

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 188

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

**Financial Institutions - Commissioner of Financial Regulation - Disclosure and
Sharing of Information**

This departmental bill expands the scope of confidentiality pertaining to information obtained or generated in the exercise of examination authority – beyond banking institutions and credit unions – to include all persons required to be licensed by the Commissioner of Financial Regulation (or otherwise under the jurisdiction of the commissioner). The bill is also intended to clarify that subsequent disclosure by any person in possession of information is subject to the confidentiality provisions and expressly prohibited without the commissioner’s prior written consent. It expands application of the existing maximum \$1,000 fine for violations of confidentiality provisions as well as the existing maximum incarceration penalty of two years imprisonment to licensed persons, including collection agencies and debt management services providers. The bill also makes conforming changes.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to expanded application of penalty provisions. Enforcement can be handled with existing resources. The District Court can handle the bill’s requirements with existing resources.

Local Effect: Potential minimal increase in local revenues and expenditures due to expanded application of penalty provisions. Enforcement can be handled with existing resources. The circuit courts can handle the bill’s requirements with existing resources.

Small Business Effect: The Department of Labor, Licensing and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill establishes that a person, including the Commissioner of Financial Regulation and an employee of and the attorney for the commissioner's office, may not disclose any information obtained or generated in the exercise of the commissioner's authority to examine banking institutions, credit unions, or licensed persons. The bill defines "licensed person" as (1) a person required to be licensed under the Financial Institutions Article, whether or not the person maintains a license, and (2) a collection agency required to be licensed under the Business Regulation Article, whether or not the collection agency maintains a license.

Allowable Disclosures: The commissioner may disclose such information, however, when:

- performing a public duty to report on or take special action about the business of a banking institution, credit union, or licensed person;
- testifying as a witness in a criminal proceeding;
- informing any director or authorized officer, member, partner, employee, or agent (as relevant) of a banking institution, credit union, or licensed person of the results of an examination;
- providing information to any state or federal agency having supervisory authority over the banking institution, credit union, or licensed person;
- providing information about a banking institution to the Federal Deposit Insurance Corporation (FDIC), if the banking institution is applying for insurance from the FDIC and asks the commissioner to do so;
- providing information about a banking institution to the Board of Governors of the Federal Reserve Bank System or the Federal Reserve Bank of Richmond, if the banking institution is applying for membership in the Federal Reserve System and asks the commissioner to do so;

- providing information about a banking institution to the Office of the Comptroller of the Currency, if the banking institution is applying to convert to, consolidate or merge with, or transfer assets to a national banking association and asks the commissioner to do so;
- providing information about a banking institution to any other state bank regulatory agency, if the banking institution is applying to consolidate or merge with or transfer assets to an other-state bank and asks the commissioner to do so;
- providing information about a credit union to a credit union share guaranty corporation, if the credit union is insured by the credit union share guaranty corporation (or is applying for insurance from the credit union share guaranty corporation) and asks the commissioner to do so;
- providing information about a credit union to the National Credit Union Administration, if the credit union is applying for insurance from the National Credit Union Administration and asks the commissioner to do so (or is applying to convert to or merge with a federal credit union and asks the commissioner to do so);
- providing information about a credit union to another state bank regulatory agency, if the credit union is applying to merge with an other-state credit union and asks the commissioner to do so; or
- entering information into evidence under seal in a public enforcement hearing.

Clarifying Provisions: The bill clarifies that the Commissioner of Financial Regulation may enter into information sharing agreements with any federal or other state's regulatory agency having authority over banking institutions, credit unions, or licensed persons, as well as with any federal or state law enforcement agency, as long as the agreements prohibit the agencies from disclosing any shared information without the prior written consent from the commissioner regarding disclosure of the particular information.

The commissioner may also exchange information about banking institutions, credit unions, and licensed persons, including information obtained or generated during an examination, with any federal or other state's regulatory agency having authority over the banking institutions, credit unions, or licensed persons as well as with any federal or state law enforcement agency. The bill establishes that information shared by the commissioner under such circumstances may not be disclosed by an agency under federal or other states' laws governing the disclosure of public information or by subpoena, discovery, or admission into evidence in private civil litigation or administrative process, without the prior written consent of the commissioner.

