

Code of Virginia

§ 59.1-335.1. Title.

This chapter may be cited as the "**Virginia Credit Services Businesses Act.**"

(1989, cc. 651, 655.)

§ 59.1-335.2. Definitions.

In this chapter the following words have the following meanings:

"**Attorney General**" means the Office of the Attorney General of Virginia.

"**Commissioner**" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"**Consumer**" means any individual who is solicited to purchase or who purchases the services of a credit services business.

"**Consumer report**" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which (i) is furnished or (ii) is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

1. Credit or insurance to be used primarily for personal, family, or household purposes; or
2. Employment purposes; or
3. Other purposes which shall be limited to the following circumstances:
 - a. In response to the order of a court having jurisdiction to issue the order.
 - b. In accordance with the written instructions of the consumer to whom the report relates.
 - c. To a person which the agency has reason to believe:
 - (i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to or review or collection of an account of, the consumer; or

- (ii) Intends to use the information for employment purposes; or
- (iii) Intends to use the information in connection with the underwriting of insurance involving the consumer; or
- (iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or
- (v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

The term "consumer report" does not include:

1. Any report containing information solely as to transactions or experiences between the consumer and the person making the report;
2. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or
3. Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer as to the exact nature of the request and the effect of the report on its decision to extend credit.

"Consumer reporting agency" means 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 for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports. "Consumer reporting agency" does not include a private detective or investigator licensed under the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1.

"Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

1. Improving a consumer's credit record, history, or rating;
2. Obtaining an extension of credit for a consumer; or

3. Providing advice or assistance to a consumer with regard to either subdivision 1 or 2 herein.

"Credit services business" does not include:

(i) The making, arranging, or negotiating for a loan or extension of credit under the laws of this Commonwealth or the United States;

(ii) Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or other federal insurance agency, or any credit union organized and chartered under the laws of this Commonwealth or the United States;

(iii) Any nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code (26 U.S.C. § 501 (c) (3));

(iv) Any person licensed as a real estate broker by this Commonwealth where the person is acting within the course and scope of that license;

(v) Any person licensed to practice law in this Commonwealth where the person renders services within the course and scope of that person's practice as a lawyer;

(vi) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of that regulation;

(vii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681v); or

(viii) Any person selling personal, family, or household goods to a consumer who, in connection with the seller's sale of its goods to the consumer, assists the consumer in obtaining a loan or extension of credit or extends credit to the consumer.

"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.

"File" when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or

associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

"**Person**" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(1989, cc. 651, 655; 1990, c. 3; 2003, c. 359.)

§ 59.1-335.3. Registration; fees.

A. It shall be unlawful for any credit services business to offer, advertise, or execute or cause to be executed by a consumer any contract in this Commonwealth unless the credit services business at the time of the offer, advertisement, sale or execution of a contract has been properly registered with the Commissioner. The Commissioner may charge the credit services business a reasonable fee not exceeding \$100 to cover the costs of filing.

B. The registration shall contain (i) the name and address of the credit services business, (ii) the name and address of the registered agent authorized to accept service of process on behalf of the credit services business, (iii) the name and address of any person who directly or indirectly owns or controls a ten percent or greater interest in the credit services business, and (iv) the name and address of the surety company that issued a bond pursuant to § 59.1-335.4 or the name and address of the bank that issued a letter of credit pursuant to § 59.1-335.4. The registration statement shall also contain either a full and complete disclosure of any litigation or unresolved complaint filed within the preceding five years with a governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business, or a notarized statement that there has been no litigation or unresolved complaint filed within the preceding five years with the governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business.

C. The credit services business shall attach to the registration statement a copy of (i) the information statement required under § 59.1-335.6, (ii) a copy of the contract which the credit services business intends to execute with its consumers, and (iii) evidence of the bond or trust account required under § 59.1-335.4.

D. The credit services business shall update the registration statement required under this section not later than ninety days after the date from which a change in the information required in the statement occurs.

E. Each credit services business registering under this section shall maintain a copy of the registration statement in its files. The credit services business shall allow a buyer to inspect the registration statement on request.

(1989, c. 655.)

§ 59.1-335.4. Bond or letter of credit required.

A. Every credit services business, before it enters into a contract with a consumer, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in an amount equal to 100 times the standard fee charged by the credit services business but in no event shall the bond or letter of credit required under this section be less than \$5,000 or greater than \$50,000.

B. The required bond or letter of credit shall be in favor of the Commonwealth of Virginia for the benefit of any person who is damaged by any violation of this Act. The bond or letter of credit shall also be in favor of any person damaged by such practices. Any person claiming against the bond or letter of credit for a violation of this Act may maintain an action at law against the credit services business and against the surety or bank. The surety or bank shall be liable only for actual damages and attorneys fees and not for penalties permitted under §§ 59.1-206 and 59.1-335.12 or punitive damages permitted under § 59.1-335.10. The aggregate liability of the surety or bank to all persons damaged by a credit services business violation of this chapter shall in no event exceed the amount of the bond or letter of credit.

C. The bond or letter of credit shall be maintained for a period of two years after the date that the credit services business ceases operation.

(1989, c. 655.)

§ 59.1-335.5. Prohibited practices.

