

SENATE BILL 383

N1

(3lr1104)

ENROLLED BILL

— *Judicial Proceedings and Finance/Environmental Matters and Economic Matters* —
Introduced by **Senators Raskin, Benson, Colburn, Ferguson, Forehand, Frosh,
Jones-Rodwell, King, Madaleno, Manno, Montgomery, Muse, Peters,
Pugh, Ramirez, Rosapepe, and Stone**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Real Property – ~~Stopping Fraud in Maryland~~ Mortgage Assistance Relief**
3 **Services Act of 2013**

4 FOR the purpose of ~~requiring certain mortgage assistance relief service providers to~~
5 establishing that a mortgage assistance relief service provider providing
6 mortgage assistance relief service in connection with a dwelling in the State that
7 does not comply with certain provisions of federal law is in violation of this Act;
8 authorizing the Attorney General or the Commissioner of Financial Regulation
9 to seek an injunction to prohibit a violation of certain provisions of this Act;
10 ~~making a violation of this Act an unfair or deceptive trade practice under the~~
11 ~~Maryland Consumer Protection Act and subject to certain enforcement and~~
12 ~~penalty provisions~~ authorizing the Commissioner to enforce the provisions of this
13 Act by exercising certain powers and requiring a violator to take certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 affirmative action under certain circumstances; authorizing the Attorney
 2 General and the State's Attorney to conduct the criminal investigation and
 3 prosecution of ~~mortgage assistance relief services~~ violations under ~~certain~~
 4 ~~provisions of~~ this Act; authorizing a private right of action for a violation of
 5 ~~certain provisions of~~ this Act under certain circumstances; establishing the
 6 venue for certain ~~actions~~ violations of this Act; imposing certain penalties for a
 7 violation of ~~certain provisions of~~ this Act under certain circumstances; making a
 8 violation of this Act an unfair or deceptive trade practice under the Maryland
 9 Consumer Protection Act and subject to certain enforcement and penalty
 10 provisions; establishing that a certain attorney exception in federal law applies
 11 only to certain individuals; altering the definition of "credit services business" for
 12 purposes of certain provisions of law regulating credit services businesses to
 13 exclude, beginning on a certain date, certain mortgage assistance relief service
 14 providers; defining certain terms; ~~establishing that this Act supersedes certain~~
 15 ~~provisions of law under certain circumstances~~ declaring the intent of the General
 16 Assembly; and generally relating to mortgage assistance relief services.

17 BY repealing and reenacting, without amendments,

18 Article – Commercial Law

19 Section 14–1901(a) and (e)(1)

20 Annotated Code of Maryland

21 (2005 Replacement Volume and 2012 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article – Commercial Law

24 Section 14–1901(e)(3)(viii) and (ix)

25 Annotated Code of Maryland

26 (2005 Replacement Volume and 2012 Supplement)

27 BY adding to

28 Article – Commercial Law

29 Section 14–1901(e)(3)(x)

30 Annotated Code of Maryland

31 (2005 Replacement Volume and 2012 Supplement)

32 BY adding to

33 Article – Real Property

34 Section 7–501 through ~~7–510~~ 7–511 to be under the new subtitle "Subtitle 5.

35 Maryland Mortgage Assistance Relief Services Act"

36 Annotated Code of Maryland

37 (2010 Replacement Volume and 2012 Supplement)

38 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 39 MARYLAND, That the Laws of Maryland read as follows:

40 Article – Commercial Law

1 14-1901.

2 (a) In this subtitle the following words have the meanings indicated.

3 (e) (1) “Credit services business” means any person who, with respect to the
 4 extension of credit by others, sells, provides, or performs, or represents that such person
 5 can or will sell, provide, or perform, any of the following services in return for the
 6 payment of money or other valuable consideration:

7 (i) Improving a consumer’s credit record, history, or rating or
 8 establishing a new credit file or record;

9 (ii) Obtaining an extension of credit for a consumer; or

10 (iii) Providing advice or assistance to a consumer with regard to
 11 either subparagraph (i) or (ii) of this paragraph.

