HB 362

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 362 (Delegate Conaway)
Economic Matters

Consumer Protection - Recurring Automatic Orders - Notice of Method of Contract Cancellation

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This bill requires a merchant that provides or sells consumer goods or services by mail or over the telephone under a recurring payment contract to include specified information to the consumer on how to cancel the contract. The notice must be written and either included with each shipment of consumer goods or sent at least one week before payment is due. The notice must include either (1) a toll-free telephone number that the consumer may call to cancel the contract or (2) an address to which a consumer may write to cancel the contract. In addition, for consumer goods or services provided or sold over the Internet, the merchant must include in a prominent place on its website a link to a web page that allows the consumer to cancel the contract.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law: A merchant that provides consumer goods or services over the Internet under a recurring payment contract must include certain information in a prominent place on its website, including (1) a toll-free telephone number that a consumer may call to cancel the contract or (2) an address to which a consumer may write to cancel the contract. Violation of the requirement is an unfair or deceptive trade practice under the MCPA, subject to MCPA's civil and criminal penalty provisions.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

Background: According to the Consumer Financial Protection Bureau (CFPB), consumers use automatic payments set up with a merchant or other service provider to pay bills and other recurring payments from their bank or credit union accounts. Automatic payments can be a convenient way for people to make sure they pay their bills on time. Some lenders offer an interest rate reduction on loans for paying automatically. However, CFPB notes that some consumers have reported having trouble stopping automatic payments after providing a company with their account information.

According to CFPB, federal law provides protections for recurring automatic payments, and consumers have the right to stop a company from taking automatic payments from their account, even if they previously allowed the payments. CFPB recommends that consumers first call and write the company and inform it that permission to take automatic payments is being revoked. (This is called "revoking authorization.") Next, consumers should inform their financial institution that they have revoked authorization for recurring payments. Even if authorization has not been revoked, consumers can stop an automatic payment from being charged to their account by giving the bank a "stop payment" order, which instructs a bank to stop allowing the company to take payments from an account. Finally, CFPB recommends that consumers monitor their accounts regularly and notify their financial institution if a charge appears that was not authorized or for which authorization was previously revoked. Federal law gives consumers the right to dispute and get their money back for any unauthorized transfers as long as the financial institution is notified in time.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 6, 2017
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