

SB1068/717373/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 1068
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after “of” insert “authorizing a lender to elect to make a certain loan to a borrower under certain circumstances; providing that certain provisions of law do not apply to certain loans under certain circumstances;”; strike beginning with “receiving” in line 5 down through “compensation” in line 6 and substitute “collecting or attempting to collect in a certain manner certain money or enforcing or attempting to enforce a certain contract in a certain manner”; in line 8, after “loans” insert “under certain circumstances”; in line 10, strike “specified” and substitute “certain”; in line 16, after “borrower;” insert “repealing a certain prohibition against a lender taking certain actions;”; in line 21, after “Act” insert “or State financial laws”; in the same line, strike “consumer reporting agencies” and substitute “collection agencies, mortgage lenders”; in line 22, after “mortgage” insert “loan”; in the same line, after “cashers,” insert “money transmitters,”; and strike beginning with “requiring” in line 22 down through “information;” in line 25 and substitute “prohibiting a certain collector from engaging in a certain unlicensed debt collection activity and certain conduct under certain circumstances;”.

On page 2, in line 2, after “actions” insert “or proceedings under certain circumstances”; strike beginning with “providing” in line 4 down through “home;” in line 16 and substitute “providing that certain revenues received from licensing of certain individuals is deposited in the Nondepository Special Fund; expanding the uses and purpose of the Fund;”; strike beginning with “requiring” in line 23 down through “applications” in line 33 and substitute “specifying certain qualifications for an applicant to qualify for a certain license; requiring a certain applicant to provide certain information to the Nationwide Mortgage Licensing System and Registry; specifying the application requirement process, including the license and investigation fees; requiring a certain applicant to file a certain surety bond; requiring the Commissioner to conduct”.

(Over)

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a certain investigation under certain circumstances; requiring the process for when an applicant does not meet certain requirements; establishing the term of a certain license”; and strike beginning with “requiring” in line 36 down through “circumstances;” in line 37.

On pages 2 and 3, strike beginning with “authorizing” in line 40 on page 2 down through “fees” in line 13 on page 3 and substitute “requiring a certain licensee to preserve certain records and communications with certain borrowers; requiring a licensee to comply with certain federal laws; specifying the process when a licensee receives a certain nonconforming payment on a certain loan; prohibiting a certain licensee from certain actions; authorizing the Commissioner to hire certain individuals; authorizing the Commissioner to conduct certain investigations; authorizing the Commissioner to enforce certain provisions of law against certain persons; authorizing the Commissioner to suspend or revoke a certain license under certain circumstances; requiring the Commissioner to provide a certain licensee an opportunity for a certain hearing before taking certain action; providing that a certain licensee that fails to comply with certain requirements is liable to a certain borrower for certain damages”.

On page 3, in line 14, after “regulations;” insert “requiring that certain revenue received for licensing certain persons be credited to the Fund;”; strike beginning with “study” in line 17 down through “technologies” in line 18 and substitute “conduct certain studies”; in line 25, after “changes;” insert “providing for a delayed effective date for certain provisions of this Act; providing for the application of certain provisions of this Act;”; after line 25, insert:

“BY repealing and reenacting, with amendments,
Article - Business Regulation
Section 7–101(i), 7–102, and 7–205(b)
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)”;

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in line 28, after “12-114,” insert “12-301,”; in the same line, after “12-314,” insert “12-401(c),”; in line 29, strike “14-1206, 14-1208,”; in line 30, after the fourth comma insert “and”; in the same line, strike “, and 14-1218(a)”; in line 35, strike “12-114.1” and substitute “12-101.1, 12-114.1, and 12-402.1”; in line 41, after “Section” insert “12-401(a) and (b),”; and in the same line, after “12-601(f)” insert a comma.

On page 4, strike in their entirety lines 1 through 10, inclusive, and substitute:

“BY repealing

Article - Commercial Law

Section 12-313

Annotated Code of Maryland

(2013 Replacement Volume and 2017 Supplement)”;

in line 13, strike “2-105.1(b), 11-303, 11-601(q)” and substitute “2-115(b), 2-116(b), 11-219, 11-517(c), 11-610”; in the same line, after “12-126,” insert “12-426(e)(2),”; in line 18, after “Section” insert “11-303, 11-504,”; in the same line, after “12-105(a),” insert “12-405(a),”; and in line 23, strike “12-1119” and substitute “12-1125”.

AMENDMENT NO. 2

On page 6, after line 14, insert:

“Article – Business Regulation

7-101.

(i) “Licensed collection agency” means a person who is [licensed by the Board to do business as a collection agency] REQUIRED TO BE LICENSED UNDER THIS SUBTITLE, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

7-102.

(Over)

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(a) (1) In this section the following words have the meanings indicated.

(2) “Common ownership” means direct or indirect ownership of more than 50% of a person.

(3) “Principal business” means a business activity of a person that comprises more than 50% of the total business activities of the person.

