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SENATE FILE 331  
BY TAYLOR

(COMPANION TO LSB 2304H  
BY RENKEN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to credit services organizations, by requiring  
2 their registration, imposing regulation, and providing  
3 penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 331

1 Section 1. NEW SECTION. 533C.1 DEFINITIONS.

2 In this chapter, unless the context otherwise requires:

3 1. "Buyer" means an individual who is solicited to  
4 purchase or who purchases the services of a credit services  
5 organization.

6 2. "Consumer reporting agency" has the meaning assigned by  
7 section 603(f), Fair Credit Reporting Act, 15 U.S.C. §  
8 1681a(f) as amended through January 1, 1989.

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

12 Sec. 2. NEW SECTION. 533C.2 CREDIT SERVICES ORGANIZATION  
13 DEFINED -- EXEMPTIONS.

14 1. A credit services organization is a person who, with  
15 respect to the extension of credit by others and in return for  
16 the payment of money or other valuable consideration,  
17 provides, or represents that the person can or will provide,  
18 any of the following services:

- 19 a. Improving a buyer's credit record, history, or rating.  
20 b. Obtaining an extension of credit for a buyer.  
21 c. Providing advice or assistance to a buyer with regard  
22 to paragraph "a" or "b".

23 2. The following are exempt from this chapter:

24 a. A person authorized to make loans or extensions of  
25 credit under the laws of this state or the United States who  
26 is subject to regulation and supervision of this state or the  
27 United States, or a lender approved by the United States  
28 secretary of housing and urban development for participation  
29 in a mortgage insurance program under the National Housing  
30 Act, 12 U.S.C. § 1701 et seq.

31 b. A bank or savings and loan association whose deposits  
32 or accounts are eligible for insurance by the federal deposit  
33 insurance corporation or the federal savings and loan  
34 insurance corporation, or successor deposit insurance  
35 entities, or a subsidiary of a bank or savings and loan

1 association.

2 c. A credit union doing business in this state.

3 d. A nonprofit organization exempt from taxation under  
4 section 501(c)(3) of the Internal Revenue Code, as defined in  
5 section 422.3.

6 e. A person licensed as a real estate broker or  
7 salesperson, under section 117.20, acting within the course  
8 and scope of that license.

9 f. A person licensed to practice as an attorney in this  
10 state acting within the course and scope of the person's  
11 practice as an attorney.

12 g. A broker-dealer registered with the securities and  
13 exchange commission or the commodity futures trading  
14 commission acting within the course and scope of the  
15 regulations of the commission that person is registered with.

16 h. A consumer reporting agency.

17 Sec. 3. NEW SECTION. 533C.3 PROHIBITED CONDUCT.

18 A credit services organization, a salesperson, agent, or  
19 representative of a credit services organization, or an  
20 independent contractor who sells or attempts to sell the  
21 services of a credit services organization shall not:

22 1. Charge a buyer or receive from a buyer money or other  
23 valuable consideration before completing performance of all  
24 services the credit services organization has agreed to  
25 perform for the buyer, unless the credit services organization  
26 has obtained a bond in accordance with section 533C.4 from a  
27 surety company authorized to do business in this state or  
28 established and maintained a surety account at a federally  
29 insured bank or savings and loan association located in this  
30 state in the amount required by section 533C.4, subsection 5.

31 2. Charge a buyer or receive from a buyer money or other  
32 valuable consideration solely for referral of the buyer to a  
33 retail seller who will or may extend credit to the buyer if  
34 the credit that is or will be extended to the buyer is  
35 substantially the same as that available to the general

1 public.

2 3. Make or use a false or misleading representation in the  
3 offer or sale of the services of a credit services  
4 organization.

5 4. Engage, directly or indirectly, in a fraudulent or  
6 deceptive act, practice, or course of business in connection  
7 with the offer or sale of the services of a credit services  
8 organization.

9 Sec. 4. NEW SECTION. 533C.4 BOND -- SURETY ACCOUNT.

10 1. This section applies to a credit services organization  
11 required by section 533C.3, subsection 1, to obtain a surety  
12 bond or establish a surety account.

