ANTITRUST, TRADE REGULATION AND CONSUMER AFFAIRS SECTION

'eering Committee:
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The District of Columbia Bar

Committees:
Antitrust
Consumer Affairs

June , 1989

Hon. John Ray, Chair
Committee on Consumer and Regulatory Affairs
Council of The District of Columbia
District Building
District of Columbia

Proposed D.C. Consumer
Credit Repair
Organization Act of 1989

Dear Chairman Ray:

The Consumer Affairs Committee of Section 2 (Antitrust, Trade Regulation and Consumer Affairs) of the D.C. Bar submits the following comments on the proposed D.C. Consumer Credit Repair Organization Act of 1989. The purpose of the comments is to strengthen the consumer protection goals of the bill. A copy of the bill is attached, marked to reflect our comments. The major elements of our comments are discussed below.

Section 3. Registration Statement.

The Committee recommends that provisions be made in the proposed Act to prevent the consumer credit repair organization from implying or suggesting that its activities are sanctioned by the District of Columbia because it has obtained a Certificate of Registration from the District. The changes marked on the attached copy of the bill rely on use of a registration statement rather than a certificate, and are intended to eliminate any implication of official sanction of the consumer credit repair organization's activities.

Section 4. Bond Required; Trust Account; Prohibited Acts

The Committee recommends that the proposed Act specify that certain minimum provisions be contained in the surety bond specifying when the consumer credit repair organization would be in default and the surety company would be obliged to pay a person victimized by the organization.

The Committee believes that the bill's requirement that the bond be with a surety company admitted to do business in the District of Columbia is insufficient to ensure that that the surety company will be able to pay possible victims of a consumer credit repair organization. The requirements should be strengthened. The Committee recommends that the Act provide that the Mayor shall establish qualifications required of the surety company.

With regard to the provision of the Act requiring that the consumer credit repair organization deposit money in a trust account, in addition to obtaining a surety bond, the Committee recommends that the Act specify the terms and conditions of the maintenance of the account.

The changes marked on the attached copy of the bill embody these recommendations.

Section 5. Disclosure; Written Agreement Required.

The Committee agrees with provisions of the Act that provide that the consumer credit repair organization is required to inform prospective clients of important facts before receiving any money for services. In addition to the facts currently addressed in the proposed Act, the Committee recommends that the organization should be required to advise the prospective client that the client has a right to file disputes directly with the credit reporting agency. Further, the consumer credit repair organization should be required to advise the prospective client that the organization's ability to improve the client's credit is sharply limited, consisting essentially of correcting incorrect information contained in the credit reporting agency's file.

The changes marked on the attached copy of the bill embody these recommendations.

Sincerely,

Mark Steinbach
Don Resnikoff
Co-Chairs, Committee on
Consumer Affairs
Section 2, D.C. Bar

igr12/bcredit

RECEIVED

Chairman David A. Clarke at
the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman David A. Clarke at the request of the Mayor, introduced the following bill which was referred to the Committee on _____.

To provide for the registration of consumer credit repair organizations, to require that such organizations obtain a surety bond where payment is accepted prior to completion of performance, to provide for the imposition of civil and criminal penalties; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Consumer Credit Repair Organizations Act of 1989".

Sec. 2. Definitions. For the purposes of this act, the term:

(1) "Buyer" means any individual who is solicited to purchase or who purchases the services of a consumer credit

repair organization.

(2) "Consumer credit repair organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:

(A) Improving a buyer's credit record, history, or rating;

(B) Obtaining an extension of credit for a buyer; or

(C) Providing advice or assistance to a buyer with regard to either 2(A) or 2(B) of this subsection.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

(4) "Mayor" means the Mayor of the District of Columbia.

(5) "Person" means corporation, firm, agency, company, association, organization, partnership, society, and joint stock company, as well as an individual.

(6) "Consumer Credit Repair Organization" does not include:

(A) Any person authorized to make loans or

extensions of credit under the laws of the District of Columbia or the United States who is subject to regulation and supervision by the District of Columbia or the United States or a lender approved by the United States Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(B) Any bank, savings bank, or savings and loan institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or a subsidiary of such bank, savings bank, or savings and loan institution;

(C) Any credit union doing business in the District of Columbia under D.C. Code, Sec. 26-601 et seq.

(D) Any non profit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(E) Any person operating as a collection agency pursuant to the laws of the District of Columbia.

