

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1089 (Grayson) – As Introduced February 18, 2021

**SUBJECT:** Credit services organizations

**SUMMARY:** This bill would establish a licensing law for credit service organizations (CSOs) to take effect on January 1, 2023. The new licensing law would incorporate existing provisions of the Credit Services Act of 1984 (Act) and add new requirements and prohibitions for CSOs. Specifically, **this bill would:**

- 1) Prohibit a person from providing credit services in California without first obtaining a license with the Department of Financial Innovation and Protection (DFPI).
- 2) Provide powers to the DFPI commissioner similar to those in Financial Code licensing laws administered by DFPI, including rulemaking authority; authority to prescribe the content of the licensing application and require applicants to apply through the Nationwide Multistate Licensing System & Registry; investigation and examination authority; and limited enforcement authority, which includes desist and refrain authority, the ability to order ancillary relief, and the ability to suspend or revoke a license.
- 3) Restrict a CSO from engaging in the following activities, among others:
  - Making or counseling a consumer to make an untrue statement to a consumer credit reporting agency or data furnisher, among others.
  - Seeking to remove adverse information from the consumer's credit record that is known, or that by the exercise of reasonable care should be known, to be accurate and not obsolete.
  - Calling or submitting any communication to a consumer credit reporting agency, creditor, debt collector, or debt buyer without the consumer's prior written authorization.
  - Calling or submitting any communication to a consumer reporting agency, creditor, debt collector, or debt buyer impersonating a consumer and failing to identify when the communication originates from the credit services organization.
  - Submitting a consumer's dispute to a consumer credit reporting agency, creditor, debt collector, or debt buyer more than 180 days after the account subject to the dispute has been removed.
  - Sending any communication, directly or indirectly, to any person on behalf of a consumer without disclosing the sender's identity, street address, telephone number, and facsimile number, and, if applicable, the name and street address of any parent organization of sender.

- Sending any communication on behalf of a consumer to any person other than the consumer without providing an exact copy of the communication to the consumer within five days thereafter.
  - Other activities already prohibited in existing law.
- 4) Require a consumer credit reporting agency, creditor, debt collector, or debt buyer to communicate with a CSO unless the CSO fails to respond within a reasonable period of time or the consumer expressly directs them not to communicate with the CSO.
  - 5) Require a CSO, when sending a written communication that contains a consumer's personal information, to redact specified personal information, and extends the records retention requirement in current law from two years to four years.
  - 6) Require a contract between a CSO and consumer to include specified information, including a list of the adverse information appearing on the consumer's credit report, a list of those accounts that the CSO will seek to delete or modify and, if applicable, a description of each modification sought and the anticipated payment required by the consumer to achieve each account deletion or modification. The contract must also include information already required in current law.
  - 7) Provides for a civil penalty in the amount of at least \$100 and no greater than \$1,000 for a willful and knowing violation of the law by a CSO, which is in addition to any damages awarded pursuant to existing law.

**EXISTING LAW:**

- 1) Establishes the Credit Services Act of 1984 (Act), which generally defines and regulates the activities of credit services organizations (CSOs) (Civ. Code Sec. 1789.10 et seq.)
- 1) Defines a CSO as a person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that he or she can or will sell, provide or perform, any of the following services, in return for the payment of money or other valuable considerations: (1) improving a buyer's credit record, history, or rating; (2) obtaining a loan or other extension of credit for a buyer; or providing advice or assistance to a buyer with regard to either (1) or (2). (Civ. Code Sec. 1789.12.)
- 2) Prohibits CSOs from engaging in certain specified activities including, among others:
  - Charging or receiving any money or other valuable consideration prior to full and complete performance of the services the CSO has agreed to perform for or on behalf of the buyer.
  - Making, or counseling or advising a buyer to make a statement that is untrue or misleading and that is known to be untrue or misleading to a consumer 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, as specified.

