

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 658

By: Senator Rapert

## For An Act To Be Entitled

AN ACT TO CREATE THE CREDIT REPAIR SERVICES ORGANIZATIONS ACT OF 2017; TO REPEAL THE CREDIT SERVICES ORGANIZATIONS ACT OF 1987; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE THE CREDIT REPAIR SERVICES ORGANIZATIONS ACT OF 2017; AND TO REPEAL THE CREDIT SERVICES ORGANIZATIONS ACT OF 1987.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 91, is amended to add an additional subchapter to read as follows:

Subchapter 2 – Credit Repair Services Organizations Act of 2017

4-91-201. Title.

This subchapter shall be known and may be cited as the "Credit Repair Services Organizations Act of 2017".

4-91-202. Definitions.

(a) As used in this subchapter:

(1) "Buyer" means a person or entity that has received credit in a loan transaction and is obligated to repay the loan amount;

(2) "Consumer" means an individual who is solicited to purchase or who purchases the services of a credit services organization;



(3)(A) "Credit repair services organization" means a person or entity that, with respect to the extension of credit by others, sells, provides, performs, or represents that the person or entity will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

(i) Improve a buyer's credit record, history, or rating;

(ii) Obtain an extension of credit for a buyer;

(iii) Locate an independent, unaffiliated third-party lender for a buyer;

(iv) Obtain an installment loan from an independent third-party lender; or

(v) Provide advice or assistance to a buyer with regard to subdivision (3)(A)(i), subdivision (3)(A)(ii), or subdivision (3)(A)(iii) of this section.

(B) "Credit repair services organization" does not include:

(i) A person or entity authorized to make loans under state or federal law, if the person or entity is:

(a) Subject to regulation and supervision by a state or federal regulatory agency; or

(b) 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. § 1701 et seq.;

(ii) A bank, trust company, savings bank, building and loan association, savings and loan company or association, or credit union, authorized to do business under state or federal laws relating to financial institutions, the accounts of which are insured by the Federal Deposit Insurance Corporation, the National Credit Union Administration, or their operating subsidiaries;

(iii) A nonprofit corporation that qualifies as a nonprofit entity under § 501(c)(3) of the Internal Revenue Code;

(vi) A licensed real estate agent or broker who is performing those activities subject to the regulation of the Arkansas Real Estate Commission;

(v) A licensed collection agency that is performing

those activities subject to the regulation of the State Board of Collection Agencies;

(vi) An attorney licensed in Arkansas rendering legal services to his or her client, when the conduct that would subject the attorney to the jurisdiction of this section is ancillary to the provision of the legal services offered;

(vii) A person doing business under the laws of this state or the United States relating to any broker-dealer or commodity futures commission merchant or commodity trading advisor or agent registered and regulated by the State Securities Department or the United States Commodity Futures Trading Commission; or

(viii) A consumer reporting agency as defined in 15 U.S.C. § 1681a(f), as it existed on January 1, 2017;

(4) "Extension of credit" means the right, offered or granted primarily for personal, family, or household purposes, to defer payment of debt or to incur debt and defer its payment;

(5) "Lender" means a person or entity engaged in the business of making loans to buyers through a credit services organization; and

(6)(A) "Loan" means an advance of funds or moneys that is conditioned on the obligation of a person or entity to repay the funds or moneys under a loan agreement, note, contract, or other instrument or document evidencing the indebtedness.

(B) "Loan" includes payments for interest, expenses, and charges incurred with the making of the loan;

(b)(1) The maximum rate of interest provided by § 4-57-104 applies to a loan obtained under this section.

(2) Any amount paid or payable to a credit repair services organization under a loan obtained under this section that exceeds the amount provided by the lender to the buyer in connection with a loan shall be included as interest for purposes of § 4-57-104.