(G) Any person licensed to practice law in this state if the person renders services within the course and scope of his or her practice as an attorney;

(H) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the

course and scope of that regulation; or

(I) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C. Section 1681 through 1681t.

Sec. 3. Registration Statement. ~~Certificate of Registration.~~

(a) No person shall operate a consumer credit repair organization in the District of Columbia unless he or she files a registration statement as prescribed in Sec. 3(b). ~~holds a valid certificate of registration authorizing such operation.~~

(b) Such registration statement ~~Application for such certificate of registration~~ shall be made in ~~upon~~ such form or forms as shall be prescribed by the Mayor, shall be sworn to and shall be filed with the Mayor. Each such statement ~~application~~ shall contain such information as the Mayor shall by regulation require.

(c) If, at any time ~~where any application is pending, or during the term of any certificate of registration granted thereon,~~ there is any change in fact, policy, or method from information given in the registration statement ~~application~~, the ~~applicant or~~ registrant shall within ten (10) business days after such change report the same in writing to the Mayor.

(d) Whenever in the opinion of the Mayor the registration statement ~~application~~ does not disclose sufficient information required by this act, or the regulations made pursuant thereto, ~~to be stated in such application,~~ then the registrant ~~applicant~~ shall file in writing, ~~within two (2) business~~

~~days, after demand therefor made by the Mayor,~~ such additional information as may be ~~required~~ STETY by the Mayor. ~~Provided further that~~ The Mayor ~~may withhold~~ shall refuse the ~~issuance of a certificate of registration~~ filing of the registration statement until ~~such additional~~ all information demanded by the Mayor is furnished. ~~Such certificate of registration shall be valid for such period of time as shall be specified therein.~~

Sec. 4. Bond Required; Trust Account; Prohibited Acts.

(a) A consumer credit repair organization, or its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a consumer credit repair organization shall not:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the consumer credit repair organization has agreed to perform for the buyer, unless the consumer credit repair organization has obtained a surety bond Insert below or twenty-five thousand dollars ($25,000) issued by a surety company having such qualifications as may be required by the Mayor. ~~admitted to do business in the District of Columbia and~~ Such ~~established a~~ trust account shall have ~~having~~ a minimum balance of no less than twenty-five thousand dollars ($25,000) at a federally insured bank or savings and loan association located in the District of Columbia;

(2) Charge or receive any money or other valuable consideration solely for referral of the buyer to a retail

INSERT to Sec. 4(a)(1), above: and established a trust account guaranteeing the refund to the buyer of any money or other valuable consideration paid if full and complete performance of the agreed upon services has not been made. Such bond shall be in the amount of

seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;

(3) Make or counsel 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, to a 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 with respect to a buyer's creditworthiness, credit standing, or credit capacity;

(4) Make or use any untrue or misleading representations or fail to disclose any material fact, policy, or method in the offer or sale of the services of a consumer credit repair organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a consumer credit repair organization.

(b) If a consumer credit repair organization is in compliance with section 4(a)(1) of this act, the salesperson, agent, or representative who sells the services of that organization is not required to obtain a surety bond and establish a trust account.

Sec. 5. <u>Disclosure; Written Agreement Required.</u>

(a) Before the execution of a contract or agreement between the buyer and a consumer credit repair organization or before the receipt by the consumer credit repair organization of any money or other valuable consideration, whichever occurs first, the consumer credit repair organization shall provide the buyer with a statement in writing, containing all the information required by Section 5(b) of this act. The consumer credit repair organization shall maintain on file for a period of three (3) years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

(b) The information statement required under Section 5(a) of this act shall include the following:

(1) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by the consumer credit reporting agency, as provided under the Federal Fair Credit Reporting Act, 15 U.S.C. Sections 1681 through 1681t;

(2) A statement that the buyer may review his or her consumer credit reporting agency's file at no charge if a request is made to the consumer credit reporting agency within thirty (30) days after receiving notice that credit has been denied; and

(3) The approximate price the buyer will be charged by the consumer credit reporting agency to review his or

her consumer credit reporting agency's file; INSERT: if the request had not been made within thirty (30) days after receiving notice that credit has been denied;

(4) 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 any consumer credit reporting agency;

(5) A complete and detailed description of the services to be performed by the consumer credit repair organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay for the services;

(6) A statement asserting the buyer's right to ~~proceed against~~ recover under the bond or trust account required under Section 4 of this Act; ~~and~~

(7) The names and address of the trust account depository and the trustee and the account number of the trust account ~~and~~ and the name and address of the surety company issuing the bond and the number and date of the surety bond.

