

## CREDIT SERVICES ORGANIZATIONS

### **538A.1 Definitions.**

In this chapter, unless the context otherwise requires:

1. "*Buyer*" means an individual who is solicited to purchase or who purchases the services of a credit services organization.
2. "*Consumer reporting agency*" has the meaning assigned by section 603(f), Fair Credit Reporting Act, 15 U.S.C. § 1681a(f) as amended through January 1, 1989.
3. "*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.

89 Acts, ch 183, §1

CS89, § 533C.1

C93, § 538A.1

### **538A.2 Credit services organization defined exemptions.**

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

- a. Improving a buyer's credit record, history, or rating.
- b. Providing advice or assistance to a buyer with regard to paragraph "a".

2. The following are exempt from this chapter:

- a. 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 of this state or the United States, or 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.
- b. A bank or savings and loan association whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or successor deposit insurance entities, or a subsidiary of a bank or savings and loan association.
- c. A credit union doing business in this state.
- d. A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3.
- e. A person licensed as a real estate broker or salesperson, under section 543B.20, acting within the course and scope of that license.
- f. A person licensed to practice as an attorney in this state acting within the course and scope of the person's practice as an attorney.

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

h. A consumer reporting agency.

89 Acts, ch 183, §2

CS89, § 533C.2

C93, § 538A.2

93 Acts, ch 60, §23

### **538A.3 Prohibited conduct.**

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

1. Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained a bond in accordance with section 538A.4 or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in the amount required by section 538A.4, subsection 5.
2. Charge a buyer or receive from a buyer 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 substantially the same as that available to the general public.
3. Make or use a false or misleading representation in the offer or sale of the services of a credit services organization.
4. Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization.

89 Acts, ch 183, §3

CS89, § 533C.3

C93, § 538A.3

### **538A.4 Bond surety account.**

1. This section applies to a credit services organization required by section 538A.3, subsection 1, to obtain a surety bond or establish a surety account.
2. If a bond is obtained, a copy of it shall be filed with the secretary of state. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the secretary of state.
3. If a bond is obtained, the bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than thirty days' written notice to both the credit services organization and to the secretary of state. The notice shall indicate

the surety's intent to cancel the bond effective on a date at least thirty days after the date of the notice.

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

5. A person claiming against the bond or surety account for a violation of this chapter may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee is liable only for damages awarded under section 538A.9, subsection 1, and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter shall not exceed the amount of the surety account or bond.

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

7. A depository holding money in a surety account under this chapter shall not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the secretary of state indicating that section 538A.5, subsection 6, has been satisfied in relation to the account. The secretary of state may conduct investigations and require submission of information as necessary to enforce this subsection.

89 Acts, ch 183, §4

CS89, § 533C.4

C93, § 538A.4

#### **538A.5 Registration.**

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

*a.* The name and address of the credit services organization.

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

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

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

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

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

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

5. The secretary of state may charge each credit services organization that files a registration statement with the secretary of state a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The

secretary of state shall not require a credit services organization to provide information other than that provided in the registration statement.

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

89 Acts, ch 183, §5

CS89, § 533C.5

C93, § 538A.5

### **538A.6 Disclosure statement.**

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

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

*b.* A statement explaining the buyer's rights to proceed against the bond or surety account required by section 538A.4.

*c.* 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 surety account.

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

89 Acts, ch 183, §6

CS89, § 533C.6

C93, § 538A.6

### **538A.7 Form in terms of contract.**

1. A contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must 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 before midnight of the third 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 another 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.

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

2. The contract must have attached two easily detachable copies of the notice of cancellation. The notice must be in boldface type and in the following form: **Notice of Cancellation**

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

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

**To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice or other written notice to: (name of seller) at (address of seller) (place of business) not later than midnight (date). (Date) ..... (Purchaser's signature) ...../B>**

**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.**

**89 Acts, ch 183, §7**

**CS89, § 533C.7**

**C93, § 538A.7**

**538A.8 Waiver.**

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

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

**89 Acts, ch 183, §8**

**CS89, § 533C.8**

**C93, § 538A.8**

**538A.9 Action for damages.**

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

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

**89 Acts, ch 183, §9**

**CS89, § 533C.9**

**C93, § 538A.9**

**538A.10 Injunction.**

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

**89 Acts, ch 183, §10**

**CS89, § 533C.10**

**C93, § 538A.10**

**538A.11 Statute of limitations.**

**An action shall not be brought under section 538A.9 after ten years after the date of the execution of the contract for services to which the action relates.**

**An action shall not be brought under section 538A.12 after four years after the date of the execution of the contract for services to which the action relates.**

**89 Acts, ch 183, §11**

**CS89, § 533C.11**

**C93, § 538A.11**

**538A.12 Criminal penalty.**

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

**89 Acts, ch 183, §12**

**CS89, § 533C.12**

**C93, § 538A.12**

**538A.13 Burden of proving exemption.**

**In an action under this chapter, the burden of proving an exemption under section 538A.2, subsection 2, is upon the person claiming the exemption.**

**89 Acts, ch 183, §13**

**CS89, § 533C.13**

**C93, § 538A.13**

**538A.14 Remedies cumulative.**

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

**89 Acts, ch 183, §14**

**CS89, § 533C.14**

C93, § 538A.14

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