13 2. If a bond is obtained, a copy of it shall be filed with  
14 the secretary of state. If a surety account is established,  
15 notification of the depository, the trustee, and the account  
16 number shall be filed with the secretary of state.

17 3. The bond or surety account required must be in favor of  
18 the state for the benefit of any person who is damaged by a  
19 violation of this chapter.

20 4. A person claiming against the bond or surety account  
21 for a violation of this chapter may maintain an action at law  
22 against the credit services organization and against the  
23 surety or trustee. The surety or trustee is liable only for  
24 damages awarded under section 533C.9, subsection 1, and not  
25 the punitive damages permitted under that section. The  
26 aggregate liability of the surety or trustee to all persons  
27 damaged by a credit services organization's violation of this  
28 chapter shall not exceed the amount of the surety account or  
29 bond.

30 5. The bond or the surety account shall be in an amount of  
31 at least ten thousand dollars.

32 6. A depository holding money in a surety account under  
33 this chapter shall not convey money in the account to the  
34 credit services organization that established the account or a  
35 representative of the credit services organization unless the

1 credit services organization or representative presents a  
2 statement issued by the secretary of state indicating that  
3 section 533C.5, subsection 6, has been satisfied in relation  
4 to the account. The secretary of state may conduct  
5 investigations and require submission of information as  
6 necessary to enforce this subsection.

7 Sec. 5. NEW SECTION. 533C.5 REGISTRATION.

8 1. A credit services organization shall file a  
9 registration statement with the secretary of state before  
10 conducting business in this state. The registration statement  
11 must contain both of the following:

12 a. The name and address of the credit services  
13 organization.

14 b. The name and address of any person who directly or  
15 indirectly owns or controls ten percent or more of the  
16 outstanding shares of stock in the credit services  
17 organization.

18 2. The registration statement must also contain one of the  
19 following:

20 a. A full and complete disclosure of any litigation or  
21 unresolved complaint filed with a governmental authority of  
22 this state relating to the operation of the credit services  
23 organization.

24 b. A notarized statement that there has been no litigation  
25 or unresolved complaint filed with a governmental authority of  
26 this state relating to the operation of the credit services  
27 organization.

28 3. The credit services organization shall update the  
29 statement not later than the ninetieth day after the date on  
30 which a change in the information required in the statement  
31 occurs.

32 4. A credit services organization registering under this  
33 section shall maintain a copy of the registration statement in  
34 the files of the credit services organization. The credit  
35 services organization shall allow a buyer to inspect the

1 registration statement on request.

2 5. The secretary of state may charge each credit services  
3 organization that files a registration statement with the  
4 secretary of state a reasonable fee not to exceed one hundred  
5 dollars to cover the cost of filing. The secretary of state  
6 shall not require a credit services organization to provide  
7 information other than that provided in the registration  
8 statement.

9 6. The bond or surety account shall be maintained until  
10 two years after the date that the credit services organization  
11 ceases to operate.

12 Sec. 6. NEW SECTION. 533C.6 DISCLOSURE STATEMENT.

13 1. Before executing a contract or agreement with a buyer,  
14 or receiving money or other valuable consideration, a credit  
15 services organization shall provide the buyer with a statement  
16 in writing, containing all of the following:

17 a. A complete and detailed description of the services to  
18 be performed by the credit services organization for the buyer  
19 and the total cost of the services.

20 b. A statement explaining the buyer's rights to proceed  
21 against the bond or surety account required by section 533C.4.

22 c. The name and address of the surety company which issued  
23 the bond, or the name and address of the depository and the  
24 trustee, and the account number of the surety account.

25 2. The credit services organization shall maintain on file  
26 for a period of two years after the date the statement is  
27 provided, an exact copy of the statement, signed by the buyer,  
28 acknowledging receipt of the statement.

29 Sec. 7. NEW SECTION. 533C.7 FORM IN TERMS OF CONTRACT.

30 1. A contract between the buyer and a credit services  
31 organization for the purchase of the services of the credit  
32 services organization must be in writing, dated, signed by the  
33 buyer, and must include all of the following:

34 a. A conspicuous statement in boldface type, in immediate  
35 proximity to the space reserved for the signature of the

1 buyer, as follows: "You, the buyer, may cancel this contract  
2 at any time before midnight of the third day after the date of  
3 the transaction. See the attached notice of cancellation form  
4 for an explanation of this right."

