

Senate Bill No. 500

Passed the Senate May 7, 2007

Secretary of the Senate

Passed the Assembly July 3, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1789.13 and 1789.25 of the Civil Code, relating to credit service organizations.

LEGISLATIVE COUNSEL'S DIGEST

SB 500, Corbett. Credit services organizations.

(1) Existing law regulates the activities of credit services organizations, and requires them to register with the Department of Justice. Existing law prohibits a credit services organization, its salespersons, agents, representatives, and contractors, as specified, from engaging in certain activities, including charging or receiving money or other consideration for referring the buyer to a retail seller or other credit grantor who will or may extend credit to the buyer on substantially the same terms as are generally offered to the public or without the services of the organization. Existing law provides that a violation of these provisions is a misdemeanor.

This bill would provide additional activities in which a credit services organization, and its salespersons, agents, representatives, and contractors are prohibited from engaging, including, among others, directly or indirectly extending credit to any buyer, referring any buyer to a credit grantor that is related to the credit services organization by common ownership, management, or control, and providing a credit grantor with assurance that an extension of credit to a buyer referred by the credit services organization will be repaid. The bill would also prohibit the Department of Justice from providing a credit services organization certificate of registration to any person who has engaged in, or proposes to engage in, specified activities. By broadening the definition of a crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1789.13 of the Civil Code is amended to read:

1789.13. A credit services organization, and its salespersons, agents, representatives, and independent contractors who sell or attempt to sell the services of a credit services organization, shall not do any of the following:

(a) 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.

(b) Fail to perform the agreed services within six months following the date the buyer signs the contract for those services.

(c) Charge or receive any money or other valuable consideration for referral of the buyer to a retail seller or other credit grantor who will or may extend credit to the buyer, if either of the following apply:

(1) The credit which is or will be extended to the buyer (A) is upon substantially the same terms as those available to the general public or (B) is upon substantially the same terms that would have been extended to the buyer without the assistance of the credit services organization.

(2) The money or consideration is paid by the credit grantor or is derived from the buyer's payments to the credit grantor for any costs, fees, finance charges, or principal.

(d) Make, or counsel or advise any buyer to make, any statement which 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 credit 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, such as statements concerning a buyer's identification, home address, creditworthiness, credit standing, or credit capacity.

(e) Remove, or assist or advise the buyer to remove, adverse information from the buyer's credit record which is accurate and not obsolete.

(f) Create, or assist or advise the buyer to create, a new credit record by using a different name, address, social security number, or employee identification number.

(g) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization, including either of the following:

(1) Guaranteeing or otherwise stating that the organization is able to delete an adverse credit history, unless the representation clearly discloses, in a manner equally as conspicuous as the guarantee, that this can be done only if the credit history is inaccurate or obsolete and is not claimed to be accurate by the creditor who submitted the information.

(2) Guaranteeing or otherwise stating that the organization is able to obtain an extension of credit, regardless of the buyer's previous credit problems or credit history, unless the representation clearly discloses, in a manner equally as conspicuous as the guarantee, the eligibility requirements for obtaining an extension of credit.

(h) 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 organization.

(i) Advertise or cause to be advertised, in any manner, the services of the credit services organization, without being registered with the Department of Justice.

(j) Fail to maintain an agent for service of process in this state.

(k) Transfer or assign its certificate of registration.

(l) Submit a buyer's dispute to a consumer credit reporting agency without the buyer's knowledge.

(m) Use a consumer credit reporting agency's telephone system or toll-free telephone number to represent the caller as the buyer in submitting a dispute of a buyer or requesting disclosure without prior authorization of the buyer.

(n) Directly or indirectly extend credit to any buyer.

(o) Refer any buyer to a credit grantor that is related to the credit services organization by any common ownership, management, or control, including any common owner, director, or officer.

(p) Refer any buyer to a credit grantor for which the credit services organization provides, or arranges for a third party to provide, any services related to the extension of credit such as underwriting, billing, payment processing, or debt collection.

(q) Provide a credit grantor with any assurance that any portion of an extension of credit to a buyer referred by the credit services

organization will be repaid, including providing a guaranty, letter of credit, or agreement to acquire any part of the credit grantor's financial interest in the extension of credit.

(r) Use any scheme, device, or contrivance to evade the prohibitions contained in this section.

SEC. 2. Section 1789.25 of the Civil Code is amended to read:

1789.25. (a) Every credit services organization shall file a registration application with, and receive a certificate of registration from, the Department of Justice before conducting business in this state. The Department of Justice shall not issue a certificate of registration until the bond required by Section 1789.18 has been filed with the office of the Secretary of State and the department establishes that the organization seeking a certificate satisfies the requirements of subdivision (f). The application shall be accompanied by a registration fee of one hundred dollars (\$100). The registration application shall contain all of the following information:

(1) The name and address where business is actually conducted of the credit services organization.

(2) The names, addresses, and driver's license numbers of any and all persons who directly or indirectly own or control 10 percent or more of the outstanding shares of stock in the credit services organization.

(3) Either of the following:

(A) A full and complete disclosure of any litigation commenced against the credit services organization or any resolved or unresolved complaint that relates to the operation of the credit services organization and that is filed with the Attorney General or any other governmental authority of this state, any other state, or the federal government. With respect to each resolved complaint identified by the disclosure, the disclosure shall include a brief description of the resolution.

(B) An acknowledged declaration under penalty of perjury stating that no litigation has been commenced and no unresolved complaint relating to the operation of the organization has been filed with the Attorney General or any other governmental authority of this state, any other state, or the federal government.

(4) Other information that the Department of Justice requires, either at the time of application or thereafter.

(b) The Department of Justice may conduct an investigation to verify the accuracy of the registration application. If the application involves investigation outside this state, the applicant credit services organization may be required by the Department of Justice to advance sufficient funds to pay the actual expenses of the investigation. Any nonresident applying for registration under this section shall designate and maintain a resident of this state as the applicant's agent for the purpose of receipt of service of process.

(c) Each credit services organization shall notify the Department of Justice in writing within 30 days after the date of a change in the information required by subdivision (a), except that 30 days' advance notice and approval by the Department of Justice shall be required before changing the corporate name or address, or persons owning more than 10 percent of the shares of stock in the organization. Each credit services organization registering under this section may use no more than one fictitious or trade name and shall maintain a copy of the registration application in its files. The organization shall allow a buyer to inspect the registration application upon request.

(d) A certificate of registration issued pursuant to this section shall expire annually on the last day of December but may be renewed by filing a renewal application accompanied by a fee not to exceed the Department of Justice's costs of administration.

(e) The credit services organization shall attach to the registration statement a copy of the contract or contracts which the credit services organization intends to execute with its customers and a copy of the required bond.

(f) The Department of Justice shall not issue a certificate of registration under this title to any person who has engaged in, or proposes to engage in, any activity that is in violation of Section 1789.13, any law prohibiting the use of untrue or misleading statements, or any law related to the extension of credit to persons for personal, family, or household purposes.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2007

Governor