(8) and (c) Each contract between the buyer and a consumer credit repair organization for the purchase of the services of the consumer credit repair organization shall be in writing, dated, signed by the buyer, and include the following: (attached)

(1) The terms and conditions of payment, including the total of all the payments to be made by the buyer, whether to the consumer credit repair organization or to some other person;

(2) A full and detailed description of the

ADDITION TO Section 5(b):

(8) A statement asserting the buyer's right to file disputes directly with the consumer credit reporting agency in accordance with the provisions of the Federal Fair Credit Reporting Act; and

(9) A statement setting forth that a consumer credit reporting agency is not obligated to remove information from the buyer's file unless the information is erroneous, cannot be verified, or is more than seven (7) years old, and that a consumer credit reporting agency is not obligated to remove information concerning bankruptcies unless the information is more than ten (10) years old.

which must include a statement directed to specific detrimental information about the buyer's credit which the credit repair organization proposes to remedy, together with all

services to be performed by the consumer credit repair organization for the buyer, ~~including all~~ guarantees and all promises of full or partial refunds, if any, and the estimated date by which the services are to be performed, or estimated length of time for performing the services;

(3) The consumer credit repair organization's ~~principal business~~ address of its main office location and the name and address of its agent in the state authorized to receive service of process.

(d) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" that shall be attached to the contract, be easily detachable, and contain in bold-face type the following statement: ~~written in the same language as used in the contract.~~

(1) "NOTICE OF CANCELLATION"

You may cancel this contract, without any penalty or obligation, within five (5) calendar days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten (10) calendar days following receipt by the seller of your cancellation notice.

To cancel this contract, ~~mail or~~ deliver a signed, dated copy of this cancellation notice, or send this notice by certified mail, return receipt ~~or other written notice to:~~ requested, to:

(Name of Seller) at (Main Office Location ~~(Address of Seller)~~ ~~(Place of Business) not later than~~ midnight (Date), I hereby cancel this transaction, (Date) (Buyer's Signature).

(2) The consumer credit repair organization shall give to the buyer a copy of the information statement, the ~~complete~~ contract and all other documents the consumer credit repair organization requires the buyer to sign at the time they are signed.

(e) Any waiver by a buyer of any part of this chapter is void. Any attempt by the consumer credit repair organization to have a buyer waive rights given by this chapter is a violation of this Act.

Sec. 6. Enforcement; Penalties.

(a) In any proceeding involving this Act, the burden of proving an exemption or an exception from a definition is upon the person claiming the exemption or exception.

~~(b) The Mayor may, after a hearing, deny, suspend, revoke any certificate of registration issued hereunder for any violation of this Act.~~

(c) Any person violating any provision of this Act shall, upon conviction, be fined not more than one thousand dollars ($1,000.00) ~~three hundred ($300.00)~~ dollars or imprisoned for not more than one (1) year, ~~ninety (90) days~~, or both.

(d) Civil fines, penalties, and fees may also be imposed as ~~alternative~~ sanctions for any infraction of the provisions

of this Act. Such imposition of fines, penalties, and fees, and the adjudication of any infractions shall be pursuant to the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985", (D.C. Law 6-42; D.C. Code, sec. 6-271 et seq.).

(e) The Mayor may, after investigation, seek to restrain and enjoin any violation of this Act. This section does not prohibit the enforcement by any person of a right provided by this or any other law.

(f) A violation of this Act by a consumer credit repair organization is an unfair trade practice as provided in D.C. Code, Section 28-3901 et seq.

(g) Any buyer injured by a violation of this Act may bring any action for recovery of damages within three (3) years after the signing of the contract. Judgment shall be entered for actual damages, but shall in no case be less than the amount paid by the buyer to the consumer credit repair organization, plus reasonable attorney's fees and costs incurred to recover such damages. An award may also be entered for punitive damages.

(h) The remedies provided under this Act are in addition to any other law.

Sec. 7. Effective Date. This Act shall take effect after a thirty (30) day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in Section 602(c)(1) of

the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, Section 1-233(c)(1).