(c)(1) Before the execution of a contract or agreement between the buyer and a credit repair services organization or before the receipt by the credit repair services organization of any money or other valuable consideration, whichever occurs first, the credit repair services organization shall provide the buyer with a statement in writing containing:

(A) A complete and accurate statement of the buyer's right

to review any file on the buyer that is maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681t;

(B) A statement that the buyer may review his or her consumer reporting agency file at no charge if a request is made to the consumer reporting agency within thirty (30) days after receiving notice that credit has been denied;

(C) The approximate price the buyer will be charged by the consumer reporting agency to review his or her consumer reporting agency file;

(D) 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 consumer reporting agency;

(E) A complete and detailed description of the services to be performed by the credit repair services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;

(F) A statement asserting the buyer's right to proceed against the bond or trust account required under subdivision (e)(1)(A) of this section; and

(G) 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 trust account.

(2) The credit repair services organization shall maintain on file for a period of two (2) years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

(d)(1) A contract or agreement governing a credit repair services organization transaction or extension of credit shall:

(A) Be in writing;

(B)(i) Prominently disclose the annual percentage rate applicable to the loan transaction.

(ii) The annual percentage rate shall be included in bold 20-point type and Arial font surrounded by a 1.5 point rectangle, as follows:

“ APR . % ”;

(C) Provide a conspicuous statement in boldface 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 before midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right”;

(D) Disclose the terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit repair services organization or to some other person;

(E) Provide a full and detailed description of the services to be performed by the credit repair 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 the estimated length of time for performing the services; and

(F) Provide the credit repair services organization’s principal business address and the name and address of its agent in this state authorized to receive service of process.

(2) The contract shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation”, that shall be attached to the contract, be easily detachable, and contain in boldface type the following statement written in the same language as used within the contract:

“Notice of Cancellation: Buyer may cancel this contract without any penalty or obligation within five (5) days from the date the contract is signed. If Buyer cancels this contract, any payment made by Buyer under this contract will be returned within ten (10) days following receipt by the Seller of Buyer’s 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 repair 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 of the cancellation of the contract.

(e) A credit repair services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit repair services organization shall not:

(1) Charge or receive any money or other valuable consideration before complete performance of the services the credit repair services organization has agreed to perform for the buyer unless the credit repair services organization:

(A) Obtains a surety bond of ten thousand dollars (\$10,000) issued by a surety company having a right to do business in this state; and

(B) Establishes a trust account at a state or national bank or savings and loan association in this state, if the funds deposited into the trust account are federally insured;

(2) Charge or receive any money or other valuable consideration solely for referral of the buyer to a lender that may extend credit to the buyer if the credit that is extended to the buyer is upon substantially the same terms as those available to the general public;

(3) Make, counsel, or advise a buyer to make any statement concerning a buyer's credit worthiness, credit standing, or credit capacity that is untrue or misleading or that should be known by the exercise of reasonable care to be untrue or misleading to a credit 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; or

(4) Make or use any untrue or misleading representations in the offer or sale of the services of a credit repair 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 repair services organization.

(f)(1) A waiver by a buyer of any part of this subchapter is void.

(2) An attempt by a credit repair services organization to have a buyer waive rights given by this subchapter is a violation of this subchapter.

(g) In any proceeding involving this subchapter, the burden of proving an exemption or an exception from a definition described in this subchapter is upon the person claiming it.

(h) A violation of this section is:

(1) A deceptive and unconscionable trade practice under § 4-88-107; and

(2) Subject to the penalties, remedies, and enforcement provided by § 4-88-101 et seq.

SECTION 2. Arkansas Code § 4-91-101, is repealed as follows:

~~4-91-101. Title.~~

~~This chapter may be known and cited as the “Credit Services Organizations Act of 1987”.~~

SECTION 3. Arkansas Code § 4-91-102, is repealed as follows:

~~4-91-102. Definitions.~~

~~As used in this chapter, unless the context otherwise requires:~~

~~(1) “Buyer” means any individual who is solicited to purchase or who purchases the services of a credit services organization;~~

~~(2)(A) “Credit services organization” means any person or entity that, with respect to the extension of credit by others, sells, provides, performs, or represents that the person or entity will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:~~

~~(i) Improve a buyer’s credit record, history, or rating;~~

~~(ii) Obtain an extension of credit for a buyer; or~~

~~(iii) Provide advice or assistance to a buyer with regard to either subdivisions (2)(A)(i) or (ii) of this section.~~

