

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled

House Bill 1297

(Delegates Aumann and Frick)

Economic Matters

Finance

Commercial Law - Consumer Loans and Credit - Miscellaneous Provisions

This bill implements several recommendations made in the interim report of the Maryland Financial Consumer Protection Commission (MFCPC) that relate to consumer lending. Specifically, the bill establishes new requirements within the interest and usury sections of the Commercial Law Article for a “covered loan” that prohibit an unlicensed person from making such a loan. In addition, the bill increases from \$6,000 to \$25,000 the threshold below which a loan is subject to small lending requirements within the Maryland Consumer Loan Law (MCLL) and prohibits a person from lending \$25,000 or less if the person is not licensed under (or exempt from) requirements under MCLL. The bill also establishes that specified violations result in a loan becoming *void* as well as unenforceable. **The bill takes effect January 1, 2019.**

Fiscal Summary

State Effect: General fund revenues may increase minimally due to the expansion of loans (and hence the number of lenders) subject to licensure. Expenditures are not materially affected. Additionally, the bill’s imposition of existing penalty provisions likely does not affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Interest and Usury Provisions (Title 12, Subtitle 1 of the Commercial Law Article)

The bill expands the definition of “lender” to include a “licensee” who makes a loan subject to the Interest and Usury Subtitle. A “licensee” is a person that is required to be licensed to make loans subject to the Interest and Usury Subtitle, regardless of whether the person is actually licensed.

The bill defines a “loan” as a loan or advance of money or credit subject to the Interest and Usury Subtitle, regardless of whether the loan or advance of money or credit is or purports to be made under that subtitle. A “loan” does not include:

- a loan or advance of money or credit subject to MCLL (*i.e.*, Title 12, Subtitle 3 of the Commercial Law Article), unless a specified written election is made;
- a plan or loan for which a written election is made under Subtitle 3 (MCLL), Subtitle 4 (the Maryland Secondary Mortgage Loan Law), Subtitle 9 (revolving or “open end” credit plans), or Subtitle 10 (closed end credit plans); or
- an installment sale agreement as defined in Title 12, Subtitle 6 of the Commercial Law Article.

The bill establishes that several provisions of the Interest and Usury Subtitle do not apply to provisions expanding applicability of a “covered loan” made to any person.

Beginning on January 1, 2019, a lender may (at the lender’s option) elect to make a loan to any borrower either under the Interest and Usury Subtitle of the Commercial Law Article or as otherwise authorized by applicable law. If the lender makes such an election, other specified provisions relating to consumer loans, secondary mortgage loans, retail credit, retail installment sales, revolving credit, and closed end credit do not apply to the loan.

If a lender does *not* make a written election under the Interest and Usury Subtitle or other specified subtitles of the Commercial Law Article, then the Interest and Usury Subtitle still applies if the loan is (1) for an amount over \$25,000 or (2) for an amount of \$25,000 or less *and* not subject to MCLL.

New Provisions Regarding “Covered Loans”

The bill defines a “covered loan” as a loan that is subject to specified provisions within the Interest and Usury Subtitle, made for personal, family, or household purposes.

Specifically, it is (1) a loan that is secured by the pledge of collateral other than a savings account; (2) an unsecured loan with a maximum interest rate of 24%; or (3) a loan that is not secured by residential real property. A “covered loan” excludes the same types of loans and agreements that are excluded from the definition of “loan” under § 12-101, as noted above.

An “unlicensed person” is a person who is not licensed in Maryland to make a covered loan and is not exempt from licensing in Maryland.

The bill prohibits an unlicensed person from (1) making a covered loan; (2) making a covered loan if the rate of interest exceeds what is authorized under Maryland law, based on specified criteria; and (3) making a covered loan that violates the federal [Military Lending Act](#) (MLA).

Except in limited circumstances (*e.g.*, a clerical error that is corrected prior to the due date of the first payment), if the rate of interest on a covered loan exceeds the amount authorized by Maryland law, the loan is *void* as well as unenforceable. Accordingly, with respect to a loan that is void and unenforceable, a person may not:

- collect or attempt to collect (directly or indirectly) any amount from the borrower;
- enforce or attempt to enforce the contract against any property securing the loan; or
- sell, assign, or otherwise transfer the loan to another person.

A covered loan that violates MLA is void and unenforceable. A covered loan made by an unlicensed person is also void and unenforceable.

Maryland Consumer Loan Law (Title 12, Subtitle 3 of the Commercial Law Article)

The bill alters definitions, alters the scope of MCLL, increases the threshold below which loans are subject to MCLL, and repeals provisions regarding prohibited lender actions under MCLL that are obsolete under the bill. Specifically, the bill increases the threshold for a loan subject to MCLL from \$6,000 to \$25,000. Thus, a lender may not make a loan subject to MCLL that exceeds \$25,000.

