

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 330

SPONSOR: Commerce and Economic Opportunities Committee and Senator King

SUBJECT: Credit Service Organizations

DATE: January 10, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable
2.	Cibula	Maclure	CM	Favorable/CS
3.				
4.				
5.				
6.				

I. Summary:

The committee substitute brings part III, ch. 817, F.S., into conformity with the federal Credit Repair Organizations Act, 15 U.S.C. ss. 1679 et seq., by prohibiting payment in advance of complete performance of the services the credit service organization has agreed to perform for a consumer. Specifically, the committee substitute eliminates the option for credit service organizations to receive payment in advance of their services by maintaining a surety bond in the amount of \$10,000 and maintaining a trust account for the deposit of unearned funds. Pursuant to the committee substitute, all credit service organizations will be prohibited from receiving advance payment for their services. However, all credit service organizations will be required to maintain a surety bond in the amount of \$10,000, and no credit service organization will be required to maintain a trust account. Since s. 817.705(3), F.S., provides that violations of part III, ch 817, F.S., are third-degree felonies, the effect of the committee substitute is to authorize the imposition of criminal sanctions on credit service organizations that receive advance payment for their services. Further, the committee substitute brings Florida law into conformity with Fair Credit Reporting Act to provide consumers with the opportunity to review their credit report free of charge within 60 days after the denial of credit. Lastly, the committee substitute clarifies that the Attorney General is authorized to enforce the federal Credit Repair Organizations Act.

The committee substitute substantially amends the following sections of the Florida Statutes: 817.7005, 817.701, 817.702, and 817.703.

II. Present Situation:

Credit service organizations are regulated by part III, ch. 817, F.S., and the federal Credit Repair Organizations Act (“CROA”), codified in 15 U.S.C. ss. 1679 et seq. The CROA, however, only

regulates a subset of credit service organizations that the CROA defines as credit repair organizations.

Section 817.7001(2)(a), F.S., defines a “credit service organization” as:

any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

1. Improving a buyer’s credit record, history, or rating;
2. Obtaining an extension of credit for a buyer; or
3. Providing advice or assistance to a buyer with regard to the services described in either subparagraph 1. or subparagraph 2.

According to 15 U.S.C. s. 1679a(3), the term “credit repair organization”:

(A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of --

- (i) improving any consumer’s credit record, credit history, or credit rating; or
- (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

Section 817.7005, F.S., authorizes credit service organizations to receive compensation prior to complete performance of the contracted services if the credit service organization has obtained a surety bond in the amount of \$10,000 and utilizes a trust account for the deposit of unearned client funds. However, the CROA in 15 U.S.C. s. 1679b(b) prohibits credit repair organizations from receiving compensation prior to complete performance of their contracts with customers.

Section 817.703(1)(b), F.S., mandates that credit service organizations provide an information statement to customers notifying them of the right to review their credit reports free of charge if a request for such review is made within 30 days after a denial of credit. However, the Fair Credit Reporting Act in 15 U.S.C. ss. 1681j(b) and 1681m(a)(3)(A), and the CROA in 15 U.S.C. s. 1679c(a) provide consumers with 60 days after the denial of credit to request a free copy of their credit reports from a credit reporting agency. As such, Florida law does not provide the same level of consumer protection as provided by federal law.

The Federal Trade Commission (“FTC”) and the “chief law enforcement officer of a state, or an official or agency designated by the state,” are authorized to enforce the CROA. 15 U.S.C. s. 1679h. The FTC suggests that the entities described in 15 U.S.C. s. 1679h(c) authorized to enforce the CROA include state attorneys general. See, e.g., *File Segregation: New Id is a Bad Idea* available at <http://ftc.gov/bcp/online/pubs/credit/creditid.htm> (January 1999). However,

according to s. 4(c), Art. IV of the State Constitution, the attorney general is chief state legal officer, not the chief law enforcement officer. As a result, there may be confusion as to the state government entity responsible for the enforcement of the CROA.

When authorized by 15 U.S.C. s. 1679h(c) to enforce the CROA, states may bring actions to enjoin violations and bring actions for damages on behalf of residents. However, pursuant to s. 817.705(3), F.S., violations of part III, ch. 817, F.S., are third-degree felonies.

III. Effect of Proposed Changes:

The committee substitute brings part III, ch. 817, F.S., into conformity with the federal Credit Repair Organizations Act, 15 U.S.C. ss. 1679 et seq., by prohibiting payment in advance of complete performance of the services the credit service organization has agreed to perform for a consumer. Specifically, the committee substitute eliminates the option for credit service organizations to receive payment in advance of their services by maintaining a surety bond in the amount of \$10,000 and maintaining a trust account for the deposit of unearned funds. Pursuant to the committee substitute, all credit service organizations will be prohibited from receiving advance payment for their services. However, all credit service organizations will be required to maintain a surety bond in the amount of \$10,000, and no credit service organization will be required to maintain a trust account. Since s. 817.705(3), F.S., provides that violations of part III, ch 817, F.S., are third-degree felonies, the effect of the committee substitute is to authorize the imposition of criminal sanctions on credit service organizations that receive advance payment for their services. Further, the committee substitute brings Florida law into conformity with Fair Credit Reporting Act to provide consumers with the opportunity to review their credit report free of charge within 60 days after the denial of credit. Lastly, the committee substitute clarifies that the Attorney General is authorized to enforce the federal Credit Repair Organizations Act.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All credit service organizations will be required to maintain a surety bond in the amount of \$10,000. Credit service organizations will be prohibited from receiving advance payment for services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
