HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1319 Financial Literacy
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N	Renner	Kiner
2) Regulatory Affairs Committee	15 Y, 0 N	Bauer	Hamon

SUMMARY ANALYSIS

The Credit Repair Organizations Act (CROA) was signed into law with the intent to prevent credit repair organizations from engaging in unfair business practices that result in financial hardships for consumers. Specifically, CROA prohibits untrue or misleading representations and requires certain affirmative disclosures in the offering or sale of “credit repair” services. CROA bars “credit repair organizations” from demanding advance payment, requires that “credit repair” contracts be in writing, and gives consumers certain contract cancellation rights.

While CROA is meant to prevent unfair and deceptive trade practices by credit repair organizations that undermine the accuracy and completeness of credit reports, the law could be construed to discourage national credit bureaus from providing credit education services to consumers.

The memorial urges the U.S. Congress to enact reforms to the Credit Repair Organization Act to ensure that nationwide credit reporting agencies create, promote, and maintain resources for consumers to access specific recommendations for improving their credit reports and credit scores.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

The memorial does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

Credit scores are used widely for assessing eligibility for mortgages, credit cards, student loans, personal loans, and other consumer credit. They are also used for other situations that a person may not think about, such as:

- Determining security deposits for renting a home;
- Setting up payment plans for various purchases; and
- Obtaining auto or home insurance.

Due to the increasing reliance on credit scores, financial literacy is essential in preparing individuals to make informed financial decisions.[1]

The 2014 Consumer Financial Literacy Survey showed the following statistics when it comes to budgeting, debt, and savings:[2]

- 61 percent of U.S. adults admit to not having a budget;
- 34 percent of U.S. adults indicated their household carries credit card debt from month-to-month;
- 32 percent of U.S. adults do not save any portion of their annual income for retirement; and
- 21 percent of U.S. adults are not at all sure about what types of information are included on a standard credit report.

Credit reports are used by financial institutions, insurance companies, employers, and other entities in making eligibility decisions affecting consumers. Information included in consumer reports generally may include consumers' credit history and payment patterns, as well as demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).

Credit reporting agencies (also known as credit bureaus) are entities that collect and disseminate information about consumers to be used for credit evaluation and other permissible purposes, such as employment or background checks for professional licenses. The three major credit reporting companies in the U.S. are Equifax, TransUnion, and Experian; depending on the credit reporting agency and scoring models, the measure of a consumer's risk of default varies, but generally considers a consumer's payment and credit history, types of credit, debt burden, and frequency of credit applications.[3]

Federal Regulation of Credit Reporting and Credit Scoring

In 1970, Congress enacted the federal Fair Credit Reporting Act (FCRA),[4] which regulates the collection, dissemination, and use of consumer credit information and is enforced by the Federal Trade Commission, and provides a private cause of action for consumers. The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the

[1] Annamaria Lusardi, Dartmouth College, Harvard Business School, June 2008, "Financial Literacy: An Essential Tool for Informed Consumer Choice?" page 20; available at: http://www.dartmouth.edu/~alusardi/Papers/Lusardi_Informed_Consumer.pdf (last visited April 2, 2015).

[2] The National Foundation for Credit Counseling website on *Key Findings from the 2014 Consumer Financial Literacy Survey, available at http://www.c360m.com/online/2014_financial_literacy_infographic.html* (last visited April 2, 2015)

[3] USA.gov, *Credit Bureaus and Credit Scoring*, http://www.usa.gov/topics/money/credit/credit-reports/bureaus-scoring.shtml (lsat viewed Apr. 10, 2015).

[4] 15 U.S.C. §§ 1681 *et seq.*

efficiency of the nation's banking and consumer credit systems. It requires that businesses providing consumer information to the credit reporting agencies ensure that the information be complete and accurate.

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act (FACT) to improve the accuracy and transparency of the credit reporting system.[5] FACT amended the FCRA to require credit reporting agencies to provide consumers one free credit report every 12 months and enhanced consumer rights regarding identity theft detection and prevention and credit scoring. Additionally, FCRA provides civil penalties and remedies to contest inaccurate information, which is particularly important to detect identity theft or if an application for credit has been denied based on inaccurate information.

In 2010, the Wall Street Reform and Consumer Protection Act (commonly referred to as "Dodd-Frank") was signed into law.[6] It has widely been described as the most expansive financial regulatory legislation since the 1930s, and was formed with the intent "to focus directly on consumers, rather than on bank safety and soundness or on monetary policy."[7] Section 1100F Dodd-Frank amended the FCRA to require disclosure of credit scores and information relating to credit scores for both risk-based pricing and FCRA adverse action notices.

Federal and Florida Regulation of Credit Repair Organizations

The Consumer Credit Protection Act (CCPA),[8] enforced by the U.S. Department of Labor, protects employees from discharge by their employers because their wages have been garnished for any one debt, and limits the amount of an employee's earnings that may be garnished in any one week.[9] Generally, the CCPA safeguards consumers in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; restricts the garnishment of wages; and creates the National Commission on Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry.[10]

The Credit Repair Organizations Act (CROA),[11] enforced by the Federal Trade Commission, amends title IV of the CCPA. The intent of CROA is to prevent credit repair organizations from engaging in unfair business practices that result in financial hardships for consumers. CROA defines a credit repair organization broadly as any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that they 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:

- Improving any consumer's credit record, credit history, or credit ratings; or
- Providing advice or assistance to any consumer with regard to any activity or service above.[12]

CROA excludes from the definition of a credit repair organization any nonprofit organization which is exempt from taxation under IRC 501(c)(3).[13] CROA also excludes from the definition any depository institution,[14] Federal or State credit union,[15] or any affiliate or subsidiary of a depository or credit union.

