

## **Debt Adjusting Companies and Credit Services Businesses: Tennessee's Requirements**

Tennessee law has separate provisions relative to debt adjusting companies and credit services businesses (see the definitions below) in the Consumer Protection Act. Both Debt Adjusting Companies and Credit Services Businesses are discussed hererin.

**Debt Adjusting Companies.** Tennessee's consumer protection laws make regulate certain actions of Debt Adjusting Companies. "Debt adjusting" means doing business in debt adjusting, budget counseling, debt management, or debt pooling service or holding oneself out, by words of similar import, as providing services to debtors in the management of their debts to do any of the following:

- Effect the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor;
- Receive from the debtor and disburse to the debtor's creditors any money or other thing of value; or
- Solicit business and advertise as a debt adjuster.

**Exemptions from "debt adjusting".** The following persons are not considered adjusters: **(i)** Any attorney-at-law of this state; **(ii)** Any person who is a regular, full-time employee of a debtor, and who acts as an adjuster of the employer's debts; **(iii)** Any person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this state or of the United States; **(iv)** Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; **(v)** Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts; and **(vi)** Any charitable, religious or educational organization, determined to be exempt from taxation under § (501)(c)(3) of the Internal Revenue Code that is not in the business of debt adjusting.

It is an unfair or deceptive practice under the T. C. A. § 47-18-104 to engage in the business of debt adjusting and to:

- Fail to disburse all funds to the appropriate creditors within thirty (30) days of receipt of the funds from the debtor, less any contributions or fees not prohibited by law\*;
- Fail to maintain a separate trust account for the receipt of any funds from debtors and the disbursement of the funds to creditors on behalf of the debtors;
- Accept a contribution or fee exceeding seventy-five dollars (\$75)\* from a debtor for an initial set up;
- Accept a consultation contribution or fee exceeding fifty dollars (\$50)\* per calendar year from a debtor;

- Accept a periodic contribution or fee from a debtor that exceeds the greater of eight and one half percent (8.5%) of the amount paid by a debtor each month for distribution to the debtor's creditors or thirty dollars (\$30)\*;
- Charge the debtor a bad check handling fee in excess of twenty dollars (\$20)\*;
- **Fail to obtain and at all times maintain insurance coverage for errors and omissions, employee dishonesty, depositor's forgery, and computer fraud, with a minimum limit of one hundred thousand dollars (\$100,000) that names the division of consumer affairs of the department of commerce and insurance and the consumer protection division of the office of the attorney general as additional interested parties;**
- Fail to provide, prior to the execution of a contract, agreement debt management or adjustment plan, the following printed in bold and capital letters signed and dated by the consumer: **WITH RESPECT TO MY CREDIT HISTORY, I UNDERSTAND THAT MY PARTICIPATION IN THE DMP MAY AFFECT MY CREDIT REPORT EITHER FAVORABLY OR UNFAVORABLY ACCORDING TO MY CREDITOR'S POLICIES WITH RESPECT TO THE DMP AND MY PAYMENT HISTORY PRIOR TO AND DURING MY PARTICIPATING IN THE DMP. I ALSO UNDERSTAND THAT, FOR ANY JOINT ACCOUNTS, MY SPOUSE'S CREDIT RATING MAY AFFECT MY CREDIT RATING EITHER FAVORABLY OR UNFAVORABLY.**

**Credit Services Businesses.** “Credit services business” means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform any of the following services in return for the payment of money or other valuable consideration:

- Improving a consumer’s credit record, history, or rating;
- Obtaining an extension of credit for a consumer; or
- Providing advice or assistance to a consumer with regard to either of these.

“Credit services business” does not include:

- The making, arranging, or negotiating directly for a loan or extension of credit under the laws of this state or the United States;
- Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or any credit union organized and chartered under the laws of this state or the United States;
- Any nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));

\*These fees may be adjusted on an annual basis by a formula using the consumer price index.

- Any person licensed as a real estate broker by this state where the person is acting within the course and scope of that license;
- Any person licensed to practice law in this state where the person renders services within the course and scope of that person's practice as a lawyer;
- Any broker-dealer registered with the securities and exchange commission or the commodity futures trading commission where the broker-dealer is acting within the course and scope of that regulation; or
- Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681t).