12 (3) “Credit services business” does not include:

13 (viii) Any consumer reporting agency as defined in the federal Fair
 14 Credit Reporting Act (15 U.S.C. §§ 1681 – 1681t) or in § 14-1201(e) of this title; [or]

15 (ix) An individual licensed by the Maryland Board of Public
 16 Accountancy when the individual renders services within the course and scope of
 17 practice by the individual as a certified public accountant and does not engage in the
 18 credit services business on a regular and continuing basis; OR

19 (X) **BEGINNING JULY 1, 2013, A MORTGAGE ASSISTANCE**
 20 **RELIEF SERVICE PROVIDER REGULATED UNDER TITLE 7, SUBTITLE 5 OF THE**
 21 **REAL PROPERTY ARTICLE.**

22 **Article – Real Property**

23 **SUBTITLE 5. MARYLAND MORTGAGE ASSISTANCE RELIEF SERVICES ACT.**

24 **7-501.**

25 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 26 **INDICATED.**

27 (B) **“COMMISSIONER” MEANS THE COMMISSIONER OF FINANCIAL**
 28 **REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.**

29 (C) **“DWELLING” HAS THE MEANING STATED IN 12 C.F.R. § 1015.2 AND**
 30 **ANY SUBSEQUENT REVISION OF THAT REGULATION.**

1 (D) "MORTGAGE ASSISTANCE RELIEF SERVICE" HAS THE MEANING
2 STATED IN 12 C.F.R. § 1015.2 AND ANY SUBSEQUENT REVISION OF THAT
3 REGULATION.

4 (E) (1) "MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER" HAS
5 THE MEANING STATED IN 12 C.F.R. § 1015.2 AND ANY SUBSEQUENT REVISION
6 OF THAT REGULATION.

7 (2) "MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER"
8 INCORPORATES THE MEANINGS OF OTHER TERMS STATED IN 12 C.F.R. § 1015.2
9 TO THE EXTENT THOSE TERMS ARE USED TO ESTABLISH THE MEANING OF
10 "MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER".

11 ~~(F) "PERSON" HAS THE MEANING STATED IN 12 C.F.R. § 1015.2 AND~~
12 ~~ANY SUBSEQUENT REVISION OF THAT REGULATION.~~

13 7-502.

14 ~~(A) A MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER WHO OFFERS~~
15 ~~PROVIDING MORTGAGE ASSISTANCE RELIEF SERVICE IN CONNECTION WITH A~~
16 ~~DWELLING IN THE STATE SHALL THAT DOES NOT COMPLY WITH 12 C.F.R. §§~~
17 ~~1015.1 THROUGH 1015.11 AND ANY SUBSEQUENT REVISION OF THOSE~~
18 ~~REGULATIONS.~~

19 ~~(B) A MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER WHO DOES~~
20 ~~NOT COMPLY WITH SUBSECTION (A) OF THIS SECTION IS IN VIOLATION OF THIS~~
21 ~~SUBTITLE.~~

22 7-503.

23 THE ATTORNEY EXEMPTIONS IN 12 C.F.R. § 1015.7 APPLY ONLY TO AN
24 INDIVIDUAL ADMITTED TO PRACTICE LAW IN THE STATE WHO PROVIDES
25 MORTGAGE ASSISTANCE RELIEF SERVICE AS PART OF THE INDIVIDUAL'S
26 REGULAR PRACTICE OF LAW.

27 7-504.

