

# Legal & Compliance Brief Prepared for Fierce Auto Marketing

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POLICIES | PROCEDURES for CREDIT REPAIR — Prepared Exclusively for KENTUCKY

## 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— KENTUCKY REGULATIONS

Kentucky does not have a comprehensive statutory law, but it does regulate credit repair business under its telephone solicitation rules, as recorded in Baldwin's Kentucky Revised Statutes Annotated, and prohibits:

- (1) Advertising or representing that registration as a telemarketer equals an endorsement or approval by any government or governmental agency;
- (2) Requesting a fee in advance to remove derogatory information from or improve a person's credit history or credit record;
- (3) Requesting or receiving a payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telephone solicitation transaction;
- (4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the telemarketing company has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;
- (5) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or bond or other account without the consumer's express written authorization, or charging a credit card account or making electronic transfer of funds except in conformity with KRS 367.46963;
- (6) Procuring the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected;
- (19) Engaging in any unfair, false, misleading, or deceptive practice or act as part of a telephone solicitation.

*[KRS § 367.46955, 367.46955 Prohibited telephone solicitation acts and practices]*

## 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:

## 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— Kentucky State Law

(1) Advertising or representing that registration as a telemarketer equals an endorsement or approval by any government or governmental agency;

**Fierce Auto Marketing Policy:** No marketing, messaging either spoken, digital, online or conveyed by our representatives shall construe a tacit endorsement of or approval by the credit bureaus, FTC, or other governmental agencies.

(2) Requesting a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

**Fierce Auto Marketing Policy:** No payments are ever required of the consumer.

(3) Requesting or receiving a payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telephone solicitation transaction;

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

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the telemarketing company has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

**Fierce Auto Marketing Policy:** No payments are ever received of the consumer for credit repair services.

(5) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or bond or other account without the consumer's express written authorization, or charging a credit card account or making electronic transfer of funds except in conformity with KRS 367.46963;

**Fierce Auto Marketing Policy:** No credit card number, checking account or EFT information is ever required.

(6) Procuring the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected;

**Fierce Auto Marketing Policy:** No payments are asked for, so no courier is ever needed to take payment.

(19) Engaging in any unfair, false, misleading, or deceptive practice or act as part of a telephone solicitation.

**Fierce Auto Marketing Policy:** We do not engage in deceptive practices, as previously so stated.

## 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.