

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 848

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

Economic Matters

Finance

Commissioner of Financial Regulation - Consumer Reporting Agencies

This departmental bill expands regulation of consumer reporting agencies (CRAs) under the Maryland Credit Reporting Agencies Act. The bill also requires licensing, investigation, and examination fees of specified nondepository financial institutions to be deposited into the Nondepository Special Fund.

Fiscal Summary

State Effect: General fund revenues decrease by \$783,200 in FY 2019 and \$1.04 million annually thereafter due to shifting existing revenues to the Nondepository Special Fund. Special fund revenues increase correspondingly. Beginning in FY 2019, general fund expenditures decrease by about \$1.26 million, contingent upon enactment of the bill. Special fund expenditures increase correspondingly due to the funding shift and to register CRAs. Special fund expenditures may increase further to conduct investigations. General fund and special fund revenues increase minimally due to higher civil penalties and investigation reimbursements, respectively.

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

Small Business Effect: The Department of Labor, Licensing, and Regulation has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs in part and disagrees in part with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law:

Nondepository Special Fund Provisions

The bill requires licensing, investigation, and examination fees, as specified, for certain nondepository financial institutions (collection agencies, consumer lenders, installment lenders, sales finance companies, mortgage lenders, check cashing services, CRAs, and credit services businesses) to be deposited into the Nondepository Special Fund, rather than the general fund. No changes to any licensing or other fees occur from this change. Fines and penalties collected by the Office of the Commissioner of Financial Regulation (OCFR) continue to be paid into the general fund. The bill also expands the purpose of the fund to encompass covering the costs of (1) activities related to the new revenues and (2) other functions that have been funded through the general fund.

Consumer Reporting Agency Provisions

The bill expands State authority over CRAs by (1) requiring them to provide a secure, electronic method for placing and removing security freezes; (2) codifying an existing regulatory requirement that CRAs must register with OCFR; and (3) establishing a process for receiving and investigating complaints about CRAs. Finally, the bill imposes a surety bond requirement on CRAs, allows OCFR to recoup investigation costs, and increases civil monetary penalties for violations.

Security Freezes

State law defines a “consumer” as an individual. A “protected consumer” is an individual younger than age 16 at the time a request for a security freeze is made, or an incapacitated or protected person for whom a guardian or conservator has been appointed. A “security freeze” is defined as a restriction placed on a consumer’s consumer report at the request of the consumer that prohibits a CRA from releasing the report (or any information derived from the report) without the authorization of the consumer.

Method of Security Freeze

Under current law, generally a consumer may elect to place a security freeze on the consumer’s consumer report by (1) written request sent by certified mail; (2) telephone, subject to certain requirements related to providing personal information that the CRA may require; (3) electronic mail (email) if a secure email connection is made available by the CRA; and (4) if the reporting agency makes a secure connection available on its website, an electronic request through that secure connection.

The bill requires CRAs to develop secure connections to process electronic requests for placing, lifting, or removing a security freeze.

Credit Freezes for Vulnerable Populations

Under current law, a CRA may not charge a fee for a security freeze for a minor for whom a consumer report already exists. State law also allows a protected consumer's representative to request a security freeze for an individual who is younger than age 16 at the time of request, or for an incapacitated person or a protected person for whom a guardian or conservator has been appointed. The Department of Human Services is authorized by State law to request a security freeze for a child placed in foster care.

The bill expands the definition of a "protected consumer" to include certain populations, including the elderly (age 85 or older), specified members of the military, and incarcerated persons.

Registration and Bond Requirement

Under current regulations, CRAs are required to register with OCFR; however, OCFR is not authorized to register CRAs with the Nationwide Multistate Licensing System (NMLS). Accordingly, OCFR does not have specific authority to revoke a CRA's registration if it fails to comply with Maryland law.

The bill codifies the requirement that CRAs must register with OCFR.