28 FOR THE PURPOSE OF VENUE UNDER THIS SUBTITLE, A VIOLATION OF
29 THIS SUBTITLE SHALL BE CONSIDERED TO HAVE BEEN COMMITTED:

30 (1) IN THE COUNTY IN WHICH THE DWELLING IS LOCATED FOR
31 WHICH MORTGAGE ASSISTANCE RELIEF SERVICE IS BEING PROVIDED;

1 **(2) IN THE COUNTY IN WHICH AN ACT WAS PERFORMED IN**
2 **FURTHERANCE OF THE VIOLATION; AND**

3 **(3) IN THE COUNTY IN WHICH A PERSON ALLEGED TO HAVE**
4 **VIOLATED THIS SUBTITLE HAD CONTROL OR POSSESSION OF ANY PROCEEDS OF**
5 **THE VIOLATION.**

6 **7-505.**

7 **(A) THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION TO PROHIBIT**
8 **A PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS**
9 **SUBTITLE FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.**

10 **(B) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO:**

11 **(1) PREVENT THE USE BY A PERSON OF ANY PROHIBITED**
12 **PRACTICE;**

13 **(2) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL**
14 **PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY PROHIBITED**
15 **PRACTICE; OR**

16 **(3) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION OF**
17 **THIS SUBTITLE.**

18 **(C) IN ANY ACTION BROUGHT BY THE ATTORNEY GENERAL UNDER THIS**
19 **SECTION, THE ATTORNEY GENERAL IS ENTITLED TO RECOVER THE COSTS OF**
20 **THE ACTION FOR THE USE OF THE STATE.**

21 **7-506.**

22 **(A) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS**
23 **SUBTITLE BY EXERCISING ANY OF THE POWERS PROVIDED UNDER §§ 2-113**
24 **THROUGH 2-116 OF THE FINANCIAL INSTITUTIONS ARTICLE.**

25 **(B) (1) THE COMMISSIONER MAY SEEK AN INJUNCTION TO PROHIBIT**
26 **A PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS**
27 **SUBTITLE FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.**

28 **(2) THE COURT MAY ENTER ANY ORDER OR JUDGMENT**
29 **NECESSARY TO:**

30 **(1) PREVENT THE USE BY A PERSON OF ANY PROHIBITED**
31 **PRACTICE;**

1 (II) RESTORE TO A PERSON ANY MONEY OR REAL OR
2 PERSONAL PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY
3 PROHIBITED PRACTICE; OR

4 (III) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION
5 OF THIS SUBTITLE.

6 (3) IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER
7 THIS SECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF
8 THE ACTION FOR THE USE OF THE STATE.

9 (C) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS
10 SUBTITLE BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE ACTION TO
11 CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR
12 PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.

13 (D) THE COMMISSIONER MAY:

14 (1) INVESTIGATE VIOLATIONS OF THIS SUBTITLE; AND

15 (2) AID ANY OTHER UNIT OF STATE GOVERNMENT THAT HAS
16 REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE
17 VIOLATOR.

18 (E) THE COMMISSIONER MAY COOPERATE IN THE INVESTIGATION AND
19 PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH ~~THE~~:

20 (1) THE OFFICE OF THE ATTORNEY GENERAL, A STATE'S
21 ATTORNEY, OR ANY OTHER UNIT OF LAW ENFORCEMENT, ~~OR WITH THE~~ IN THE
22 STATE; OR

23 (2) THE FEDERAL TRADE COMMISSION, THE CONSUMER
24 FINANCIAL PROTECTION BUREAU, OR THE U.S. DEPARTMENT OF HOUSING
25 AND URBAN DEVELOPMENT.

26 7-507.

27 (A) (1) IN ADDITION TO ANY ACTION AUTHORIZED UNDER THIS
28 SUBTITLE AND ANY OTHER ACTION OTHERWISE AUTHORIZED BY LAW, A PERSON
29 MAY BRING AN ACTION FOR DAMAGES INCURRED AS THE RESULT OF A
30 VIOLATION OF THIS SUBTITLE.