- Removing, or assisting or advising the buyer to remove adverse information from the buyer's credit record that is accurate and not obsolete.
  - Making or using untrue or misleading representations in the offer or sale of the services of a CSO, including guaranteeing or otherwise stating that the CSO is able to delete an adverse credit history unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete and is not claimed to be accurate by the creditor who submitted the information.
  - Engaging, directly or indirectly, in an act, practice, or course of business that operates or would operate as a fraud or deception upon a person in connection with the offer or sale of the services of a CSO.
  - Advertising or causing to be advertised, in any manner, the services of the CSO, without being registered with the AG.
  - Submitting a buyer's dispute to a consumer credit reporting agency without the buyer's knowledge. (Civ. Code Sec. 1789.13.)
- 3) Prohibits a CSO from providing a service to a buyer except pursuant to a written contract that must include a statement declaring the buyer's right to cancel the contract, the terms, and conditions of payment, a full and detailed description of the services to be performed by the CSO, and the estimated date by which the services are to be performed. (Civ. Code Sec. Section 1789.16.)
- 4) Requires, among other things, that a CSO register with the AG before conducting business in this State. The CSO applicant must, among other things, file a surety bond, pay a \$100 registration fee, and annually file a renewal registration application with the AG. (Civ. Code Sec. 1789.25.)
- 5) Provides a private right of action for recovery of damages, or for injunctive relief, or both, related to a violation of the Act. Entitles a prevailing plaintiff to reasonable attorney's fees and costs, and authorizes a trial court to assess punitive damages. (Civ. Code Sec. 1789.21.)
- 6) Defines "buyer" as a natural person who is solicited to purchase or who purchases the services of a CSO. (Civ. Code Sec. 1789.12(c).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to increase transparency in the provision of credit repair services and increase enforcement of the Credit Services Act. This bill is sponsored by the California Association of Collectors.
- 2) **Author's statement:** According to the author:

In recent years the activities of CSOs have come under scrutiny by the Federal Government and consumer watchdogs because of misleading practices and unlawful fees. While California has some of the strongest consumer protections in the nation for other

industries, current law does not require CSOs to provide even basic information about the services they will render, or have rendered, how much their services are likely to cost, when they communicate with third parties on behalf of the consumer, or a timeline for when their services will be complete.

State oversight of credit repair companies is currently weak. The Credit Services Act of 1984 does not provide the Attorney General with authority to impose administrative fines or other sanctions against registered credit repair companies (which would be shifted to DFPI under the provisions of this bill.) Additionally, the Act provides no authority for a state agency to examine the books and records of a registered credit repair company to check for compliance with the law, either on a routine basis or in the event of a complaint received from a consumer.

- 3) **Bill is similar to AB 699 (Grayson, 2020), with the addition of licensing provisions:** With the exception of Sections 1-31, this bill is substantially similar to AB 699 (Grayson, 2020) which this Committee heard last year. For an analysis of the licensure requirements contained in this bill, please refer to the analysis prepared by the Assembly Banking Committee, for that committee's hearing on April. 15, 2021. This analysis will instead focus on the "consumer protection" provisions beginning at Section 32 of the bill.
- 4) **Business practices of credit repair organizations:** Subject to the Credit Services Act of 1984 (Act), credit repair companies are organizations that offer to improve a consumer's credit profile in exchange for a fee. Companies covered by the Act are required to register with the California Attorney General (AG) prior to engaging with California consumers and renew their registration annually.

Credit repair companies have been widely criticized for engaging in unfair and deceptive marketing and business practices and for charging high fees for services that consumers can often perform themselves. The Consumer Financial Protection Bureau (CFPB) has also taken enforcement actions against credit repair companies for violations of federal law, including against four California-based companies. The CFPB actions are not limited to fines, but also include shutting companies down and banning them from providing any credit repair services. In May 2019, the CFPB filed suit against Lexington Law and CreditRepair.com. In the complaint, the CFPB alleges that Lexington Law relied on an expansive network of online lead generators that "used deceptive, bait advertising to generate referrals to Lexington Law's credit repair service." Late last year, Google announced that ads for credit repair services would no longer be allowed to serve on its advertising platform. In the updated policy, Google states that the company wants "consumers to make informed decisions about the services offered to help them address bad credit," and to protect users from harmful practices, an outright ban on credit repair advertisements is appropriate.