5 b. The terms and conditions of payment, including the  
6 total of all payments to be made by the buyer, whether to the  
7 credit services organization or to another person.

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

14 d. The address of the credit services organization's  
15 principal place of business and the name and address of its  
16 agent in the state authorized to receive service of process.

17 2. The contract must have attached two easily detachable  
18 copies of the notice of cancellation. The notice must be in  
19 boldface type and in the following form:

20

"Notice of Cancellation

21 You may cancel this contract, without any penalty or  
22 obligations, within three days after the date the contract is  
23 signed.

24 If you cancel, any payment made by you under this contract  
25 will be returned within ten days after the date of receipt by  
26 the seller of your cancellation notice.

27 To cancel this contract, mail or deliver a signed, dated  
28 copy of this cancellation notice or other written notice to:  
29 (name of seller) at (address of seller) (place of business)  
30 not later than midnight (date).

31 (date)

32 (Purchaser's signature)

33 3. The credit services organization shall give to the  
34 buyer a copy of the completed contract and all other documents  
35 the credit services organization requires the buyer to sign at

1 the time they are signed.

2 Sec. 8. NEW SECTION. 533C.8 WAIVER.

3 1. A credit services organization shall not attempt to  
4 cause a buyer to waive a right under this chapter.

5 2. A waiver by a buyer of any part of this chapter is  
6 void.

7 Sec. 9. NEW SECTION. 533C.9 ACTION FOR DAMAGES.

8 1. A buyer injured by a violation of this chapter may  
9 bring an action for recovery of damages. The damages awarded  
10 shall not be less than the amount paid by the buyer to the  
11 credit services organization, plus reasonable attorney's fees  
12 and court costs.

13 2. The buyer may also be awarded punitive damages.

14 Sec. 10. NEW SECTION. 533C.10 INJUNCTION.

15 1. The attorney general or a buyer may bring an action in  
16 a district court to enjoin a violation of this chapter.

17 Sec. 11. NEW SECTION. 533C.11 STATUTE OF LIMITATIONS.

18 An action shall not be brought under section 533C.9 or  
19 533C.12 after four years after the date of the execution of  
20 the contract for services to which the action relates.

21 Sec. 12. NEW SECTION. 533C.12 CRIMINAL PENALTY.

22 A person who violates a provision of this chapter commits a  
23 serious misdemeanor.

24 Sec. 13. NEW SECTION. 533C.13 BURDEN OF PROVING  
25 EXEMPTION.

26 In an action under this chapter, the burden of proving an  
27 exemption under section 533C.2, subsection 2, is upon the  
28 person claiming the exemption.

29 Sec. 14. NEW SECTION. 533C.14 REMEDIES CUMULATIVE.

30 The remedies provided by this chapter are in addition to  
31 other remedies provided by law.

32 EXPLANATION

33 This bill requires registration of credit services  
34 organizations and imposes regulation upon their activities. A  
35 credit services organization is defined as a person offering

1 to improve a buyer's credit record, history, or rating, or to  
2 obtain an extension of credit for a buyer, or to provide  
3 advice or assistance to do either. Several classes of already  
4 regulated persons are exempted, including banks, savings and  
5 loan associations, credit unions, tax-exempt nonprofit  
6 organizations, real estate brokers and salespersons, lawyers,  
7 registered broker-dealers, and consumer reporting agencies.

8 A bond of at least ten thousand dollars is required of a  
9 credit services organization registered under this bill.

10 Certain disclosures to buyers and other procedures are  
11 required to be used. The buyer of credit services is granted  
12 a three-day right to rescind, similar to that provided for  
13 door-to-door sales. A buyer is permitted to bring an action  
14 for damages. The attorney general or the customer may bring  
15 an action to enjoin a violation. A four-year statute of  
16 limitations is created. Violation of the new chapter created  
17 by the bill is made a serious misdemeanor, punishable by a  
18 fine of up to one thousand dollars, a year in jail, or both.  
19 The new chapter is tentatively numbered 533C.

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