

# Legal & Compliance Brief Prepared for Fierce Auto Marketing

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## POLICIES | PROCEDURES for CREDIT REPAIR — FLORIDA

### Industry Background

The Consumer Credit Protection Act of 1968 [Pub.L. 90-321, 82 Stat. 146; May 29, 1968] was a law originally containing (4) Titles, or sections pertaining to the proper use of consumer credit, including the most common Title I, *Truth in Lending*. Several amendments followed, notably Title VI, The Fair Credit Reporting Act (FCRA) [Pub.L. 91-508, 84 Stat. 1114; Oct 26, 1970]. This milestone law was a first in trying to protect a consumer's data in a digital age. Its key tenants would set the precedent on information privacy worldwide for the next 50 years.

The most pertinent to this discussion, was the law that 'no secret databases were to be used to make a decision about an individual's life, and such individual had a right to see and challenge such information at will.'

During the 1980s Credit Counseling, Credit Repair and Credit Arbitration companies emerged to help consumers liaise with the credit bureaus to improve their clients' credit by deciphering the database. The objective was to challenge and remove negative inaccurate marks and boost their credit score.

### The National Need

Based on several factors, including, but not limited to multiple consumer complaints, the FTC initiated a study to examine the accuracy in consumer credit reports using a nationally representative sample of consumers with credit histories.

The FTC concluded that a significant number of the sample consumer credit reports contained errors, resulting in lower credit scores. Some of which even prohibited the consumer acquisition of new lines of credit, or other loans. Experience has shown that this problem is systemic and rooted in the inherent challenge in keeping and updating correct financial records at the respective credit bureaus.

*[Section 319 of the Fair & Accurate Credit Transactions Act of 2003: Fifth Interim FTC Report to Congress Concerning the Accuracy of Information in Credit Reports; Dec. 2012]*

Despite most credit repair company's efforts to assist in building their customer's credit, some companies sought to take advantage of unsuspecting consumers who had little knowledge about or understanding of the complexities of credit score calculation and modifications.

### Additional Consumer Protection

The unscrupulous actions of some predatory companies resulted in supplementary consumer protection laws being enacted on behalf of the customers. Both federal and individual state laws were created to articulate policy and anticipate possible loop holes through which some might try to jump, attempting to defraud the consumer.

#### FEDERAL LAWS

The Credit Repair Organizations Act (CROA) is a federal law passed in September 1996 and is a subchapter of the aforementioned Consumer Credit Protection Act. It was drafted in response to deceptive practices of certain companies offering credit repair under false pretenses. Their actions caused material harm to consumers and actually worked a financial hardship upon consumers through hefty fees for their services, or lack thereof.

The CROA has several significant provisions to protect consumers desiring credit repair:

**Main Provisions—**

1. **Credit Repair Defined:** A person or entity who provides services that improve a consumer’s credit, or providing advice or assistance to any consumer regarding his or her credit. [15 U.S.C. §1679a(3)]
2. **Misleading Statements:** Credit repair organizations are barred from making statements which are untrue or misleading with respect to a consumer’s credit, such as statements that encourage the alteration of a consumer’s identification. [15 U.S.C. §1679b(a)(1)(2)]
3. **Misleading Representations:** Credit repair organizations are barred from employing untrue or misleading representations of their services, and from engaging in any business practice that constitutes or results in the commission of fraud. [15 U.S.C. §1679b(a)(3)(4)]
4. **Written Contract:** The major practical ramifications of this act include a requirement for credit repair organizations to provide consumers with a written contract containing significant disclosures, cancellation rights for consumers, and a bar on advance payments for credit repair services. Such protections may not be waived by consumers, and any attempt by a credit repair organization is in itself a violation of CROA. [15 U.S.C. §1679b(b)(4)cdef(a),(b)]
5. **Enforcement:** CROA contemplates and authorizes both administrative enforcement as well as private rights of action. Civil liabilities include actual and punitive damages, as well as attorneys’ fees and costs for the prevailing party in a successful action to enforce liability. The remedies available to the enforcing authority are those set forth in the Federal Trade Commission Act (FTC Act).

The FTC Act [15 U.S.C. §45(a)(1); of 1914] further clarifies the broad consumer protection under the following provisions:

**Unfair & Deceptive Acts Defined:** CROA The FTC act succinctly declares that “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.” The standard for deception used by the FTC has evolved over the years. A practice is deceptive if “there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.” [Southwest Sunsites, Inc. v. FTC, 785 F.2d 1431, 1435 (C.A. 9 1986), citing Cliffdale Associates, Inc., 3 CCH Trade Reg.Rep. ¶ 22,137 (1984), and Amrep Corp. v. FTC, 768 F.2d 1171, 1179 (10th Cir. 1985).]