However, credit repair companies are not the only financial products and services receiving consumer complaints. In fact, when examining the nearly 1.5 million consumer complaints received as of April 1, 2018, the CFPB reported that over 400,000 were the result of debt

collection activity, 314,068 were associated with credit reporting, 20,152 were associated with payday loans, and 1,633 were associated with credit repair.<sup>1</sup>

This bill is sponsored by the California Association of Collectors (CAC), representing the largest state organization of debt collectors. CAC argues that this bill is needed because member companies receive “robo letters, sent purportedly from the consumer and without disclosing the identity of the real sender.” Under federal law, upon receiving disputes from consumers, debt collectors are required to conduct a reasonable investigation, report results to the consumer within 30 days, and provide specified notices to consumer reporting agencies. Central to CAC’s position is the contention that if letters sent on *behalf* of the consumer do not identify that the correspondence is coming from a credit repair company, debt collectors incur costs that negatively affect the debt collector’s profitability. Accordingly, among other things, this bill seeks to enact several provisions aimed at reducing the resources debt collectors must dedicate to addressing “robo letters” and other business practices of credit repair companies.

Also in support, Encore Capitol Group, a global financial services group that “purchases primarily delinquent credit card receivables from national banks and originators and works to help consumers on the road to financial recovery,” writes:

We believe the bill will benefit consumers by ensuring that credit repair companies are more transparent about the services they provide and are timely in communicating with creditors, debt collectors and debt purchasing companies on behalf of the consumer.

- 5) **Provisions in the bill that should function to benefit consumers:** Existing law authorizes individuals who have been injured by a violation of the Act or by a credit services organization’s breach of a contract to bring an action for recovery of actual damages, injunctive relief, or both, and reasonable attorney’s fees and costs. In addition, the court may award punitive damages. (Civ. Code Sec. 1789.25.) This bill would additionally entitle a consumer to a civil penalty between \$100 and \$1000 for knowing and willful violations of the Act.

By way of background, both state and federal law provide a number of protections to consumers who seek the services of CSOs. Despite these laws, some credit repair companies still operate in ways that exploit vulnerable individuals and/or violate the law.

Arguably, enforcement of existing law continues to be a challenge and keeps the various laws from achieving their full consumer-protection potential. Part of the challenge is that although a variety of actors are authorized to take different actions against CSOs for violations of the law, there is no licensing entity to whom CSOs are held accountable. Importantly, this bill would require the Department of Financial Protection and Innovation (DFPI) (formerly the Department of Business Oversight), to license, regulate, and oversee CSOs, beginning in 2023. While DFPI arguably has this authority under existing law, this bill would ensure that they begin the process of licensure by a particular date.

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<sup>1</sup> (See [https://files.consumerfinance.gov/f/documents/bcfc\\_complaint-snapshot\\_debt-collection\\_052018.pdf](https://files.consumerfinance.gov/f/documents/bcfc_complaint-snapshot_debt-collection_052018.pdf). [as of Jan. 10, 2020])

Staff further notes that under existing law, the damages available to individuals who bring a private right of action are limited to actual damages, but in no case less than the amount paid by the consumer to the CSO. In practice, this means that most individuals who have a claim against a credit repair company may only recover what they paid the credit repair company, despite the amount of time spent or frustration experienced. By increasing the amount of damages one may recover for knowing and willful violations of the Act, this bill will arguably help incentivize private suits against bad actors in the credit repair service industry, thereby increasing enforcement.

Other provisions of the bill that should benefit consumers include:

- Creating strict timelines by which a CSO must perform the agreed upon services.
- Prohibiting a CSO from making or using untrue or misleading representations to the consumer, including guarantees that a CSO is able to delete adverse credit history or obtain an extension of credit, as specified.
- Updating required notices to include specific information about the consumer and how the CSO will attempt to resolve adverse information on the consumer's credit report.