1 **(2) A PERSON MAY BRING AN ACTION FOR DAMAGES UNDER THIS**
2 **SECTION:**

3 **(I) WITHOUT HAVING TO EXHAUST ADMINISTRATIVE**
4 **REMEDIES UNDER THIS SUBTITLE; AND**

5 **(II) REGARDLESS OF THE STATUS OF AN ADMINISTRATIVE**
6 **ACTION OR A CRIMINAL PROSECUTION, IF ANY, UNDER THIS SUBTITLE.**

7 **(B) A PERSON WHO BRINGS AN ACTION UNDER THIS SECTION AND WHO**
8 **IS AWARDED DAMAGES ALSO MAY SEEK, AND THE COURT MAY AWARD,**
9 **REASONABLE ATTORNEY'S FEES.**

10 **(C) IF THE COURT FINDS THAT THE DEFENDANT VIOLATED THIS**
11 **SUBTITLE, THE COURT MAY AWARD DAMAGES EQUAL TO THREE TIMES THE**
12 **AMOUNT OF ACTUAL DAMAGES.**

13 **7-508.**

14 **(A) THE ATTORNEY GENERAL AND THE STATE'S ATTORNEY ARE**
15 **AUTHORIZED TO CONDUCT THE CRIMINAL INVESTIGATION AND PROSECUTION**
16 **OF ALL CASES ALLEGING A VIOLATION OF THIS SUBTITLE.**

17 **(B) THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY, AS**
18 **APPROPRIATE, SHALL REPORT PROMPTLY A CONVICTION UNDER THIS**
19 **SUBTITLE TO THE UNIT OF STATE GOVERNMENT THAT HAS REGULATORY**
20 **JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE PERSON CONVICTED.**

21 **7-509.**

22 **(A) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS**
23 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO**
24 **IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$10,000**
25 **OR BOTH.**

26 **(B) (1) A PERSON CONVICTED OF VIOLATING THIS SUBTITLE SHALL**
27 **PAY RESTITUTION TO ANY PERSON DAMAGED BY THE VIOLATION.**

28 **(2) RESTITUTION SHALL BE ORDERED IN ADDITION TO A FINE OR**
29 **IMPRISONMENT OR BOTH.**

30 **(C) EACH VIOLATION OF THIS SUBTITLE CONSTITUTES A SEPARATE**
31 **OFFENSE AND SHALL NOT MERGE WITH ANY OTHER CRIMES SET FORTH IN THE**
32 **CRIMINAL LAW ARTICLE.**

1 (D) A PERSON WHO VIOLATES THIS SUBTITLE IS SUBJECT TO § 5-106(B)
2 OF THE COURTS ARTICLE.

3 **7-510.**

4 A VIOLATION OF THIS SUBTITLE IS:

5 (1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE
6 MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND

7 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
8 CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

9 **7-511.**

10 THIS SUBTITLE MAY BE CITED AS THE MARYLAND MORTGAGE
11 ASSISTANCE RELIEF SERVICES ACT.

12 SECTION 2. AND BE IT FURTHER ENACTED, That ~~the authority of the~~
13 ~~Commissioner of Financial Regulation to regulate mortgage assistance relief services~~
14 ~~under Title 14, Subtitle 19 of the Commercial Law Article for any violation committed~~
15 ~~after the effective date of this Act is superseded by this Act~~ *it is the intent of the*
16 *General Assembly, in enacting Title 7, Subtitle 5 of the Real Property Article in Section*
17 *1 of this Act, to implement in State law the consumer protections available under*
18 *federal regulations governing mortgage assistance relief service providers. This Act is*
19 *not intended, and may not be construed, to have any effect on the authority of the*
20 *Commissioner of Financial Regulation to regulate mortgage assistance relief service*
21 *providers under Title 14, Subtitle 19 of the Commercial Law Article, or on any*
22 *enforcement actions, including litigation, taken under that authority as it existed and*
23 *based on actions that occurred before the effective date of this Act.*

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 July 1, 2013.