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## STATE LAWS— FLORIDA REGULATIONS

According to Florida state legislation originally passed in 1987 as the Florida Credit Service Organizations Act (FCSOA), and updated in 2002 Chapter 817, Section 7005— The major tenets of the FCSOA include:

(1) A written statement be provided to consumers, the regulation of contract provisions, a prohibition against any consumer waivers of any protections provided by the act, a provision for criminal penalties for violations of the act, as well as a provision for actions for damages.

In addition, a credit service organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit service organization 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 the credit service organization has agreed to perform for the buyer;

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

(3) Make, or counsel or advise any buyer to make, any statement that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, or omit any material fact to a consumer reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's credit worthiness, credit standing, or credit capacity; or

(4) Make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a credit service organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit service organization, notwithstanding the absence of reliance by the buyer.

*[Fla. Stat. ch. 817, pt. III, the Credit Service Organizations Act (2002); Chapter 817: Fraudulent Practices; Section 7005: Prohibited Acts]*

Another enforcement provision of the Florida Statutes that could apply to the industry, is the Florida Free Gift Advertising Law:

(1) Which restricts the use of the word "free," to include such terms as "awarded," "prize," "absolutely without charge," "free of charge," to only those items that are, in fact, free. The statute may be enforced by the commissioner of agriculture or the attorney general for injunctive relief. There is no private right of action pursuant to this statute.

*[Fla. Stat. §817.415]*

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## Fierce Auto Marketing Compliance

While the Credit Repair Organizations Act (CROA) sets tough compliance requirements on the industry, credit repair companies can and do operate fearlessly, if they're following the rules. And by doing so they, in turn, hold banks, debt collectors and the credit reporting agencies accountable to consumer protection laws.

*[thesimpledollar.com/if-a-credit-repair-company-does-this-its-breaking-the-law/]*

Most compliance concerns and litigatory actions with credit restoration relate to *how* money is collected from customers. In fact, all the actions listed on a federal and state level are in some way tied to the collection of fees, and the ensuing harm caused by taking their money. The Fair Credit Reporting Act (FCRA) and the Credit Repair Organizations Act (CROA) specifically mention how the credit bureaus can and should be held accountable with the laws and guidelines they've outlined, and we too must be compliant to federal and state law.

All tort law is based on the plaintiff suffering "loss or harm." Generally, individuals don't seek legal remedies unless they feel defrauded of money. Since payment collection is the highest potential litigious compliance issue facing the credit repair industry, we've removed client fees altogether... ZERO FEES = ZERO FINANCIAL HARM = ZERO LIABILITY.

Our principals have successfully operated for 23 years. They are recognized by the industry, and credit bureaus alike, navigating through several states with zero compliance issues, and no formal complaints for their credit repair process to the FTC, or to the Better Business Bureau. More than 100,000 satisfied nationwide customers attest to the proven system utilized nationwide to build credit.

Fierce Auto Marketing hereunder addresses each of the above mentioned salient regulatory statues, laws or requirements, by stating its own policies, or compliance procedures:

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## Federal Legal Requirements Vs. Fierce Auto Marketing Policy

### CROA Provisions—

**Provision 2:** “Credit repair organizations are barred from making statements which are untrue or misleading with respect to a consumer’s credit, such as statements that encourage the alteration of a consumer’s identification.”

**Fierce Auto Marketing Policy:** All references to “fixing” or “repairing” credit only address our desire to remove all negative inaccurate marks from a consumer’s report. At no time shall any representative of our firm advocate that a client or member alter their identification.

**Provision 3:** “Credit repair organizations are barred from employing untrue or misleading representations of their services, and from engaging in any business practice that constitutes or results in the commission of fraud.”

**Fierce Auto Marketing Policy:** All credit specialists and/or representatives shall never employ misleading statements regarding the number of negative marks that could be removed, or the associated time in which any such mark might be deleted from their credit report. Only historical cases are shown with permission.

**Provision 4:** “The major practical ramifications of this act include a requirement for credit repair organizations to provide consumers with a written contract containing significant disclosures, cancellation rights for consumers, and a bar on advance payments for credit repair services. Such protections may not be waived by consumers, and any attempt by a credit repair organization is in itself a violation of CROA.”

**Fierce Auto Marketing Policy:** Each consumer is given a contract prior to enrolling in our membership program. Consumers may cancel at anytime with written notice. No payments are ever taken, so any federal provision relating to payment is null and void.