While these provisions will likely benefit consumers, as a matter of public policy it is equally important that consumers have access to law-abiding and ethical professionals to assist them with their financial needs. Thus it is crucial that requirements imposed on CSOs in the Act are closely tied to protecting consumers and do not simply create operational burdens with no real consumer benefit so that enforcement of the Act through litigation does not limit the number of ethical professionals available to assist individuals.

- 6) **Various provisions of the bill arguably undermine consumer protections or benefits offered to consumers by CSOs:** This bill would include several provisions aimed at increasing transparency in CSO contracts and services. USCB, America, Inc., an employee-owned accounts receivable management company, writes in support that “AB 1089 will ensure that the Credit Services Act of 1984 is updated to address new communications technologies that have emerged in the more than three decades since that law’s enactment. Significantly, the bill will ensure that consumers are not deceived into having ‘credit service organizations’ dispute items on their credit reports that have already been removed or resolved. The bill will also prevent a credit service organization from impersonating a consumer, which will help ensure that all communications by these organizations are done on behalf of, and after consultation with, the consumer.”

While seemingly well-intended, some of these provisions may result in harm to consumers. For example, the bill would prohibit “impersonation” of a consumer by a CSO by requiring a CSO to identify when a communication originates from the CSO. In fact, the opposition to this bill argues that these provisions are intended to prevent consumers from receiving professional help when questioning what appears on their credit reports.

Indeed, under the Federal Fair Credit and Reporting Act, data furnishers (which are debt collectors for the purposes of this analysis) have an obligation to investigate disputes about the information on credit reports from a *consumer* and to review all relevant information provided by the *consumer*. By contrast, there is no obligation imposed on a data furnisher to investigate disputes “prepared on behalf of the consumer by, or submitted on a form supplied

to the consumer by, a credit repair organization.” (12 C.F.R. Sec. 1022.43.) To this point, Lexington Law and Progrexion, two CSOs, write “[f]or example, several seemingly “common sense” provisions in the bill aimed at requiring CSOs to disclose their identity on communications might at first glance appear innocuous, or protective of the consumer by preventing a CSO from ‘impersonating’ the consumer. Such provisions, however, in fact only benefit *the debt collector* by leveraging federal law, which operates to protect debt collectors from efforts of consumers and their representatives to improve their credit by demanding fair, accurate, and substantiated credit reporting. Specifically, federal law<sup>2</sup> allows debt collectors to effectively ignore any communications that come from anyone other than the actual consumer — even those preparing the communications on behalf of the consumer, at the request of the consumer.

Lexington and Progrexion continue, “[i]f the intent was to protect *the consumer’s* interest, the bill could instead codify the practice of requiring the consumer’s knowledge and consent before sending communications in their name or statutorily prohibit any CSO-sent communication from being treated any differently than a communication sent directly from the consumer. As drafted, however, To put it plainly, AB 1089’s requirements centered around disclosures of a CSO’s identity is tantamount to codifying guarantees that the CSO-represented consumer can and will be ignored.”

Building on a provision in existing law that prohibits a CSO from removing or advising a consumer to remove an item from their credit report that is accurate and not obsolete, this bill would also prohibit a CSO from seeking to remove or assisting or advising a buyer to remove adverse information from the consumer’s credit record that “by the exercise of reasonable care should be known” to be accurate and not obsolete. Lexington and Progrexion argue that this modification will harm consumers:

Section 40 of the bill [...] imposes a requirement that effectively requires knowledge of answers to questions before there has even been opportunity for the questions to have been asked. [...] Particularly in the debt collection world, consumers often do not recognize items appearing on their credit report. Those items may or may not appropriately appear on a credit report and it may require some amount of investigation to arrive at that conclusion. Forcing consumers to know upfront whether an item needs to be deleted or modified before engaging a credit services organization deprives them of the opportunity to receive professional help in assessing the fairness, accuracy, or substantiation of their credit report.

Also problematically, this bill would authorize situations where a debt collector or debt buyer, who knows that a consumer is represented by a CSO, is permitted to bypass that consumer’s representative and communicate with the consumer directly. Specifically, this bill would allow a debt collector to go around a CSO and communicate directly with a

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<sup>2</sup> See e.g. Fair Credit Reporting Act 15 U.S.C. §1681s-2(a)(8)(G), providing that the data furnisher’s [*i.e.* collector’s] duty to investigate “shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization...”; see also 12 C.F.R. §1022.41, providing that the data furnisher’s duty to conduct a reasonable investigation of a consumer’s direct dispute shall not apply to a furnisher if the furnisher “has a reasonable belief that the direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization...”.

consumer if “the consumer expressly directs [them] to not communicate with the CSO.” Additionally, the bill would permit a debt collector, consumer credit reporting agency, or creditor refuse to communicate with a CSO if, in their own determination, they “reasonably determines that the dispute is frivolous or irrelevant,” as specified, or account subject to the dispute has been paid, settled, or otherwise resolved and has been reported as paid, settled, or otherwise resolved on the consumer’s credit report.

There are a number of serious concerns with these provisions. As a practical matter, a consumer who did not wish to use their CSO any longer would terminate (or fail to renew) the contract, or sue the CSO for breach of contract. It seems unlikely that a consumer would hire a professional to deal with disputes on a credit report and then authorize the entities that their representative is supposed to be dealing with contact the consumer directly. If there are problems with a service being provided by a CSO, it is arguably an issue to be resolved by the licensing authority—not a competing industry. Additionally, authorizing debt collectors to independently determine that a dispute is irrelevant or frivolous denies the consumer the benefit of the advocate they have hired specifically for the purpose of resolving these disputes. Finally, a major function of CSOs is to remove disputes that have been paid, settle, or otherwise resolved from a report. This bill would seriously undercut their ability to provide that service.

Addressing a number of these concerns, the author has accepted the following amendments which would: (1) remove the prohibition on CSOs from seeking to remove adverse information from a consumer’s credit report that they have do not have knowledge of being inaccurate or obsolete; (2) remove the language prohibit a CSO from “impersonating” a consumer; (3) would allow a debt collector to contact a represented consumer directly if a CSO has not responded to the debt collector’s communications after 30 days; and (4) would clarify that a redaction of a consumer’s personal information in a correspondence, as required under this bill, is not considered a violation of a CSO’s obligation to provide sufficient information to investigate a dispute.

Author’s amendments:

- 1) On page 28, beginning in line 36, strike “or that by the exercise of reasonable care should be known to the credit services organization”
  - 2) On page 29, strike lines 31-34.
  - 3) On page 31, line 2, strike “reasonable period of time” and insert “*30 days*”
  - 4) On page 32, in line 2, after “objective.” and insert “*Redacting information pursuant to this subdivision shall not be considered a violation of Section 1789.13(a)(25).*”
- 7) **Some provisions of the bill seemingly do not benefit consumers but create practical hurdles for CSOs:** In a number of places, this bill requires additional written authorization for services the consumer has likely already authorized via contract. For example, the bill would require the prior written authorization before a CSO may “call or submit any communication to a consumer credit reporting agency, creditor, debt collector, or debt buyer” and would additionally require prior written authorization before a CSO may “use the online electronic portal, electronic email system, or telephone system of a credit reporting agency,



creditor, debt collector, or debt buyer to submit a dispute of a consumer or to request disclosure.” Arguably, these are the exact services for which the consumer contracted when they initially agreed to have the CSO represent them, and so the prior written authorization is found in the actual contract. Creating additional requirements for written authorization is not only confusing, it could subject CSOs to unnecessary liability and slow down the credit repair process for consumers, who may have to sign authorizations over and over again.

Additionally, this bill would require CSOs to provide consumers with a highly detailed itemized monthly statement, “showing each service performed, including each call or written communication, and credit check made or sent on behalf of the consumer, and the date of each such service.” As CSOs are compensated on a fee-based model and not the billable hour (like most legal professionals), requiring such detailed information from a CSO arguably creates an administrative burden that is not justified by the benefit to the consumer. Even attorneys need only to account for the time they have spent on a client’s matter, and are not required to provide a list of all correspondence taken in any given period. The information that will likely benefit a consumer is a monthly statement showing the services performed, but need not be as detailed as each and every action taken on behalf of a consumer.

Accordingly, the author has agreed to the following amendments, which would address a number of the provisions of the bill which appear to create additional responsibilities for CSOs without providing additional consumer benefit. The amendments would: (1) streamline the required monthly statement a CSO must provide to a consumer; (2) clarify in two different places that relevant authorization in the consumer/CSO contract is sufficient for the purposes of prior written authorization; (3) clarify that written communications sent on behalf of a consumer need to be available in the online portal, not sent to the consumer directly; and (4) update an existing provision to remove a requirement that a consumer personally sign a statement to acknowledge receipt of the statement, as that information must be provided to the consumer prior to signing the actual contract. Additionally the amendments would strike a reference to a “power of attorney” that does not reflect current practices of CSOs.

Author’s amendments:

- 1) On page 28, line 7, strike “an itemized statement” and insert “a”

On page 28, beginning at line 8, strike “showing each service performed including each call or written communication, and credit check made or sent on behalf of the consumer, and the date of each service” and insert “*detailing the services performed.*”

- 2) On page 29, in line 30, after “consumer.” insert “*A relevant authorization in the agreement or contract between a consumer and a credit services organization is sufficient for the purposes of this paragraph.*”

On page 30, in line 2, after “consumer.” insert “*A relevant authorization in the agreement or contract between a consumer and a credit services organization is sufficient for the purposes of this paragraph.*”

- 3) On page 30, line 23, strike “Send” and insert “*Ensure that*”

On page 30, line 23, insert “*sent*” after communication

On page 30, beginning in line 24, strike “without providing a copy of the communication to the consumer within five days thereafter” and insert “*is available to the consumer through the online portal.*”

- 4) On page 32, beginning in line 24, strike “personally signed by the consumer acknowledging receipt of a copy of the statement.”
- 5) On page 30, beginning in line 35, strike “pursuant to a power of attorney,”
- 8) **Narrowing the bill may benefit consumers:** As discussed in the comments above, this bill contains several provisions that should benefit consumers who interact and contract with CSOs. At the same time, it also includes provisions that could seriously undermine any legitimate service that a CSO could offer a consumer in search of professional assistance. Further, other provisions expose CSOs to liability for acts or omissions that are not closely tied to the value of the service the consumer is receiving. Thus, in its current form, it is difficult to ascertain whether the bill, on balance, benefits consumers at all. To be true to the intent of the Credit Services Act, which this bill seeks to amend, the bill’s provisions should be limited to those that truly benefit consumers.  
  
The Committee, while appreciative of the amendments the author has offered to address concerns (as reflected in this analysis), notes that there are arguably still outstanding concerns with the bill. Accordingly, if this Committee were to approve this bill, it may wish to seek a commitment from the author to continue narrowing the bill to ensure that its provisions are limited to those that truly benefit consumers.
- 9) **Prior legislation:** AB 699 (Grayson, 2020), in relevant part, was substantially similar to this bill. AB 699 was never set for hearing in the Senate Judiciary Committee.
- 10) **Double referral:** This bill would double referred to the Assembly Banking Committee where it was heard on April 15, 2021 and passed out 10-0.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of Collectors, Inc. (Sponsor)  
California Bankers Association  
Encore Capital Group, Inc.  
The Association of Credit and Collection Professionals  
USCB, Inc

### **Opposition**

Lexington Law Firm  
Progrexion

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