In addition, the bill requires CRAs to post a bond or bond alternative to cover injuries to consumers from violations of the bill's provisions and actual damages to consumers (*e.g.*, a cybersecurity breach or identity fraud). The amount of the bond is determined by OCFR through regulation, but may not exceed \$1 million. OCFR may exempt a CRA from the bond requirement as specified.

Complaint Investigation, Civil Penalties, and Investigation Fees

Under current law, any consumer who has reason to believe that a violation of a law regulating consumer credit reporting has occurred may file a complaint with OCFR. Upon receipt of the complaint, the commissioner may hold a hearing on the complaint, issue an order for compliance, and, if after a hearing the commissioner finds a pattern and practice of violation, issue cease and desist orders. If a CRA ignores a cease and desist order or other order for compliance, the commissioner may impose a civil penalty of up to \$100 for each violation. Additionally, the commissioner may petition the circuit court of any county to aid in the enforcement of any of the aforementioned enforcement powers of the commissioner.

The bill authorizes the commissioner to investigate a written complaint and to inspect the books, records, letters, and contracts of a CRA as well as of each person who has furnished information to the CRA in regards to a specific written complaint.

The bill increases the maximum civil monetary penalty to \$1,000 for the first violation and \$2,500 for each subsequent violation and authorizes imposition of a civil penalty instead of or in addition to any other action that may be taken.

The bill also requires a CRA that is the subject of an investigation to pay any fees that OCFR assesses to recover the costs of any investigation that the commissioner considers necessary.

Confidentiality Privileges of Registrants

Under the bill, while federal and state laws apply to any information or material that has been disclosed to NMLS, the information and material may be shared with all state and federal regulatory officials having oversight authority without the loss of privilege or confidentiality protections. Additionally, the bill authorizes the commissioner to enter into information-sharing agreements with other government agencies.

Background: According to OCFR, in September 2017, Equifax, one of the largest CRAs, disclosed that its security systems had been breached and that consumer credit information was improperly accessed. Approximately 143 million people (including nearly 3 million Maryland residents) were affected by the breach. OCFR notes that, in the aftermath of the breach, many Maryland residents were unable to exercise their rights under State law in a timely manner.

In response to the breach, many governmental agencies at both the state and federal level commenced investigations and conducted hearings related to the breach and Equifax's response. Based on an analysis of activities conducted by other agencies and legislatures, and after considering information from further investigation into CRAs' compliance with Maryland laws and regulations, OCFR determined that additional oversight of CRAs was warranted.

Security Freezes, Generally

A consumer report (sometimes called a credit report) contains key financial information about a consumer, including credit history, bill repayment history, and the status of the consumer's credit accounts. A consumer report includes detailed information about how often a consumer makes payments on time, how much credit is available to the consumer, and whether debt or bill collectors are collecting on money owed by the consumer. A

lender uses information contained in the consumer report to determine whether to extend credit to a consumer and, if so, what interest rate to charge.

Many other types of companies also use consumer reports to make decisions about conducting business with consumers. For example, insurance companies, apartment rental companies, and utility companies often request a consumer report in order to decide whether to conduct business with a consumer. In some cases, prospective employers require applicants to release consumer report information as part of the hiring process.

States have the authority to determine the cost for the placement, lifting, or removal of a security freeze. In some states, consumers incur no cost for the placement, lifting, or removal of a security freeze. In most states, the cost ranges from \$3 to \$10 for each placement, lift, or removal at each CRA.

A security freeze restricts access to a consumer report. Because most creditors need to see a consumer report before they will open a new account, they are unlikely to extend credit with a security freeze in place. Thus, a security freeze makes it more difficult for identity thieves to open new accounts in another person's name. Consumers with an active security freeze on their consumer reports must temporarily lift the freeze in order to allow third parties (*e.g.*, a credit card company, mortgage lender, prospective employer, etc.) access to their reports.

A security freeze does not affect a consumer's credit score (a three-digit number calculated from information contained in a consumer report and a representation of a consumer's creditworthiness).