**Provision 5:** “CROA contemplates and authorizes both administrative enforcement as well as private rights of action. Civil liabilities include actual and punitive damages, as well as attorneys’ fees and costs for the prevailing party in a successful action to enforce liability. The remedies available to the enforcing authority are those set forth in the Federal Trade Commission Act.”

**Fierce Auto Marketing Policy:** No “actual” damages shall exist because no money is ever requested, required or received by the consumer. No liability exists on the part of the offering party (car dealership) because they are simply recommending a complimentary service to help elevate their credit scores.

### FTC Act—

**Deceptive Acts:** “A practice is deceptive if “there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”

**Fierce Auto Marketing Policy:** The consumer cannot suffer financial detriment because we require no money from the customer. Removing negative inaccurate items from their credit can only increase their financial footing.

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## State-Specific Regulations— FLORIDA State Law Vs. Fierce Auto Marketing Policy

- (1) A written statement be provided to consumers, the regulation of contract provisions, a prohibition against any consumer waivers of any protections provided by the act, a provision for criminal penalties for violations of the act, as well as a provision for actions for damages.

**Fierce Auto Marketing Policy:** Each of our Consumer Agreements contain the following:

1. Credit Repair Service Agreement
2. Authorization for Credit Repair Action
3. Consumer Credit File Rights (CROA Disclosure)
4. Right of Cancellation Notice (3-Day Rescind Notice)
5. State Specific Disclosures (added if applicable)

- (1) Not charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit service organization has agreed to perform for the buyer;

**Fierce Auto Marketing Policy:** No payments are ever requested of or received from the consumer.

- (2) Not charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller or to any other credit grantor, who will or may extend credit to the buyer if the credit that is or will be extended to the buyer if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public.

**Fierce Auto Marketing Policy:** The fulfillment company for credit repair, reNew Financial MAP does not charge or receive money for credit repair. Fierce Auto Marketing only receives a marketing fee when a customer purchases a vehicle from an approved Dealership. The Dealership shall agree to accept the VIP program customers who shall present a Certificate of Completion, entitling them to an exclusive VIP service, and additional discounts not available to the general public.

- (3) Not make, counsel or advise any buyer to make, any statement that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, or omit any material fact to a consumer reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's credit worthiness, credit standing, or credit capacity;

**Fierce Auto Marketing Policy:** No false or misleading statements are ever sanctioned, supported, endorsed or encouraged, which might be construed as fact to a consumer reporting agency, current or perspective creditor.

- (4) Not make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a credit service organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit service organization, notwithstanding the absence of reliance by the buyer.

**Fierce Auto Marketing Policy:** We do not use false or misleading representations or statements in any collateral, whether online or in print format, nor do we engage in deceptive practices, as previously so stated. All marketing materials are available for review an approval by the Dealership upon request, per signed agreement.

- (5) Shall restrict the use of the word "free," to include such terms as "awarded," "prize," "absolutely without charge," "free of charge," to only those items that are, in fact, free. The statute may be enforced by the commissioner of agriculture or the attorney general for injunctive relief. There is no private right of action pursuant to this statute.

**Fierce Auto Marketing Policy:** Credit repair services are absolutely free to our consumers. However, the act or pulling a consumer's credit is a third-party expense, if the consumer has not been given a recent tri-merge report. Additionally, third-party credit monitoring service may be approved and paid for by the consumer, to determine when a credit score has increased to the consumer's goal level. Consumers may also be introduced to other programs outside of credit repair, which they may purchase at no obligation.

## **Conclusion**

Given the specifics of both Federal and State laws established above, Fierce Auto Marketing cannot add any more appropriate conclusion than found in the Florida Bar Journal regarding the Credit Repair industry:

“At this time, there are no loopholes to the meaningful regulation of credit repair organizations. Even though there have been attempts to evade the provisions of CROA and FCSSOA, new legislation is not necessary to combat any attempts by scam artists to avoid the penalties of current laws—existing legislation is broad and encompassing so as to adequately protect the consuming public from such threats. Cooperation among the various regulators at the federal and state levels continues to improve so that enforcement agency partnerships and information sharing on cases is reaching synergistic levels.”

*[Florida Bar Journal; July/Aug 2003 Vol. LXXVII, No.7 "Credit Repair Organizations After Regulation: Wolves in Nonprofits' Clothing?]*

The business model established by Fierce Auto Marketing protects the consumer from financial obligation, harm or injury because the consumer is never charged for their credit repair and therefore receives the benefit of credit repair without cost. Furthermore, all other regulations and considerations are equally held true by Fierce Auto Marketing.

Car dealerships cannot run afoul of the current federal and state regulations by merely educating their customers about a free service designed to repair their credit.

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