~~(B) “Credit services organization” does not include:~~

~~(i) Any person or entity authorized to make loans or extensions of credit under the laws of this state or the United States, which person or entity 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 any mortgage insurance program under the National Housing Act;~~

~~(ii) Any bank, savings bank, or savings and loan institution whose deposits 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 bank, savings bank, or savings and loan institution;~~

~~(iii) Any credit union, federal credit union, or~~

~~out-of-state credit union doing business in this state;~~

~~(iv) Any nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code;~~

~~(v) Any person licensed as a real estate broker by this state if the person is acting within the course and scope of that license;~~

~~(vi) Any person licensed as a collection agency under the laws of this state if the person is acting within the course and scope of that license;~~

~~(vii) Any person licensed to practice law in this state if the person renders services within the course and scope of his or her practice as an attorney;~~

~~(viii) Any 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; or~~

~~(ix) Any consumer reporting agency as defined in the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681t; and~~

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

SECTION 4. Arkansas Code § 4-91-103, is repealed as follows:

~~4-91-103. Waiver of rights.~~

~~(a) Any waiver by a buyer of any part of this chapter is void. Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.~~

~~(b) In any proceeding involving this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.~~

SECTION 5. Arkansas Code § 4-91-104, is repealed as follows:

~~4-91-104. Violations.~~

~~(a) Any person who violates this chapter is guilty of a Class A misdemeanor. Any court of competent jurisdiction in this state may restrain and enjoin any violation of this chapter.~~

~~(b) This section and § 4-91-103 shall not limit or restrict the right~~

~~of any person to pursue any appropriate remedy at law for a violation of this chapter.~~

SECTION 6. Arkansas Code § 4-91-105, is repealed as follows:

~~4-91-105. Damages.~~

~~(a) Any buyer suffering damages as a result of a violation of this chapter by any credit services organization may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case shall the amount be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.~~

~~(b) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct otherwise provided by law.~~

SECTION 7. Arkansas Code § 4-91-106, is repealed as follows:

~~4-91-106. Prohibited acts.~~

~~(a) 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:~~

~~(1) 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 unless the credit services organization has obtained a surety bond of ten thousand dollars (\$10,000) issued by a surety company admitted to do business in this state and has established a trust account at a federally insured bank or savings and loan association located in this state;~~

~~(2) 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;~~

~~(3) Make, counsel, or advise any buyer to make, any statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is untrue or misleading or that should be known by the exercise of reasonable care 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; or

~~(4) 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.~~

~~(b) If a credit services organization is in compliance with subdivision (a)(1) of this section, the salesperson, agent, or representative who sells the services of that organization is not required to obtain a surety bond and establish a trust account.~~

SECTION 8. Arkansas Code § 4-91-107, is repealed as follows:

~~4-91-107. Information statement—Requirements.~~

~~(a) 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 § 4-91-108.~~

~~(b) The credit services organization shall maintain on file for a period of two (2) years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.~~

SECTION 9. Arkansas Code § 4-91-108, is repealed as follows:

~~4-91-108. Information statement—Contents.~~

~~The information statement required under § 4-91-107 shall include all of the following:~~

~~(1)(A) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681t;~~

~~(B) A statement that the buyer may review his or her consumer reporting agency file at no charge if a request is made to the consumer reporting agency within thirty (30) days after receiving notice that credit has been denied; and~~

~~(C) The approximate price the buyer will be charged by the consumer reporting agency to review his or her consumer reporting agency~~

file;

~~(2) 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 consumer reporting agency;~~

~~(3) 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;~~

~~(4) A statement asserting the buyer's right to proceed against the bond or trust account required under § 4-91-106(a); and~~

~~(5) 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 trust account.~~

SECTION 10. Arkansas Code § 4-91-109, is repealed as follows:

~~4-91-109. Contract requirements—Notice of cancellation.~~

~~(a)(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, and signed by the buyer and shall include all of the following:~~

~~(A) A conspicuous statement in boldface 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 the 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 this state authorized to receive service of process.~~

~~(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation", that shall be attached to the contract, be easily detachable, and contain in boldface 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 (5) days from the date the contract is signed. If you cancel this contract, any payment made by you under this contract will be returned within ten (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) —"~~

~~(b) 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.~~