State Fiscal Effect:

Consumer Reporting Agency Provisions

Special fund expenditures increase by \$4,100 annually beginning in fiscal 2020 for OCFR to pay the NMLS licensing fee for CRAs. The bill does not require CRAs to pay any fee for registration; thus, OCFR must register approximately 41 CRAs with NMLS at \$100 per registration. Because of the terms of OCFR's contract with NMLS, registrants will not be charged in fiscal 2019.

The bill also increases civil penalties for CRAs and authorizes imposition in addition to other actions that may be taken. OCFR advises that it is unable to estimate how many investigations it might undertake or the amount of penalties resulting from such investigations. Even so, general fund revenues likely increase minimally from penalties imposed under the bill. CRAs are also required to reimburse OCFR, on a per-day basis,

for each employee engaged in an investigation. Any such reimbursements are likely to be minimal and must be deposited into the Nondepository Special Fund.

Funding Swap – Nondepository Special Fund Provisions

Beginning on October 1, 2018, the bill requires specified existing licensing, investigation, and examination fees to be paid into the Nondepository Special Fund, rather than the general fund. Thus, general fund revenues decrease by \$783,191 in fiscal 2019 (reflecting the bill's October 1, 2018 effective date) and by \$1.04 million in subsequent years. This estimate is based on a five-year average of licensing fees currently paid into the general fund. Special fund revenues for OCFR increase correspondingly beginning in fiscal 2019.

The fiscal 2019 budget specifies that the general fund appropriation for OCFR be reduced by approximately \$1.26 million, contingent upon enactment of legislation authorizing the deposit of financial regulation licensing and examination fees into the Nondepository Special Fund – as this bill does. The budget also authorizes use of special fund revenues to replace the general fund appropriation. Thus, this analysis assumes that general fund expenditures decrease by about \$1.26 million annually beginning in fiscal 2019 and that special fund expenditures increase correspondingly. However, under the bill, the Nondepository Special Fund is not authorized to receive revenues currently deposited into the general fund until October 1, 2018. Thus, between July 1, 2018, and October 1, 2018, OCFR must rely on the accrued balance in the Nondepository Special Fund in order to maintain current services.

As a result of the bill's funding shift, the general fund is expected to realize net savings while the Nondepository Special Fund is expected to realize net costs. DLS advises that new special fund revenues received under the bill may not be sufficient to cover anticipated ongoing expenditures in some (or all) years. Based on OCFR's revenue estimates and the fiscal 2019 budget, the *estimated* shortfall between new special fund revenues and new special fund expenditures is about \$218,500 annually. If *actual* special fund revenues received as a result of the bill are not sufficient to cover special fund expenditures to maintain services currently paid for with general funds, then the accrued balance of the Nondepository Special Fund is sufficient to cover the shortfall.

In fiscal 2019, OCFR advises that the Nondepository Special Fund is expected to carry forward a balance of approximately \$8.46 million. That amount is more than sufficient to cover the estimated \$218,500 annual gap between current appropriations and expected revenues. In any year in which special fund revenues instead exceed special fund expenditures, that surplus is carried forward as part of the overall fund balance into the next fiscal year and is available for future shortfalls.

Exhibit 1 shows revenues and expenditures as anticipated by OCFR for the Nondepository Special Fund under current law and under the bill, which reflects the combined impacts of the funding shift, the contingent reduction in the fiscal 2019 budget, the October 1, 2018 effective date of these provisions, and registration of CRAs with NMLS. OCFR advises that, under current law, general fund appropriations are used only for salaries and fringe benefits; however, those funds are only applied to a portion of salaries and benefits for 54 employees in OCFR. For purposes of this analysis, DLS assumes that, under the bill, those positions are reclassified as being funded entirely by special funds.

