



February 23, 2018

ENGROSSED SENATE BILL No. 420

DIGEST OF SB 420 (Updated February 21, 2018 5:33 pm - DI 101)

Citations Affected: IC 24-5.

Synopsis: Credit services organizations. Amends the definition of the term "credit services organization" for purposes of the Indiana Code provisions governing credit services organizations to more closely align the definition with the definition of "credit repair organization" set forth in the federal Credit Repair Organizations Act. Makes a conforming amendment to the definition of the term "buyer" in the Indiana statute. Requires a credit services organization to do the following with respect to communications made by the credit services organization after June 30, 2018: (1) Include the complete name and address of the credit services organization on all communications. (2) Include a statement identifying itself as a credit services organization on all communications. Specifies that a person that receives a communication that is made in violation of these requirements may bring a cause of action to recover damages under the statute.

Effective: July 1, 2018.

Perfect, Holdman

(HOUSE SPONSORS — BURTON, ELLINGTON)

January 10, 2018, read first time and referred to Committee on Insurance and Financial Institutions.

January 22, 2018, reported favorably — Do Pass.

January 30, 2018, read second time, amended, ordered engrossed.

January 31, 2018, engrossed.

February 5, 2018, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

February 12, 2018, read first time and referred to Committee on Financial Institutions.

February 22, 2018, amended, reported — Do Pass.

ES 420—LS 6793/DI 101



February 23, 2018

Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 420

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5-15-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. As used in this
3 chapter, "buyer" means an individual **consumer** who is solicited to
4 purchase or who purchases the services of a credit services
5 organization.
- 6 SECTION 2. IC 24-5-15-2, AS AMENDED BY P.L.114-2010,
7 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2018]: Sec. 2. (a) As used in this chapter, "credit services
9 organization" means a **any** person that ~~with respect to the extension of~~
10 ~~credit by another person~~; sells, provides, **or** performs (or represents that
11 the person can or will sell, provide, or perform) **any service**, in return
12 for the payment of money or other valuable consideration, ~~any of the~~
13 ~~following services~~; **for the express or implied purpose of:**
- 14 (1) improving a ~~buyer's~~ **any consumer's** credit record, credit
15 history, or credit rating; **or**
16 (2) ~~Obtaining an extension of credit for a buyer.~~
17 (3) ~~Obtaining a delay or forbearance of a buyer's obligation under~~

ES 420—LS 6793/DI 101



- 1 a mortgage.
- 2 ~~(4)~~ Obtaining a lower interest rate for:
- 3 (A) a consumer loan; or
- 4 (B) a residential mortgage loan;
- 5 to which the buyer is a debtor or a prospective debtor.
- 6 ~~(5)~~ Providing debt settlement services on behalf of a buyer.
- 7 ~~(6)~~ **(2)** providing advice or assistance to a buyer **any consumer**
- 8 **concerning the services any activity or service** described in
- 9 **subdivisions subdivision (1). through (5):**
- 10 (b) The term "credit services organization" does not include any of
- 11 the following:
- 12 ~~(1)~~ A person authorized to make loans or extensions of credit
- 13 under state or federal laws that is subject to regulation and
- 14 supervision under state or federal laws; or a lender approved by
- 15 the United States Secretary of Housing and Urban Development
- 16 for participation in a mortgage insurance program under the
- 17 federal National Housing Act (12 U.S.C. 1701 et seq.);
- 18 ~~(2)~~ A bank or savings association or a subsidiary of a bank or
- 19 savings association that has deposits or accounts that are eligible
- 20 for insurance by the Federal Deposit Insurance Corporation.
- 21 ~~(3)~~ A credit union doing business in Indiana.
- 22 ~~(4)~~ **(1)** Any nonprofit organization exempt from taxation under
- 23 Section 501(c)(3) of the Internal Revenue Code **(26 U.S.C.**
- 24 **501(c)(3)).**
- 25 ~~(5)~~ **(2)** A person licensed as a real estate broker under IC 25-34.1
- 26 if the person is acting within the course and scope of the person's
- 27 license.
- 28 ~~(6)~~ A person admitted to the practice of law in Indiana if the
- 29 person is acting within the course and scope of the person's
- 30 practice as an attorney.
- 31 ~~(7)~~ A broker-dealer registered with the Securities and Exchange
- 32 Commission or the Commodity Futures Trading Commission if
- 33 the broker-dealer is acting within the course and scope of the
- 34 broker-dealer's regulation.
- 35 ~~(8)~~ **(3)** A consumer reporting agency (as defined in the Federal
- 36 Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).
- 37 ~~(9)~~ **(4)** A loan servicer acting on behalf of the holder of:
- 38 (A) a consumer loan; or
- 39 (B) a residential mortgage loan.
- 40 ~~(10)~~ A debt management company (as defined in
- 41 IC 28-1-29-1(2)).
- 42 **(5) Any creditor (as defined in section 103 of the federal Truth**



1 **in Lending Act (15 U.S.C. 1602)), with respect to any**
 2 **consumer, to the extent the creditor is assisting the consumer**
 3 **to restructure any debt owed by the consumer to the creditor.**
 4 **(6) Any depository institution (as defined in section 3 of the**
 5 **Federal Deposit Insurance Act (12 U.S.C. 1813)) or any**
 6 **federal or state credit union (as those terms are defined in**
 7 **section 101 of the Federal Credit Union Act (12 U.S.C. 1752)),**
 8 **or any affiliate or subsidiary of a depository institution or of**
 9 **a federal or state credit union.**

10 SECTION 3. IC 24-5-15-5, AS AMENDED BY P.L.171-2006,
 11 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2018]: Sec. 5. The following are deceptive acts:

13 (1) To charge or receive money or other valuable consideration
 14 before the complete performance of services that a credit services
 15 organization has agreed to perform for or on behalf of a
 16 consumer, unless the credit services organization has under
 17 section 8 of this chapter:

18 (A) obtained a surety bond issued by a surety company
 19 admitted to do business in Indiana; or

20 (B) established an irrevocable letter of credit.

