

Chapter 21 Credit Services Organizations Act

13-21-1 Short title.

This chapter is known as the "Credit Services Organizations Act."

Enacted by Chapter 29, 1985 General Session

13-21-2 Definitions -- Exemptions.

As used in this chapter:

- (1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.
- (2) "Credit reporting agency" means a person who, for a monetary fee, 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 persons.
- (3)
 - (a) "Credit services organization" means a person who represents that the person or an employee is a debt professional or credit counselor, or, with respect to the extension of credit by others, sells, provides, or performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:
 - (i) improving a buyer's credit record, history, or rating;
 - (ii) providing advice, assistance, instruction, or instructional materials to a buyer with regard to Subsection (3)(a)(i); or
 - (iii) debt reduction or debt management plans.
 - (b) "Credit services organization" does not include:
 - (i) a person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States and who derives at least 35% of the person's income from making loans and extensions of credit;
 - (ii) a depository institution:
 - (A) as defined in Section 7-1-103; or
 - (B) that is regulated or supervised by the Federal Deposit Insurance Corporation or the National Credit Union Administration;
 - (iii) a person licensed as a principal broker under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the person is acting within the course and scope of that license;
 - (iv) a person licensed to practice law in this state if:
 - (A) the person renders the services described in Subsection (3)(a) within the course and scope of the person's practice as an attorney; and
 - (B) the services described in Subsection (3)(a) are incidental to the person's practice as an attorney;
 - (v) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation;
 - (vi) a credit reporting agency if the services described in Subsection (3)(a) are incidental to the credit reporting agency's services; or

- (vii) a person who provides debt-management services and is required to be registered under Title 13, Chapter 42, Uniform Debt-Management Services Act.
- (4) "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, or household purposes.

Amended by Chapter 289, 2011 General Session

13-21-3 Credit services organizations -- Prohibitions.

- (1) A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:
 - (a) conduct any business regulated by this chapter without first:
 - (i) securing a certificate of registration from the division; and
 - (ii) unless exempted under Section 13-21-4, posting a bond, letter of credit, or certificate of deposit with the division in the amount of \$100,000;
 - (b) make a false statement, or fail to state a material fact, in connection with an application for registration with the division;
 - (c) charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer;
 - (d) dispute or challenge, or assist a person in disputing or challenging an entry in a credit report prepared by a consumer reporting agency without a factual basis for believing and obtaining a written statement for each entry from the person stating that that person believes that the entry contains a material error or omission, outdated information, inaccurate information, or unverifiable information;
 - (e) charge or receive any 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 upon substantially the same terms as those available to the general public;
 - (f) make, or counsel or advise any buyer to make, any 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 credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer's creditworthiness, credit standing, or credit capacity;
 - (g) make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization; and
 - (h) transact any business as a credit services organization, as defined in Section 13-21-2, without first having registered with the division by paying an annual fee set pursuant to Section 63J-1-504 and filing proof that it has obtained a bond or letter of credit as required by Subsection (2).
- (2)
 - (a) A bond, letter of credit from a Utah depository, or certificate of deposit posted with the division shall be used to cover the losses of any person arising from a violation of this chapter by the posting credit services organization. A bond, letter of credit, or certificate of deposit may also be used to satisfy administrative fines and civil damages arising from any enforcement action against the posting credit service organization.
 - (b) A bond, letter of credit, or certificate of deposit shall remain in force:

- (i) until replaced by a bond, letter of credit, or certificate of deposit of identical or superior coverage; or
- (ii) for one year after the credit servicing organization notifies the division in writing that it has ceased all activities regulated by this chapter.

Amended by Chapter 183, 2009 General Session

13-21-3.5 Registration and suspension of registration.

- (1) A credit services organization shall file an application for registration with the division before engaging in any activity regulated by this chapter. The application shall include:
 - (a) the name, complete address, and telephone number of the organization;
 - (b) the name of any person who owns or controls more than 5% of the organization, either directly or through another person or entity;
 - (c) the name of any individual who is responsible for the day-to-day operation of the organization;
 - (d)
 - (i) the case title, docket number, the names and addresses of all parties, and a detailed explanation of any administrative, civil, or criminal action in which the organization or any person identified in Subsection (1)(b) or (c) is a party to an administrative, civil, or criminal action that arose in this state or any other jurisdiction involving the offer to provide or the provision of services described in Section 13-21-2(3)(a); or
 - (ii) a notarized statement of the credit services organization's chief executive officer or principal that neither the organization nor any person identified in Subsection (1)(b) or (c) is a party to any administrative, civil, or criminal action described in Subsection (1)(d)(i);
 - (e) a detailed outline of the organization's credit services program to be offered in this state, including two copies of any contract, form, sales literature, or other relevant document that will be used by the organization; and
 - (f) a reasonable registration fee to be determined by the division.
- (2) The division may deny, suspend, or revoke a registration under this chapter if:
 - (a) a credit services organization has engaged, or is engaging in a violation of this chapter; or
 - (b) a person described in Subsection (1)(b) or (c) has been found in an administrative, civil, or criminal action in any jurisdiction to have violated a law relating to the offer to provide or provision of the types of services described in Subsection 13-21-2(3)(a).