Small Business Effect: The OCFR assessment is that the bill has a potentially significant impact on small businesses. DLS advises, however, that the four major CRAs (Equifax, Experian, TransUnion, and Innovus) do not qualify as small businesses. According to the federal Consumer Financial Protection Bureau, though, at least 40 CRAs are registered nationally. Some of these entities may do business in Maryland and may qualify as small businesses. To the extent they do, they may be affected by increased costs related to the bill's more stringent registration and investigation reimbursement requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; CNBC.com; Consumer Financial Protection Bureau; Department of Legislative Services

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Exhibit 1
Nondepository Special Fund:
OCFR Estimates of Revenues and Expenditures under Current Law and the Bill: Fiscal 2019-2023

REVENUES	<u>FY 2019*</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
Nondepository Licensing Fees	\$6,200,000	\$6,200,000	\$6,200,000	\$6,200,000	\$6,200,000
Nondepository Exam Fees	250,000	250,000	250,000	250,000	250,000
Total Revenues under Current Law	6,450,000	6,450,000	6,450,000	6,450,000	6,450,000
New Revenues under the Bill	783,191	1,044,254	1,044,254	1,044,254	1,044,254
Total Revenues under the Bill	\$7,233,191	\$7,494,254	\$7,494,254	\$7,494,254	\$7,494,254
EXPENDITURES**					
Salaries and Benefits	\$4,508,377	\$4,598,544	\$4,690,515	\$4,784,325	\$4,880,012
Technical and Special Fees	248,535	253,506	258,576	263,748	269,023
Communication	56,169	57,293	58,439	59,607	60,800
Travel/Training	141,270	144,095	146,977	149,917	152,915
Lease Expense, Parking Facilities	37,699	38,453	39,222	40,007	40,807
Contractual Services	171,166	174,590	178,081	181,643	185,276
Supplies and Materials	30,878	31,496	32,126	32,768	33,424
Equipment	60,948	62,167	63,410	64,679	65,972
Fixed Charges, Rent	246,201	251,126	256,148	261,271	266,496
Administrative Expenses	653,600	666,672	680,005	693,605	707,477
CRA Registration Expenses	0	4,100	4,100	4,100	4,100
Total Expenditures under Current Law	6,154,844	6,277,941	6,403,500	6,531,570	6,662,201
New Expenditures under the Bill	1,258,607	1,262,707	1,262,707	1,262,707	1,262,707
Total Expenditures under the Bill	\$7,413,451	\$7,540,648	\$7,666,207	\$7,794,277	\$7,924,908
Net Revenue for Fiscal Year under Current Law	\$295,156	\$172,059	\$46,500	(\$81,570)	(\$212,201)
Net Revenue for Fiscal Year under the Bill	(\$180,261)	(\$46,394)	(\$171,953)	(\$300,023)	(\$430,654)
Special Fund Balance Carried Forward under Current Law	\$8,464,183	\$8,636,242	\$8,682,742	\$8,601,172	\$8,388,971
Special Fund Balance Carried Forward under the Bill	\$7,988,766	\$7,942,372	\$7,770,419	\$7,470,396	\$7,039,742

*October 1, 2018 effective date.

**Assumes processing of a budget amendment to allow the Nondepository Special Fund to be used for expenses the bill does not allow to be covered until October 1, 2018.

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Commissioner of Financial Regulation – Consumer Credit Reporting Agencies

BILL NUMBER: HB 848

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

The proposed legislation is expected to decrease revenues for credit reporting agencies covered by the Credit Reporting Agencies (CRA) Act (including any credit reporting agency that meets the small business definition). Specifically, by increasing the number of free credit reports to two times per year the opportunity to generate revenue on the second requested report would not be permitted (e.g. for one large credit reporting agency, that would be a decrease of \$5 that could be collected on the second credit report). Similarly, by eliminating \$5 charges for subsequent placement, temporary removal, or permanent removal of security freezes, credit reporting agencies will be unable to generate revenue for these actions. Finally, credit reporting agencies will need to cover the costs of maintaining the requisite surety bond and providing a secure, electronic method for placing and removing a security freeze if they do not already do so.