

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 857

(Senator Gladden)

Finance

Economic Matters

Consumer Protection - Enforcement Authority of Consumer Protection Division

This bill alters the stipulations or conditions that the Consumer Protection Division in the Office of the Attorney General may include in a written assurance of discontinuance, settlement agreement, or cease and desist order to enforce the Maryland Consumer Protection Act.

Fiscal Summary

State Effect: Enhancing the Consumer Protection Division's enforcement authority is not expected to affect the amounts recoverable by the State for violations of the Maryland Consumer Protection Act.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: In addition to requiring restitution and payment of the division's investigation costs, a written assurance of discontinuance, settlement, or a cease and desist order may include a stipulation or condition requiring the violator or alleged violator to: (1) pay economic damages; (2) post a performance bond or other security; and (3) provide information to the division that is appropriate to assist the public in obtaining relief or to prevent future violations. If the division issues an order to correct a violation of the Act, the order must include any stipulation or condition contained in a written assurance of discontinuance, settlement agreement, or cease and desist order.

In determining the amount of a performance bond or other security, when one must be posted, the division must consider: (1) the nature of the violation; (2) the value of what was received from the consumer; (3) whether full restitution has been paid; and (4) the risk of future harm to consumers.

Current Law: Upon receiving a complaint, the division must determine whether there are “reasonable grounds” to believe that a violation of the Act has occurred. Generally, if the division finds reasonable grounds, the division must seek to conciliate the complaint. If the division finds that violations are causing immediate, substantial, and irreparable injury, the Attorney General may seek an injunction, without first attempting conciliation. The terms of a conciliation agreement may be part of a written assurance of discontinuance or settlement agreement. An assurance or agreement does not constitute an admission that the law has been violated.

A written assurance of discontinuance, settlement, or a cease and desist order may include a stipulation or condition requiring the violator or alleged violator to pay: (1) the division’s investigation costs; and (2) restitution to the consumer. These stipulations and conditions do not preclude the division from using any other stipulation, condition, or remedy necessary to correct a violation of the Act.

Failing to adhere to a provision of a written assurance of discontinuance or settlement agreement is a violation of the Act. The division’s failure to enforce a violation of a provision of the assurance or agreement does not constitute a waiver of any other provision or a right of the division.

The division may hold a public hearing to determine whether a violation of the Act has occurred. If, at the conclusion of a hearing, the division finds that a violation of the Act has occurred, the division must state its findings and issue an order requiring the violator to cease and desist from the violation and to take affirmative action, including the restitution of money or property.

The division may also seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

Background: In *Consumer Protection Division v. George*, 383 Md. 505 (2004), the Court of Appeals found that the division’s authority to require a violator of the Act to take affirmative action does not authorize the division to require a violator to post a bond or to disclose financial information to aid in the division’s enforcement of a cease and desist order.

Additional Information

Prior Introductions: None.

Cross File: HB 507 (Delegate Krysiak, *et al.*) – Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division),
Department of Legislative Services

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