books, accounts, papers, correspondence and records of such licensee
17 insofar as they pertain to the business regulated by the Credit
18 Services Organization Act. Such books, accounts, papers,
19 correspondence and records shall also be open for inspection at any
20 reasonable time by any peace officer, without any need of judicial
21 writ or other process. In the course of an examination, the
22 Administrator or his or her duly authorized representative shall
23 have free access to the office, place of business, files, safes and
24 vaults of such licensee, and shall have the right to make copies of

1 any books, accounts, papers, correspondence and records. The
2 Administrator or his or her duly authorized representative, during
3 the course of such examination, may administer oaths and examine any
4 person under oath upon any subject pertinent to any matter about
5 which the Administrator is authorized or required by the Credit
6 Services Organization Act to consider, investigate or secure
7 information. Any licensee who fails or refuses to permit the
8 Administrator or his or her duly authorized representative to
9 examine or make copies of such books or other relevant documents
10 shall be deemed to be in violation of the Credit Services
11 Organization Act and such failure or refusal shall constitute
12 grounds for the suspension or revocation of such license. The
13 information obtained in the course of any examination or inspection
14 shall be confidential, except in civil or administrative proceedings
15 conducted by the Administrator, or criminal proceedings instituted
16 by the state. Each licensee shall pay to the Administrator an
17 amount assessed by the Administrator to cover the direct or indirect
18 cost of such examination, not to exceed Two Hundred Dollars
19 (\$200.00) in any calendar year.

20 B. For the purpose of discovering violations of the Credit
21 Services Organization Act or of securing information required by the
22 Credit Services Organization Act, the Administrator or his or her
23 duly authorized representative may investigate the books, accounts,
24 papers, correspondence and records of any licensee or other person

1 who the Administrator has reasonable cause to believe is violating
2 any provision of the Credit Services Organization Act whether or not
3 such person shall claim to be within the authority or scope of the
4 Credit Services Organization Act.

5 C. Each licensee shall keep ~~or~~ and make available ~~in this state~~
6 to the Administrator or his or her duly authorized representative
7 such books and records relating to credit service transactions made
8 pursuant to the Credit Services Organization Act as are necessary to
9 enable the Administrator to determine whether the licensee is
10 complying with the Credit Services Organization Act. Such books and
11 records shall be consistent with accepted accounting practices.

12 D. Each licensee shall preserve or make available to the
13 Administrator or his or her duly authorized representative such
14 books and records ~~in this state~~ relating to each of its credit
15 service transactions for four (4) years from the date of the
16 transaction, or two (2) years from the date of the final entry made
17 thereon, whichever is later. Each licensee's system of records
18 shall be accepted if it discloses such information as may be
19 reasonably required pursuant to the Credit Services Organization
20 Act. All agreements signed or accepted by customers shall be kept
21 ~~at an office in this state~~ the address designated by the licensee,
22 ~~except when transferred under an agreement which gives the~~
23 ~~Administrator access thereto~~ on the license.

24

1 E. Each licensee, annually on or before the first day of May or
2 other date thereafter fixed by the Administrator, shall file a
3 report with the Administrator setting forth such relevant
4 information as the Administrator may reasonably require concerning
5 the business and operations during the preceding calendar year for
6 each licensed place of business conducted by such licensee within
7 the state. Such report shall be made under oath and shall be in the
8 form prescribed by the Administrator, who may make and publish
9 annually a consolidated analysis and recapitulation of such reports,
10 but the individual reports shall be held confidential.

11 SECTION 9. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 148.1 of Title 24, unless there
13 is created a duplication in numbering, reads as follows:

14 There is hereby created in the State Treasury a revolving fund
15 for the Commission on Consumer Credit to be designated the "Oklahoma
16 Credit Service Organization Revolving Fund". The fund shall consist
17 of all fees and fines received by the Administrator of Consumer
18 Credit pursuant to the Credit Service Organization Act. The
19 revolving fund shall be a continuing fund not subject to fiscal year
20 limitations and shall be under the administrative direction of the
21 Administrator. Monies accruing to the credit of this fund are
22 hereby appropriated and may be budgeted and expended by the
23 Administrator upon warrants issued by the State Treasurer against
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1 claims filed as prescribed by law with the Director of State Finance
2 for approval and payment.

3 SECTION 10. This act shall become effective November 1, 2009.
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