Under the bill, Title 12, Subtitle 3 of the Commercial Law Article applies to a loan or advance of money of \$25,000 or less for personal, family, or household purposes – *regardless* of whether the loan or advance is (or purports to be) another type of product. In addition, a person may not lend \$25,000 or less if interest on a loan exceeds the amount authorized by Maryland law, the transaction violates MLA, or the person is not licensed (or exempt). The bill specifies that MCLL does not apply to (1) a plan or loan for which a written election has been made under other provisions of law relating to interest and usury,

secondary mortgage loans, revolving credit, and closed end credit transactions; (2) a loan made by an individual who makes three or fewer loans per year and is not engaged in the business of making loans; or (3) a loan between an employer and an employee.

The bill increases the threshold under which a lender is prohibited from taking a security interest from (1) \$2,000 to \$4,000, if the security is real property and (2) \$700 to \$1,400, if the security is personal property.

Retail Installment Sales

The bill also increases the threshold whereby retail installment sales requirements apply to all tangible personal property from a cash price of \$25,000 to a cash price of \$100,000.

Election to Lend under Secondary Mortgage Lender Law

The bill alters the definition of “licensee” under the Maryland Secondary Mortgage Loan Law to include a person who is required to be licensed under the Maryland Mortgage Lender Law, regardless of whether the person is actually licensed.

In addition, as of January 1, 2019, the bill authorizes a lender to make an election to lend under the Secondary Mortgage Loan Law (Title 12, Subtitle 4 of the Commercial Law Article). If the lender makes such an election, other provisions of the Commercial Law Article relating to interest and usury, consumer loans, revolving credit, and closed end credit do not apply.

If a lender does not make a written election under the Secondary Mortgage Loan Law or other specified subtitles of the Commercial Law Article, then the loan becomes subject to either Subtitle 1 (Interest and Usury) or Subtitle 3 (MCLL), depending on the characteristics of the loan.

Current Law/Background:

Interest and Usury (Title 12, Subtitle 1 of the Commercial Law Article)

Loans made under the Interest and Usury Subtitle generally cap interest rates at 24%. However, in contrast to MCLL (which caps interest at 33%), the Interest and Usury Subtitle calculates interest rates differently. For example, fees charged at inception of a loan in calculating the interest are not included, more fees are permitted, and there are less stringent penalties and protective provisions for consumers.

Any lender who knowingly and willfully violates the permitted interest charges under Subtitle 1 is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500, imprisonment for up to six months, or both.

Maryland Consumer Loan Law (Title 12, Subtitle 3 of the Commercial Law Article)

MCLL applies to small, unsecured loans of \$6,000 or less. Loans made under MCLL generally cap interest at 33% with a balance of \$2,000 or less and 24% with a balance of more than \$2,000.

Generally, any licensee, officer, or employee who knowingly violates MCLL is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500, imprisonment for up to six months, or both.

Background: In January 2018, MFCPC released an interim report recommending changes to Maryland consumer and payday lending laws. According to the report, Maryland has been at the forefront of payday lending consumer protection laws. Generally, traditional payday loans that do not exceed \$6,000 have a maximum annual percentage rate (APR) of 33%. Lending practices continue to evolve, however, and in some instances, financial institutions have found ways to avert the law to charge interest rates that exceed the intended 33% APR for small loans. For example, many lenders are now structuring payday loans not as loans, but rather as unsecured, open-end credit plans. Such changes in loan classification and structure may have been structured by lenders to circumvent caps on interest rates and fees.

The General Assembly passed legislation in 2017 to close possible loopholes in payday lending. Chapters 723 and 724 of 2017 limit the interest and fees on unsecured, open-end credit plans to 33% APR. However, the commission recommended filling possible gaps and eliminating loopholes in Maryland's current payday lending statute, particularly related to online lending and advance deposit products.

Specifically, the commission recommended (1) increasing the amount considered as a small loan and considered as a retail installment loan, particularly as these amounts have not been increased in State law since 1975 and 1977, respectively, and (2) specifying in the consumer law that contracts would be expressly void for specified violations.

State Fiscal Effect: Because the bill potentially subjects a larger number of businesses to licensure under MCLL (by raising the threshold of loans that qualify as small loans), general fund revenues potentially increase minimally from the receipt of additional licensing fees. However, the potential increase in licensees cannot be reliably estimated at this time. State expenditures are not anticipated to be materially affected by the bill.

Small Business Effect: Small businesses that make consumer loans are potentially affected by the bill. Because the bill increases the threshold for small consumer loans covered by MCLL, more small businesses may become subject to MCLL's licensing requirements. In addition, the increase could result in higher required amounts of bond coverage for consumer lenders.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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