Enacted by Chapter 186, 1994 General Session

13-21-4 Bond, letter of credit, or certificate of deposit -- Not required of agent if obtained by organization.

- (1) If a credit services organization has obtained a bond, letter of credit, or certificate of deposit as set forth in Subsection 13-21-3(1) a salesperson, agent, or representative who sells the services of that organization is not required to post his own separate bond, letter of credit, or certificate of deposit.
- (2) As used in this section, a person is not a salesperson, agent, or representative of a credit services organization unless:
 - (a) the person does business under the same name as the credit services organization; or
 - (b) the credit services organization and the issuer of the bond or letter of credit certify in writing that the bond or letter of credit covers the person.

Amended by Chapter 186, 1994 General Session

13-21-5 Written information statement required.

Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing, containing all the information required by Section 13-21-6. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

Enacted by Chapter 29, 1985 General Session

13-21-6 Contents of statement.

The information statement required under Section 13-21-5 shall include all of the following:

- (1) a complete and accurate statement of the buyer's right to review any file on the buyer maintained by any credit reporting agency, as provided under 15 U.S.C. Sec. 1681 et seq., as amended, the Fair Credit Reporting Act;
- (2) a statement that a review of the file on the buyer will be conducted free of charge by the credit reporting agency that issued a report upon which a credit denial was based, if requested within 30 days of the buyer receiving a notice of a denial of credit;
- (3) the approximate price the buyer will be charged by a credit reporting agency for a copy of the file on the buyer;
- (4) a complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by any credit reporting agency;
- (5) a complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;
- (6) a statement asserting the buyer's right to proceed against the bond or trust account required under Section 13-21-3; and
- (7) the name and address of the surety company which issued the bond, or the name and address of the depository and the trustee and the account number of the trust account.

Amended by Chapter 96, 1988 General Session

13-21-7 Written contracts required -- Contents -- Notice of cancellation of contract.

- (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include all of the following:
 - (a) a conspicuous statement in bold type, 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 prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";
 - (b) 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 some other person;
 - (c) 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 date by which the services are to be performed, or estimated length of time for performing the services; and

- (d) the credit services organization's principal business address and the name and address of its agent, in Utah, authorized to receive service of process.
- (2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain in bold type the following statement written in the same language as used in the contract:

"Notice of Cancellation

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

If you cancel, any payment made by you under this contract will be returned within 10 days following receipt by the seller of your cancellation notice.

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

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

Amended by Chapter 306, 2007 General Session

13-21-8 Burden of proving exception -- Penalties -- Court's criminal and equitable jurisdiction -- Prosecution.

- (1)
 - (a) Any waiver by a buyer of any part of this chapter is void.
 - (b) Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.
- (2) In any proceeding involving this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming the exemption or exception.
- (3)
 - (a) Any person who violates this chapter is guilty of a class A misdemeanor.
 - (b) Any district court of this state has jurisdiction to restrain and enjoin the violation of this chapter.
- (4) The attorney general, any county attorney, any district attorney, or any city attorney may prosecute misdemeanor actions or institute injunctive or civil proceedings, or both, under this chapter.
- (5) The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.
- (6)
 - (a) In addition to other penalties under this section, the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.
 - (b) All money received through administrative fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

Amended by Chapter 47, 2006 General Session

13-21-9 Damages -- Punitive damages -- Attorney's fees and costs -- Remedies.

- (1) Any buyer injured by a violation of this chapter may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable attorneys' fees and costs. An award may also be entered for punitive damages.
- (2) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.
- (3) The Division of Consumer Protection may maintain an action for damages or injunctive relief on behalf of itself or any other person to enforce compliance with this chapter. Any judgment granted in favor of the division shall include, in addition to any other monetary award or injunctive relief, an award of reasonable attorneys' fees, court costs, and costs of investigation.

Amended by Chapter 96, 1988 General Session