

Legal & Compliance Brief Prepared for Fierce Auto Marketing

POLICIES | PROCEDURES for CREDIT REPAIR — State Statues for MISSOURI

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.

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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— MISSOURI REGULATIONS

The state legislation contained in 2017 Missouri Revised Statutes State Code Title 26, Chapter 407 under “Credit Services Organizations”, include the following major tenets:

Chapter 407.638 Prohibited activities. — *MO Rev Stat § 407.635-644 (2017)*

A credit services organization, a salesperson, agent or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

- (1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer
- (2) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;
- (3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:
 - (a) Guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and
 - (b) Guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;
- (4) Engage, directly or indirectly, in a fraudulent or deceptive act, practice or course of business in connection with the offer or sale of the services of a credit services organization;
- (5) Make, or advise a buyer to make, a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer 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;
- (6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the director of finance, unless otherwise provided by this chapter.

(L. 1991 S.B. 112 § 3)

Chapter 407.640 Registration statements, filing, contents, fee. — *MO Rev Stat § 407.640 (2017)*

1. A credit services organization shall file a registration statement with the director of finance before conducting business in this state. The registration statement must contain:

- (1) The name and address of the credit services organization; and
- (2) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

2. The registration statement must also contain either:

- (1) A full and complete disclosure of any litigation or unresolved complaint filed by or with a governmental authority of this state relating to the operation of the credit services organization; or
- (2) A notarized statement that states that there has been no litigation or unresolved complaint filed by or with a governmental authority of this state relating to the operation of the credit services organization.

3. The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

4. Each credit services organization registering under this section shall maintain a copy of the registration statement in the office of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

5. The director of finance may charge each credit services organization that files a registration statement with the director of finance a reasonable fee not to exceed three hundred dollars to cover the cost of filing. The director of finance may not require a credit services organization to provide information other than that provided in the registration statement as part of the registration process.

*(L. 1991 S.B. 112 § 5, A.L. 2015 H.B. 587 merged with S.B. 345) Effective 8-28-15 (H.B. 587) *10-16-15 (S.B. 345), see § 21.250. S.B. 345 was vetoed July 7, 2015. The veto was overridden September 16, 2015.*

Chapter 407.641 Contract, writing, contents. — MO Rev Stat § 407.641 (2017)

1. Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

- (1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;
- (2) 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 by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.;
- (3) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty days after the date of receipt of notice that credit has been denied, and that the buyer's file is available for a minimal charge at any other time;
- (4) A complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;
- (5) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;
- (6) A complete and accurate statement of when consumer information becomes obsolete and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and
- (7) A complete and accurate statement of the availability of nonprofit credit counseling services.

2. The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

(L. 1991 S.B. 112 § 6)

Chapter 407.642 Contract requirements, cancellation clause. — MO Rev Stat § 407.642 (2017)

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

- (1) A statement in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, 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 length of time, not to exceed one hundred eighty days, 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 registered agent in the state authorized to receive service of process.

2. The contract must have attached 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 TEN 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.

DATE: _____

BUYER'S SIGNATURE: _____ "

3. 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.

(L. 1991 S.B. 112 § 7)

Chapter 407.643 Waiver of buyer's rights void. *MO Rev Stat § 407.643 (2017)*

1. A credit services organization may not attempt to cause a buyer to waive a right under sections 407.635 to 407.644.

2. A waiver by a buyer of any part of sections 407.635 to 407.644 is void.

(L. 1991 S.B. 112 § 8)

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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 any time 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— MISSOURI State Law Vs. Fierce Auto Marketing Policy

Chapter 407.638 Prohibited activities.

- (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 use a false or misleading representation in the offer or sale of the services of a credit services organization, including: Guaranteeing to “erase bad credit” without disclosing only inaccurate histories can be deleted, guaranteeing an extension of credit.

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) Engage, directly or indirectly, in a fraudulent or deceptive practice 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. No guarantees are made to consumers regarding credit. All marketing materials are available for review and approval by the Dealership upon request, per signed agreement.

- (5) Make, or advise a buyer to make, a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading.

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.

- (6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the director of finance, unless otherwise provided by this chapter.

Chapter 407.640 Registration statements, filing, contents, fee

A credit services organization shall file a registration statement with the director of finance before conducting business in this state. The registration statement must contain contact, and ownership information.

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

The Registration Statement must also contain disclosure of litigation, or notarization indicating good standing.

Fierce Auto Marketing Policy: A notarized statement is also on file with director of finance for the state of Missouri stating no litigation or unresolved complaint has been filed with any authority of this or any other state in relation to operation of our credit services organization.

Chapter 407.641 **Contract, writing, contents.**

An agreement in writing shall contain the following:

(1-7) 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; bureaus can only report information for 7 years; availability of non-profit credit counseling services.

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)

Chapter 407.642 **Contract requirements, cancellation clause**

Each agreement shall also contain the following:

(1)-(4) Statement of right of Rescind; Terms of agreement; Description of services; Name/Address of Company; Notice of Cancellation & Form; 2 copies of Cancellation Notice.

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)

Chapter 407.643 **Waiver of buyer's rights void.**

1. A credit services organization may not attempt to cause a buyer to waive a right under sections 407.635 to 407.644.
2. A waiver by a buyer of any part of sections 407.635 to 407.644 is void.

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."

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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.