A credit services business, and its salespersons, agents and representatives, and independent contractors who sell or attempt to sell the services of a credit services business, shall not do any of the following:

1. Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, unless the consumer has agreed to pay for such services during the term of a written subscription agreement that provides for the consumer to make periodic payments during the agreement's term in consideration for the credit services business's ongoing performance of services for or on behalf of the consumer, provided that such subscription agreement may be cancelled at any time by the consumer;

2. Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

3. Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity; or

4. Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business.

(1989, cc. 651, 655; 2010, c. 421.)

§ 59.1-335.6. Information statement required.

Before (i) the execution of a contract or agreement between a consumer and a credit services business or (ii) the receipt by the credit services business of any money or other valuable consideration, whichever occurs first, the credit services business shall provide the consumer with an information statement in writing containing all of the information required under § 59.1-335.7. The credit services business shall maintain on file or microfilm for a period of two years from the date of the consumer's acknowledgement an exact copy of the information statement personally signed by the consumer acknowledging receipt of a copy of the information statement.

(1989, cc. 651, 655.)

§ 59.1-335.7. Contents of information statement.

The information statement required under § 59.1-335.6 of this chapter shall include all of the following:

1. a. A complete and accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681g);

b. A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency if

requested by the consumer within 30 days of receiving a notice of a denial of credit as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681j); and

c. A statement that a nominal charge may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all information in the consumer's file, if the consumer has not been denied credit within 30 days from receipt of the consumer's request;

2. A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item contained in any file on the consumer that is maintained by any consumer reporting agency, as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681i);

3. A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay, or become obligated to pay, for the services. Such statement shall include the following notice in at least 10-point bold type:

IMPORTANT NOTICE: YOU HAVE NO OBLIGATION TO PAY ANY FEES OR CHARGES UNTIL ALL SERVICES HAVE BEEN PERFORMED COMPLETELY FOR YOU, UNLESS YOU ENTER INTO A SUBSCRIPTION AGREEMENT REQUIRING PERIODIC PAYMENTS IN CONSIDERATION FOR ONGOING SERVICES.

; and

4. The notice prescribed by subdivision 3 of this section shall also be posted by means of a conspicuous sign so as to be readily noticeable and readable at the location within the premises of the credit services business where consumers are interviewed by personnel of the business.

(1989, cc. 651, 655; 2010, c. 421.)

§ 59.1-335.8. Contents of contracts.

A. Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include all of the following:

1. A conspicuous statement in size equal to at least ten-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

"You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

2. The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

3. A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified;

4. The principal business address of the credit services business and the name and address of its agent in this Commonwealth authorized to receive service of process;

5. A statement asserting the buyer's right to proceed against the bond or letter of credit required under § 59.1-335.4; and

6. The name and address of the surety company which issued the bond, or the name and address of the bank which issued the letter of credit.

B. 1. The contract shall be accompanied by a completed form in duplicate, captioned "**NOTICE OF CANCELLATION**," which shall be attached to the contract and easily detachable, and which shall contain in at least ten-point bold type the following **statement**:

"NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

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

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to

.....

(Name of Seller)

At

(Address of Seller)

.....

(Place of Business)

Not later than midnight _____

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)"

2. A copy of the fully completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

(1989, cc. 651, 655.)

§ 59.1-335.9. Breach; null and void contract.

A. Any breach by a credit services business of a contract under this chapter, or of any obligation arising under it, shall constitute a violation of this chapter.

B. Any contract for services from a credit services business that does not comply with the applicable provisions of this chapter shall be void and unenforceable as contrary to the public policy of this Commonwealth.

C. Any waiver by a consumer of any of the provisions of this chapter shall be deemed void and unenforceable by a credit services business as contrary to public policy of this Commonwealth, and any attempt by a credit services business to have a consumer waive rights given by this chapter shall constitute a violation of this chapter.

D. In any proceeding involving this chapter the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(1989, cc. 651, 655.)

§ 59.1-335.10. Liability to consumer.

A. Any credit services business which willfully fails to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure; and
2. Such amount of punitive damages as the court may allow.

B. Any credit services business which is negligent in failing to comply with any requirement imposed under this chapter with respect to any consumer is liable to that

consumer in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure.

(1989, cc. 651, 655.)

§ 59.1-335.11. Statute of limitations.

An action to enforce any liability created under this chapter may be brought within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this chapter to be disclosed to a consumer and the information so misrepresented is material to the establishment of the defendant's liability to that consumer under this chapter, the action may be brought at any time within two years after discovery by the consumer of the misrepresentation.

(1989, cc. 651, 655.)

§ 59.1-335.12. Violations of chapter; enforcement.

A. Each sale of the services of a credit services business that violates any provision of this chapter is a prohibited practice under § 59.1-200.

B. If the Attorney General, any attorney for the Commonwealth, or any attorney for a county, city or town has reason to believe that any credit services business, or any salesperson, agent, representative, or independent contractor acting on behalf of a credit services business, has violated any provision of this chapter, the Attorney General, the attorney for the Commonwealth, or attorney for the county, city or town may institute a proceeding under Chapter 17 (§ 59.1-196 et seq.) of Title 59.1.

(1989, cc. 651, 655.)