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

- **(1)** Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, including all representations made orally or in writing. "Full and complete performance" means fulfillment of all items listed in the contract and other solicitations or communications to consumers;
- **(2)** Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;
- **(3)** Make, or counsel or advise any consumer to make, any statement that 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 reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity;
- **(4)** Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or 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 business; or
- **(5)** Create, or assist or advise the consumer to create a new credit record by using a different name, address, social security number, or employee identification number;
- **(6)** Provide, in any manner, the services of a credit services business within this state, without registering a bond consistent with the provisions of § [47-18-1011](#);
- **(7)** Remove, assist or advise the consumer to remove or otherwise alter adverse information from the consumer's credit record which is accurate or not obsolete;
- **(8)** Create, assist or advise the consumer to request that positive information be inserted or included on the consumer's credit record which is false, inaccurate or obsolete;

- (9) Use a program or plan which uses or employs installment payments featuring payments charged directly to a credit card prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer; or
- (10) Engaging in any violation of the federal Consumer Credit Protection Act.

Before the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, whichever occurs first, the credit services business shall provide the consumer with an information statement in writing containing all of the information required under § [47-18-1005](#). The credit services business shall maintain on file or microfilm for a period of two (2) years from the date of the consumer's acknowledgement an exact copy of the information statement personally signed by the consumer acknowledging receipt of a copy of the information statement.

**Contents of the information statement.** The required information statement shall include all of the following:

- (1)**a.** A complete and accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681g); and
- b.** A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency, if requested by the consumer within thirty (30) days from receipt of the consumer's request; and
- c.** A statement that a nominal charge, not to exceed eight dollars (\$8), may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all information in the consumer's file, if the consumer has not been denied credit within sixty (60) days from receipt of the consumer's request.
- (2) A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item contained in any file on the consumer that is maintained by any consumer reporting agency, as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681(i));
- (3) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay, or become obligated to pay, for the services;
- (4) **a.** Name and address of the surety company which issued the bond in accordance with § [47-18-1011](#)
- b.** A statement explaining the consumer's right to proceed against the bond; and
- (5) A complete and accurate statement of the availability of non-profit credit counseling.

All contracts between a consumer and a credit services business for the purchase of the services of the credit services business must be in writing, dated, signed by the consumer, and must include all of the following:

- (1) A conspicuous statement in size equal to at least ten (10) point bold type, in immediate proximity to the space reserved for the signature of the consumer, as follows: “**You, the buyer, may cancel this contract at any time prior to twelve o'clock**

- midnight (12:00) of the fifth business 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 consumer, whether to the credit services business or to some other person;
  - (3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified; and
  - (4) The principal business address of the credit services business and the name and address of its agent in this state authorized to receive service of process.

b) (1) The contract shall be accompanied by a completed form in duplicate, captioned “NOTICE OF CANCELLATION,” which shall be attached to the contract and easily detachable, and which shall contain in at least ten (10) point bold type the following statement:

#### **NOTICE OF CANCELLATION**

**You may cancel this contract, without any penalty or obligation, at any time prior to twelve o'clock midnight (12:00) of the fifth business day after the date the contract is signed.**

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

**To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to (Name of Seller) at (Address of Seller) (Place of Business) not later than twelve o'clock midnight (12:00) (Date)**

**I HEREBY CANCEL THIS TRANSACTION.**

Date

(Buyer's Signature)

A copy of the fully completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

**In order to provide a degree of protection to customers of credit services businesses, each credit services business shall post a bond of one hundred thousand dollars (\$100,000) with the department of commerce and insurance (any credit services business that was registered with the division of consumer affairs in the department of commerce and insurance on May 1, 1998, in this state shall only be required to post a bond in the amount of ten thousand dollars (\$10,000)).** Such bond may be made through deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner. The bond must be maintained for two (2) years following the date on which the credit services business ceases to conduct business in this state. In addition to the private lawsuits authorized by law, the state attorney general may enforce the provisions of this act and has the right to request that the total amount of the bond posted by the credit services business be awarded to the state for consumer restitution or civil penalties. A list of credit services businesses that have complied with the bond requirement above on the web at <http://www.state.tn.us/consumer/documents/CreditServicesBusinessesList.pdf>.

If you feel you have been the victim of unfair or deceptive business practices by a credit repair company or counseling service, you may file a complaint with the Division of Consumer Affairs at 1-800-342-8385 or online at [www.tn.gov/consumer](http://www.tn.gov/consumer).