

Legal & Compliance Brief Prepared for Fierce Auto Marketing

POLICIES | PROCEDURES for CREDIT REPAIR — State Statues for ILLINOIS

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— ILLINOIS REGULATIONS

The state legislation known as the Illinois Credit Services Organizations Act, [Source: P.A. 85-1384] included the following major tenets:

Section 5 (815 ILCS 605/5) (from Ch. 121 1/2, par. 2105)

No credit services organization, its salespersons, agents or representatives, or any independent contractor who sells or attempts to sell the services of a credit services organization shall:

- (1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for or on behalf of the buyer.
- (2) Charge or receive any money or other valuable consideration solely for the referral of a buyer to a retail seller who will or may extend credit to the buyer if such extension of credit is in substantially the same terms as those available to the general public.
- (3) Make, or advise any buyer to make, any statement that is untrue or misleading, or that should be known by the exercise of reasonable care to be untrue or misleading, with respect to a buyer's credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer has made application for an extension of credit.
- (4) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice or course of business intended to defraud or deceive a buyer in connection with the office or sale of such services; including but not limited to: the amount or type of credit a consumer can expect to receive as a result of the performance of the services offered; the qualifications, training or experience of its personnel; or the amount of credit improvement the consumer can expect to receive as a result of the services. (Source: P.A. 85-1384.)

[815 ILCS 605/1, Formerly cited as IL ST CH 121 1/2 P 262Z]

Section 6 (815 ILCS 605/6) (from Ch. 121 1/2, par. 2106)

Before the execution of a contract, such organization shall provide the buyer with a statement, in writing, with the following:

- (1) a complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.);
- (2) a statement that the buyer may review his consumer reporting agency file at no charge if a request therefor is made to such agency within 30 days after receipt by the buyer of notice that credit has been denied and if such request is not made within the allotted time, the approximate charge to the buyer for such review;
- (3) a complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by a consumer reporting agency;
- (4) a complete and detailed description of the services to be performed by the credit services organization and the total cost to the buyer for such services;
- (5) a statement notifying the buyer that: (i) credit reporting agencies have no obligation to remove information from credit reports unless the information is erroneous, cannot be verified or is more than 7 years old; and (ii) credit reporting agencies have no obligation to remove information concerning bankruptcies unless such information is more than 10 years old;
- (6) a statement asserting the buyer's right to proceed against the surety bond required under Section 10; and
- (7) the name and business address of any such surety company together with the name and the number of the account.
- (8) The credit services organization shall maintain on file, for a period of 2 years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

Source: P.A. 91-357, eff. 7-29-99

Section 7 (815 ILCS 605/7) (from Ch. 121 1/2, par. 2107)

Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and shall include:

- (1) a conspicuous statement in boldfaced type, in immediate proximity to the space reserved for the signature of the buyer, as follows:
"You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right";
- (2) the terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;
- (3) a full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or the estimated length of time for performing the services; and
- (4) the address of the credit services organization's principal place of business and the name and address of its agent in the State authorized to receive service of process.

- a. The contract must have two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed. If you cancel, any payment made by you under this contract will be returned within 10 days after the date of receipt by the seller of your cancellation notice. To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or other written notice to:(name of seller) at (address of seller) (place of business) not later than midnight (date) I hereby cancel this transaction."

- b. The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

(Source: P.A. 85-1384.)

Section 8 (815 ILCS 605/8) (from Ch. 121 1/2, par. 2108)

Any contract for services which does not comply with applicable provisions of this article shall be void and unenforceable as contrary to public policy. Any waiver by a buyer of the provisions of this Act shall be deemed void and unenforceable by a credit services organization as contrary to public policy. Any attempt by a credit services organization to have a buyer waive rights granted by this Act shall constitute a violation of this Act.

Source: P.A. 85-1384.

Section 9 (815 ILCS 605/9) (from Ch. 121 1/2, par. 2109)

- (1) A credit services organization shall file a registration statement with the Secretary of State before conducting business in this State. The registration statement shall contain:
 - c. the name and address of the credit services organization;
 - d. the name and address of the registered agent authorized to accept service of process on behalf of the credit services organization;

- e. the name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the credit services organization; and
- f. the name, numbers, and location of the surety company issuing a surety bond maintained as required by Section 10 of this Act.

(2) The registration statement must also contain either:

- a. a full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this State, any other state or the United States relating to the operation of the credit services organization; or
- b. a notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this State, any other state or the United States relating to the operation of the credit services organization.
- c. The credit services organization shall update such statement not later than the 90th day after the date on which a change in the information required in the statement occurs.
- d. Each credit services organization registering under this Section shall maintain a copy of the registration statement in their files. The credit services organization shall allow a buyer to inspect the registration statement on request.

(Source: P.A. 85-1384.)

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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 statutes, 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— ILLINOIS State Law Vs. Fierce Auto Marketing Policy

Section 5

- (1) Charge or receive money prior to performance of credit repair

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

- (2) Charge or receive any money for the referral of a buyer if such extension of credit is in 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) Make or advise buyer to make untrue or misleading statements to reporting agencies

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) Make any untrue or misleading representations in the offer or sale of services

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 and approval by the Dealership upon request, per signed agreement.

Section 6

Before the execution of a contract, such organization shall provide the buyer with a statement, in writing, with the following:

- (1)-(11) Statement containing buyer's right to review credit report at no charge if within 30 days of being denied; right to dispute information; services to be performed; inform bureaus have no right to remove accurate information from credit report; right to proceed against surety bond (if required); provide records for 2 years.

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

1. Consumer Credit File Rights (CROA Disclosure)
2. State Specific Disclosures (added if applicable)

Section 7

Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and shall include:

- (1)-(4) Statement of right of Rescind; Terms of agreement; Description of services; Name/Address of Company; Notice of Cancellation & Form;

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

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

Section 8

Any waiver by buyer of rights shall be deemed void; any attempt to have buyer waive rights shall constitute a violation of this Act.

Fierce Auto Marketing Policy: We acknowledge in our customer agreement a “Current Law Supersession” provision whereby, “If any part of this agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect.”

Section 9

A credit services organization shall file a registration statement with the Secretary of State before conducting business in this State. The registration statement shall contain:

Name/Address; Name of authorized agents; & Owners

Fierce Auto Marketing Policy: We have filed the appropriate Statement with the Secretary of State prior to conducting business in the state of Illinois.

The Statement must also contain:

Disclosure of any litigation or unresolved complaint filed with a governmental authority of this or any other state regarding operation of the company, or

Notarized statement indicating no litigation or unresolved complaint has been filed with a governmental authority of this State, any other state or the United States relating to the operation of the credit services organization.

Fierce Auto Marketing Policy: A notarized statement is also on file with the state of Illinois stating no litigation or unresolved complaint has been filed with any authority of this or any other state.

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.