The bill also specifies that all information disclosed to any person (as permitted) (1) remains the property of the commissioner and (2) may not be further disclosed by any person without the prior written permission of the commissioner. Specified provisions of the General Provisions Article relating to disclosure of information are superseded by the bill's requirements.

Applicability Provisions: The bill defines "credit union" as a credit union that is incorporated under the laws of Maryland as a credit union. The bill defines "other-state credit union" as a credit union chartered and primarily regulated by another state. The bill also defines a "Nationwide Mortgage Licensing System and Registry" (NMLS) as a multistate uniform licensing system developed and maintained by the Conference of State Bank Supervisors (including a subsidiary or an affiliate) that may be used for licensing of persons required to be licensed under the Financial Institutions Article.

The bill does not apply to information relating to publicly adjudicated disciplinary or enforcement actions against a licensed person or against a banking institution or credit union and designated by the commissioner for access to the public. The bill also does not apply to information or material provided to NMLS under certain provisions of law.

Penalties: A person who violates the bill's provisions is guilty of a misdemeanor and on conviction is subject to the existing penalty of forfeiture of the person's office or employment as well as a maximum fine of \$1,000 and/or imprisonment for up to two years.

Current Law: The Commissioner of Financial Regulation may:

- enter into cooperative and information sharing agreements with any federal or state regulatory agency having authority over financial institutions or any state or federal law enforcement agency, if the agreements prohibit the agency from disclosing any shared information without prior written consent from the commissioner regarding disclosure of the particular information; and
- exchange information about a financial institution, including information obtained during an examination, with any federal or state regulatory agency having authority over the financial institution or any state or federal law enforcement agency.

For banks and credit unions, the commissioner, the employees of and the attorney for the commissioner's office, and the member of the Banking Board may not disclose (1) the name of any debtor; (2) any information about private accounts or transactions; (3) any information obtained in the course of an examination; or (4) any confidential information obtained from a federal banking authority. However, these requirements do not apply to any information that a person discloses (1) in performing a public duty to report on or take special action about the banking or credit union business; (2) in testifying as a witness in a

criminal proceeding; or (3) in informing any director or authorized officer, employee, or agent under examination of the results of an examination.

Background: DLLR advises that, over the past 20 years, the number and type of nonbank actors involved in financial services (particularly lending) have increased significantly. As a result, the General Assembly enacted licensing statutes that brought many nonbank actors under the jurisdiction of the Commissioner of Financial Regulation. The General Assembly also provided the commissioner with examination authority over many of the licensing categories.

According to DLLR, the goal of an examination is to identify the nature, severity, and cause of problems and to develop corrective measures to prevent deterioration of capital in the case of banks or consumer harm in the case of licensees. As part of the examination process, banks and other licensees must make their books and records (including policies, transactions, *etc.*) available for review, as well as engage in informal discussion with examiners during the course of the examination. For an examination to be successful, the flow of information (written and verbal) between the licensee and commissioner must be open and frank. Because only bank examinations are subject to specific confidentiality law beyond the Maryland Public Information Act, the effectiveness of licensee examinations has been limited.

In 2014, the commissioner's reports of examination of a Maryland-chartered bank were disclosed during discovery of bank (the defendant) evidence by the plaintiff without the commissioner's prior permission, as required under § 5-209 of the Financial Institutions Article. The plaintiff attempted to enter the reports of examination into evidence against the bank. The commissioner intervened in the lawsuit to compel the return of the reports of examination and to prevent further disclosure. The plaintiff contended that, based on the applicable statute, the instances of permissible disclosure were not subject to the prohibition and the commissioner's authority to enforce the privilege in the event of subsequent disclosures did not extend to the plaintiff. DLLR advises that the bill is intended to expand confidentiality requirements to all licensees subject to the commissioner's authority and to prohibit subsequent disclosures by others who may have access to confidential information unless specifically authorized.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2016
min/kdm Revised - Enrolled Bill - May 18, 2016

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Disclosure of Information**

BILL NUMBER: HB 188

PREPARED BY:

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

We do not believe there will be any impact on small businesses as a result of this legislation.