21 (2) To charge or receive money or other valuable consideration to
 22 refer a buyer to a retail seller that will or may extend credit to the
 23 buyer if the extension of credit is made upon substantially the
 24 same terms as those available to the general public.

25 (3) To make or to advise a buyer to make a statement with respect
 26 to the buyer's creditworthiness, credit standing, or credit capacity
 27 that is:

28 (A) false or misleading; or

29 (B) that should be known by the exercise of reasonable care to
 30 be false or misleading;

31 to a consumer reporting agency or to a person that has extended
 32 credit to the buyer or to whom the buyer is applying for an
 33 extension of credit.

34 (4) To make or use a false or misleading representation in an offer
 35 to sell or a sale of the services of a credit services organization,
 36 including:

37 (A) guaranteeing to "erase bad credit" or using words to that
 38 effect unless the representation clearly discloses that this can
 39 be done only if a person's credit history is inaccurate or
 40 obsolete;

41 (B) guaranteeing an extension of credit regardless of the
 42 buyer's previous credit history unless the representation clearly



- 1 discloses the eligibility requirements for obtaining the
 2 extension of credit; or
 3 (C) requiring a buyer to waive a right protected by a state or
 4 federal law.
 5 (5) To take a power of attorney from a buyer for any purpose
 6 other than inspecting documents as provided by law.
 7 **(6) To fail to disclose the complete name and address of the**
 8 **credit services organization on all communications from the**
 9 **credit services organization to consumers, data furnishers,**
 10 **creditors, and credit reporting agencies, in violation of section**
 11 **8.5(b) of this chapter.**
 12 **(7) To fail to include the statement required by section 8.5(c)**
 13 **of this chapter on all communications from the credit services**
 14 **organization.**

15 SECTION 4. IC 24-5-15-8.5 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2018]: **Sec. 8.5. (a) This section applies to a communication made**
 18 **by a credit services organization after June 30, 2018.**

19 **(b) A credit services organization shall include the complete**
 20 **name and address of the credit services organization on all**
 21 **communications from the credit services organization to**
 22 **consumers, data furnishers, creditors, and credit reporting**
 23 **agencies.**

24 **(c) A credit services organization shall include the following**
 25 **statement on all communications from the credit services**
 26 **organization to consumers, data furnishers, creditors, and credit**
 27 **reporting agencies:**

28 **"This communication is from a credit services organization."**

29 SECTION 5. IC 24-5-15-9 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 9. A person that is**
 31 **damaged by a credit services organization's violation of this chapter,**
 32 **including a person that receives a communication made in violation**
 33 **of this chapter, may:**

34 (1) bring an action to recover the greater of two (2) times the
 35 amount of actual damages or one thousand dollars (\$1,000) and
 36 attorney's fees; and

37 (2) bring an action against the bond or irrevocable letter of credit
 38 required under section 8 of this chapter to recover an amount
 39 equal to the person's actual damages.



COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 420, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 420 as introduced.)

PERFECT, Chairperson

Committee Vote: Yeas 8, Nays 0

 SENATE MOTION

Madam President: I move that Senate Bill 420 be amended to read as follows:

Page 2, line 35, after "(8)" insert "(2)".

Page 2, line 35, reset in roman "A consumer reporting agency (as defined in the Federal Fair".

Page 2, reset in roman line 36.

Page 2, line 37, after "(9)" insert "(3)".

Page 2, line 37, reset in roman "A loan servicer acting on behalf of the holder of:".

Page 2, reset in roman lines 38 through 39.

Page 2, line 42, delete "(2)" and insert "(4)".

Page 3, line 4, delete "(3)" and insert "(5)".

(Reference is to SB 420 as printed January 23, 2018.)

PERFECT

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 420, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 25, after "(5)" insert "(2)".

Page 2, line 25, reset in roman "A person licensed as a real estate

ES 420—LS 6793/DI 101



broker under IC 25-34.1 if".

Page 2, reset in roman lines 26 through 27.

Page 2, line 35, delete "(2)" and insert "**(3)**".

Page 2, line 37, delete "(3)" and insert "**(4)**".

Page 2, line 42, delete "(4)" and insert "**(5)**".

Page 3, line 4, delete "(5)" and insert "**(6)**".

Page 4, after line 28, begin a new paragraph and insert:

"SECTION 5. IC 24-5-15-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 9. A person that is damaged by a credit services organization's violation of this chapter, **including a person that receives a communication made in violation of this chapter**, may:

- (1) bring an action to recover the greater of two (2) times the amount of actual damages or one thousand dollars (\$1,000) and attorney's fees; and
- (2) bring an action against the bond or irrevocable letter of credit required under section 8 of this chapter to recover an amount equal to the person's actual damages."

and when so amended that said bill do pass.

(Reference is to SB 420 as reprinted January 31, 2018.)

BURTON

Committee Vote: yeas 6, nays 3.