---

[5] Pub. Law 108-159, 108th Congress (2003).
[6] Pub.Law 111-203, 111th Congress (2010).
[7] CONSUMER FINANCIAL PROTECTION BUREAU, *Creating the Consumer Bureau*, at http://www.consumerfinance.gov/the-bureau/creatingthebureau/ (last visited Apr. 12, 2015).
[8] 15 U.S.C., § 1601 *et seq.*
[9] The U.S. Department of Labor website on The Consumer Credit Protection Act, *available at*: http://www.dol.gov/compliance/laws/comp-ccpa.htm#overview (last visited Apr. 2, 2015).
[10] Pub. Law 90-321, 90th Congress (1968).
[11] 15 U.S.C., §1679 *et seq.*
[12] Internal Revenue Service publication on *Credit Counseling Organizations*, *2004. available at*: *http://webcache.googleusercontent.com/search?q=cache:KhkmTp5-7tQJ:www.irs.gov/pub/irs-tege/eotopica04.pdf+&cd=1&hl=en&ct=clnk&gl=us* (last visited Apr. 2, 2015)
[13] To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may be given to a private shareholder or individual. Additionally, it may not attempt to influence legislation as a substantial part of its activities and it may not participate in

Specifically, CROA prohibits credit repair organizations from making untrue or misleading representations and requires them to provide certain affirmative disclosures in the offering or sale of "credit repair" services.[16] In furtherance of its duties, CROA:

- Bars "credit repair" companies from demanding advance payment;
- Requires that "credit repair" contracts be in writing; and
- Gives consumers certain contract cancellation rights and civil remedies.[17]

Florida Credit Service Organizations Law

Part III of ch. 817, F.S., governs "credit service organizations" and contains similar provisions to the federal CROA. Like credit repair organizations under CROA, credit service organizations provide, in return for the payment of money or other valuable consideration, services, advice, and assistance to improve a buyer's credit record, history, or rating.[18] Credit service organizations also may assist buyers with obtaining an extension of credit. Florida law excludes more persons from the definition of credit service organization than CROA, including credit reporting agencies. Like CROA, part III of ch. 817, F.S., prohibits advance fees and false or misleading representations, requires credit service organizations to comply with certain written disclosure and contractual requirements, and provides civil remedies.[19] CROA preempts state law only to the extent state law is inconsistent with CROA.[20]

Congressional Credit Repair Organization Legislation

While CROA is meant to prevent unfair and deceptive trade practices by credit repair organizations that undermine the accuracy and completeness of credit reports, the law could be construed to discourage national credit bureaus from providing credit education services to consumers. One recent federal appellate decision found that an online company is a "credit repair organization" for purposes of the CROA, because it represented itself as selling or providing a service, advice, or assistance in connection with an individual's credit, which the court held went beyond merely providing credit scores, reports, and consumer credit information.[21]

The Facilitating Access to Credit Act of 2015[22] was introduced in January 2015. The Act amends CROA to exempt from its coverage any consumer reporting agency (or affiliate subsidiary) described under the Fair Credit Reporting Act as:[23]

- One that compiles and maintains files on consumers on a nationwide basis; or
- Any person, which, for monetary fees, 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 in order to furnish consumer reports to third parties, if the person is subject to supervision and examination by the Consumer Financial Protection Bureau.

Furthermore, the bill preempts state law and regulations concerning a credit repair organization to the extent they would apply to consumer reporting agencies subject to this Act and directs the Federal

---

any campaign activity for or against political candidates. *See* http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations (last visited April 2, 2015)

[14] 12 U.S.C. § 1813 defines a depository institution as any bank or savings association.

[15] 12 U.S.C. § 1752 defines a Federal credit union as a cooperative association for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

[16] Federal Trade Commission website on Credit Repair Organization Act, *available at* https://www.ftc.gov/enforcement/statutes/credit-repair-organizations-act (last visited April 2, 2015)

[17] *Id.*

[18] s. 817.7001(2), F.S.

[19] ss. 817.7005, 807.702, 807.704, and 807.706, F.S.

[20] 15 U.S.C. § 1679j.

[21] *Stout v. FreeScore, LLC*, 743 F.3d 680 (9th Cir. 2014)

[22] H.R. 347, 114th Congress.

[23] Congress.gov H.R. 347 summary, *available at* https://www.congress.gov/bill/114th-congress/house-bill/347 (last visited April 2, 2015)

Trade Commission to study whether, in addition to these persons, any other person should be exempt from CROA.[24]

The bill has been referred to the House Financial Services Committee; however, it has not been heard in the committee.

Effect of Proposed Changes

The memorial urges the U.S. Congress to enact reforms to the Credit Repair Organization Act to ensure that nationwide credit reporting agencies create, promote, and maintain resources for consumers to access specific recommendations for improving their credit reports and credit scores.

Furthermore, copies of the memorial will be sent to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and to each member of the Florida delegation to the U.S. Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

---

[24] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES