Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Jesse Gabriel, Chair
AB 2424 (Blanca Rubio) – As Introduced February 17, 2022

SUBJECT: Credit services organizations

SUMMARY: This bill would require the Department of Financial Protection and Innovation (DFPI) to register and regulate credit services organizations (CSOs), impose certain obligations on CSOs, and provide civil penalties for willful and knowing violations of these provisions. Specifically, **this bill would**:

1) Prohibit a CSO from failing to provide a monthly statement to the consumer detailing the services performed.

2) 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 to the CSO 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. Further provides that a relevant authorization in the agreement or contract between a consumer and a CSO is sufficient for this purpose.

   - 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.

   - Failing to make a written communication sent on behalf of a consumer to any person other than the consumer available through the online portal.

   - Failing to provide, along with its first written communication to a credit reporting agency or data furnisher, sufficient information to investigate a dispute of an account, including, but not limited to any pertinent information and copies of any documents that are available to it concerning the disputed item.

3) Require a consumer credit reporting agency, creditor, debt collector, or debt buyer who knows that a consumer is represented by a CSO, and that also knows or can readily ascertain

the CSO's name and address, to communicate with the CSO unless one of the following apply:

- The CSO fails to respond within 30 days to a communication from a consumer credit reporting agency, creditor, debt collector, or debt buyer.

- The consumer expressly directs the consumer credit reporting agency, creditor, debt collector, or debt buyer not to communicate with the CSO.

4) Provide that a consumer credit reporting agency, creditor, or debt collector shall not be required to communicate with a CSO concerning an account that is subject to a dispute if any of the following apply:

   - The account has been paid, settled, or otherwise resolved, as specified.

   - The dispute has been removed from the consumer's credit report.

   - The debt collector has provided the CSO or the consumer specified documentation regarding the account subject to dispute.

   - The consumer credit reporting agency, creditor, or debt collector reasonably determines that the dispute is frivolous or irrelevant, as specified.

5) Provide that, to protect against fraud and identity theft, CSOs must redact personal information to include only the last four digits of an SSN, taxpayer identification number, or state identification number, the last four digits of the financial account number, credit card number, or debit card number, or the month and year of the consumer's date of birth, unless the inclusion of the full number or date is otherwise required by law, or is legally permissible and required to achieve the desired objective. Provides that redacting information pursuant to this subdivision shall not be considered a violation of subdivision (w) of Section 1789.13.

6) Require, as part of an agreement between a consumer and a CSO, the following notice: *If you have a complaint about the services provided by this credit services organization or the fees charged by this credit services organization, you may submit that complaint to the Department of Financial Protection and Innovation at www.dfpi.ca.gov/____, or the Attorney General's office, California Department of Justice, Attn: ____, P.O. Box 944255, Sacramento, CA 94244-2550."*

7) Extend the amount of time a CSO must maintain, following the termination or completion of an agreement, an exact copy of the agreement from two to four years.

8) Provide 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.

9) Permit the DFPI to raise the annual registration fee for CSOs, so long as the amount of the fee does not exceed that which is reasonable and necessary to satisfy its costs in complying with its duties under this title.

10) Shift remaining regulatory authority over CSOs from the Department of Justice to DFPI.

11) Require DFPI to maintain on a publicly available internet website a list of the CSOs that are required to register in this State.

12) Replaces the term "buyer" and "Department of Business Oversight" with the terms "consumer" "Department of Financial Protection and Innovation" throughout the Credit Services Act of 1984 (Act).

13) Corrects an inaccurate cross reference and makes other non-substantive changes.

14) Provide the following definitions:

- "communication" to mean the conveyance of any information regarding a debt, credit record, credit history, or credit rating, directly or indirectly, to any person by any means or through any medium.

- "consumer" to mean any natural person who is solicited to purchase or who purchases the services of a credit services organization.

- "consumer credit reporting agency" to have the same meaning as provided in the Act.

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.)

2) 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.)

3) 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 Attorney General (AG).

- Submitting a buyer's dispute to a consumer credit reporting agency without the buyer's knowledge. (Civ. Code Sec. 1789.13.)

4) 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.)

5) 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.)

6) 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.)

7) 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:

> Credit repair companies offer to improve a consumer's credit profile in exchange for a fee. Due to this activity, credit repair companies are covered by the Credit Services Act of 1984 (Act), a state law that also covers businesses that help consumers to obtain loans or other extensions of credit. Companies covered by the Act are required to register with the California Department of Justice (DOJ) prior to engaging with California consumers and to renew their registration annually. As of 2019, 53 entities registered with DOJ as CSOs.

In 2016 the federal Consumer Financial Protection Bureau (CFPB) issued a consumer advisory, which was updated in December 2019, related to credit repair companies.[1] The advisory warns consumers that credit repair companies "developed creative marketing tactics to target you. Sometimes this marketing includes confusing and misleading messaging aimed at taking advantage when you're just trying to get your financial life back on track." The advisory states that credit repair companies often charge high fees for services that consumers can often perform themselves, and some companies make false or misleading statements about the services they offer.

The CFPB has also taken enforcement actions against credit repair companies for violations of federal law, including against four California-based companies.[2] The CFPB actions are not limited to fines, but also include shutting companies down and banning them from providing any credit repair services.[3] In May 2019, the CFPB filed suit against Lexington Law and CreditRepair.com. In the complaint, the CFPB claims 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."

In November 2019, Google announced that ads for credit repair services would no longer be allowed to serve on its advertising platform. The policy applies globally to all accounts that advertise these services directly, to lead generators, and to entities who connect consumers with third party services. 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 in order to protect users from harmful practices, an outright ban on credit repair advertisements is appropriate.

State oversight of credit repair companies historically has been weak. The Act does not provide the Attorney General with authority to impose administrative fines or other sanctions against registered credit repair companies. 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. Furthermore, the law does not require the Attorney General to maintain a publicly available database of registered credit repair companies, which would allow consumers to verify that they are engaging with a company that complies with the registration requirement.

3) **Bill is similar to AB 1089 (Grayson, 2021) and AB 699 (Grayson, 2020)**: This bill is substantially similar to AB 1089 (Grayson, 2021) and AB 699 (Grayson, 2020) which this Committee passed out on a bi-partisan basis. In addition, AB 2424 reflects amendments Assemblymember Grayson took in this Committee for both of the prior bills.

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 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.[1]

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 support AB 2424 because we see first-hand that our consumers are often unaware that a credit services organization they have hired has sent a dispute letter to our company on their behalf. The dispute letters we receive are almost always in template form, often contain insufficient account information, and are often signed with consumers' names, creating the misleading impression that they were written and sent directly from our consumers. Additionally, we believe that credit services organizations frequently send us dispute letters without first reviewing consumers' unique account histories or details. Due to this lack of prior investigation, our consumer support teams often discover that the matters of concern were resolved long ago, or that the particular credit reporting tradelines that are the subject of the communication are no longer being credit reported.

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[1] (*See* https://files. consumerfinance.gov/f/documents/bcfp_complaint-snapshot_debt-collection _052018.pdf. [as of Jan. 10, 2020])

We also believe that unscrupulous credit services organizations are charging Californians exorbitant fees for little or no improvement to their credit scores. These companies keep consumers in the dark about what "credit repair work" they're doing, and consumers pay a continuous monthly fee until they proactively cancel - only to discover they will not be refunded for past payments. The predatory credit services organization business model is to send baseless template dispute letters to all creditors on consumers' credit reports, without consumers' knowledge. These frivolous disputes do not actually repair the credit scores of Californians because creditors and debt collectors validate the reported items in accordance to Federal law. Yet, consumers continue to pay the credit services organizations, and the credit services organizations repeatedly send the same robo-letters each month under the guise of providing customized credit repair services.

5) **Some provisions in the bill will likely 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, state oversight of credit repair companies historically has been weak. The Act does not provide the AG with authority to impose administrative fines or other sanctions against registered credit repair companies. Additionally, the Act provides no authority for a state agency to examine the 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.

   However, oversight of these companies may change in the near future as a result of the establishment of the California Consumer Financial Protection Law (CCFPL) in 2020. AB 1864 (Limon, Ch. 157, Stats. 2020), established the CCFPL and provides DFPI with the authority to regulate a broad market of consumer financial products and services, including CSOs.

   Unfortunately, the full impact of AB 1864 on CSOs is not yet known. As part of DFPI's roll-out of the CCFPL, DFPI has identified its top priorities (debt settlement providers, student loan debt relief providers, and earned wage access providers), which do not include CSOs. Nevertheless, DFPI's authority to take action against CSOs for unfair and deceptive practices is robust.

   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:

- Requiring CSOs to provide a consumer with a monthly statement detailing the services performed.

- Creating strict timelines by which a CSO must perform the agreed upon services.

- Prohibiting CSOs from sending communications containing sensitive personal information of the consumer, as specified.

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.

Echoing this concern, the African American Empowerment Coalition writes in opposition:

> Consumers often find it difficult to navigate the complicated credit correction system on their own, and need to rely on assistance from professionals. In-fact, over 50% of consumers who recognize there are errors on their credit scores, give up because they find the system too difficult to navigate. Add to this the inherent difficulties of navigating the system if you are a non-English language or limited-English language speaker, a victim of the digital divide, or elderly, and the result is a no-win situation for consumers in their battle against debt-collectors. It should be noted that while California suffered an unimaginable economic downturn during the pandemic, affecting nearly all consumers, debt-collectors made record profits.

Also in opposition, the League of United Latin American Citizens continues:

> Credit repair organizations are the one tool that consumers have in their arsenal, to level the uneven playing field and fight back against debt-collectors. Credit repair organizations have resolved hundreds of thousands of erroneous credit score items on Californian consumer's credit reports, thereby helping them secure lower interest rates and build their credit.
>
> This bill is not a consumer-friendly bill, and in-fact will make it impossible for consumers to benefit from the assistance credit repair organizations provide. Without these services, consumers have no-where to turn for help in addressing inaccurate or unfair negative credit marks on their credit reports.

6) **Various provisions of the bill arguably undermine consumer protections or benefits offered to consumers by CSOs acting in good faith**: 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."

   USCB is pointing to a provision in the bill that would prohibit a CSO from sending a communication on behalf of the 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."*

   While seemingly well-intended, this provision may result in harm to consumers because while federal law provides that consumers have the right to directly dispute the "accuracy of information contained in a consumer report on the consumer" and furnishers must respond to non-frivolous disputes by reinvestigating the information, the same does not apply to communications from a CSO. Specifically, federal regulations allow a furnisher to disregard a direct dispute as frivolous or irrelevant if the furnisher has a reasonable belief that a credit repair organization is behind the dispute. (12 CFR Sec. 222.43(b)(2) and (f)(1); 12 CFR Sec. 1022.43(b)(2) and (f)(1).)

   The National Asian American Coalition (NAAC) and the National Diversity Coalition (NDC) write in opposition that AB 2424 would prevent them from representing their constituents who have inaccurate or erroneous information on their credit reports because the bill would allow a debit collector or a credit agency to completely ignore the correspondence they are undertaking on behalf of their members. NAAC and NDC write:

   > [We are] deeply concerned that AB 2424 would actually prevent us from representing our constituents who have inaccurate or erroneous information on their credit reports. As a result of these inaccurate and erroneous marks on our constituent's credit reports, it will prevent them from qualifying for a home mortgage, the ability to finance a vehicle or simply having access to affordable credit and capital because they will not have advocates like ours to represent their interests before credit agencies and debt collectors.

   Also problematically, this bill would authorize situations where a furnisher 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 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 determine that the dispute is frivolous or irrelevant," as specified, or the 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 undermine their ability to provide that service.

7) **Prior legislation**: AB 1089 (Grayson, 2021) *see* Comment 3.

   AB 699 (Grayson, 2020) *see* Comment 3.

   AB 1864 (Limon, Ch. 157, Stats. 2020) *see* Comment 5.

8) **Double referral**: This bill was double-referred to the Assembly Banking Committee where it was heard on March 28, 2022 and passed out 9-0.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Collectors (sponsor)
California Association of Collectors, INC
California Bankers Association
California Chamber of Commerce
Encore Capital Group, INC.
Greenpath Financial Wellness
Money Management International, INC.
National Foundation for Credit Counseling
The Financial Counseling Association of America
UCSB INC.

Opposition

African American Employment Coalition
Anti-recidivism Coalition (unless amended)
California League of United Latin American Citizens
California State Council of Service Employees International Union (SEIU California)
League of United Latin American Citizens (LULAC)
Lexington Law Firm
National Asian American Coalition
National Diversity Coalition
Progrexion

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