(b) This title does not apply to:

(1) a bank;

(2) a federal or State credit union;

(3) a mortgage lender;

(4) a person acting under an order of a court of competent jurisdiction;

(5) a licensed real estate broker, or an individual acting on behalf of the real estate broker, in the collection of rent or allied charges for property;

(6) a savings and loan association;

(7) a title company as to its escrow business;

(8) a trust company;

(9) a lawyer who is collecting a debt for a client, unless the lawyer has an employee who:

(i) is not a lawyer; and

(ii) is engaged primarily to solicit debts for collection or primarily makes contact with a debtor to collect or adjust a debt through a procedure identified with the operation of a collection agency; [or]

(10) a person who is collecting a debt for another person if:

(i) both persons are related by common ownership;

(ii) the person who is collecting a debt does so only for those persons to whom it is related by common ownership;

(iii) the principal business of the person who is collecting a debt is not the collection of debts; and

(iv) before collecting a debt, the person files with the Board:

1. the correct name of the person;

2. an address and telephone number of a contact person;

and

3. the name of the person's resident agent; OR

(11) A LICENSED STUDENT LOAN SERVICER.

7-205.

(b) If a violator fails to comply with a lawful order issued by the Board, the Board may impose a penalty [of up to \$500] NOT EXCEEDING \$10,000 for each violation cited in the order, not to exceed [\$5,000] \$25,000, from which the violator

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failed to cease and desist or for which the violator failed to take affirmative action to correct, as ordered by the Board.”.

AMENDMENT NO. 3

On page 6, before line 15, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:”;

in line 30, after “means” insert “A LICENSEE OR”; in the same line, strike “under” and substitute “SUBJECT TO”; in line 31, after “(G)” insert ““LICENSEE” MEANS A PERSON THAT IS REQUIRED TO BE LICENSED TO MAKE LOANS SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

(H)”;

and in line 33, after “CREDIT” insert “IS OR”.

On page 7, in line 1, strike “A” and substitute “:

(I) A”;

in the same line, after “LOAN” insert “OR ADVANCE OF MONEY OR CREDIT”; in line 2, after “TITLE” insert “, UNLESS A WRITTEN ELECTION IS MADE UNDER § 12-101.1 OF THIS SUBTITLE;

(II) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION IS MADE UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE; OR

(III) AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE”;

in lines 3, 6, 10, 12, 15, and 17, strike “(H)”, “(I)”, “(J)”, “(K)”, “(L)”, and “(M)”, respectively, and substitute “(I)”, “(J)”, “(K)”, “(L)”, “(M)”, and “(N)”, respectively; in line 17, strike “his” and substitute “THE EMPLOYEE’S”; and after line 19, insert:

“12-101.1.

(A) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER’S OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

(B) IF A LENDER MAKES A WRITTEN ELECTION IN THE AGREEMENT, NOTE, OR OTHER EVIDENCE OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN THE LOAN, SUBTITLES 3, 4, 5, 6, 9, AND 10 OF THIS TITLE DO NOT APPLY TO THE LOAN.

(C) IF A LENDER THAT MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE, THIS SUBTITLE STILL APPLIES TO THE LOAN IF THE LOAN IS:

(1) FOR AN AMOUNT OVER \$25,000; OR

(2) (I) FOR AN AMOUNT OF \$25,000 OR LESS; AND

(II) NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE.”.

(Over)

On page 8, in line 25, after the comma insert "MADE FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES,"; and strike beginning with "A" in line 27 down through "TITLE" in line 28 and substitute ":

1. A LOAN OR AN ADVANCE OF MONEY OR CREDIT SUBJECT TO SUBTITLE 3 OF THIS TITLE, UNLESS A WRITTEN ELECTION IS MADE UNDER § 12-101.1 OF THIS SUBTITLE;

2. A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION HAS BEEN MADE UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE; OR

3. AN INSTALLMENT SALE AGREEMENT AS DEFINED IN §12-601 OF THIS TITLE".

On page 9, strike in their entirety lines 1 through 3, inclusive; in line 4, strike "(4)" and substitute "(3)"; strike beginning with "BY" in line 7 down through "STATE" in line 9 and substitute "TO ANY PERSON"; in line 17, strike "EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, A" and substitute "A"; strike beginning with "PARAGRAPH" in line 19 down through "AND" in line 20; and in line 29, strike "ANY PAYMENT IS RECEIVED" and substitute "THE FIRST PAYMENT IS DUE".

On page 10, strike in their entirety lines 3 through 12, inclusive, and substitute:

"(4) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION, A PERSON MAY NOT:

(I) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY, ANY AMOUNT FROM THE BORROWER;

(II) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST ANY PROPERTY SECURING THE LOAN; OR

(III) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER PERSON.

12-301.

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

(b) “Commissioner” means the Commissioner of Financial Regulation.

(c) “Lender” means a LICENSEE OR A person who makes a loan [under] SUBJECT TO this subtitle.

(d) “Licensee” means a person who is REQUIRED TO BE licensed under Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law — Licensing Provisions, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

(e) **(1) “Loan” means any loan or advance of money or credit [made under] SUBJECT TO this subtitle, REGARDLESS OF WHETHER THE LOAN OR ADVANCE OF MONEY OR CREDIT IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE.**

(2) “LOAN” DOES NOT INCLUDE AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE.

(f) “Person” includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(Over)

(g) “Wages” means all remuneration paid to any employee for [his] THE EMPLOYEE’S employment, including the cash value of all remuneration paid in any medium other than cash.”;

after line 13, insert:

“(A) (1) THIS SUBTITLE APPLIES TO A LOAN OF \$25,000 OR LESS MADE FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, THIS SUBTITLE APPLIES REGARDLESS OF:

(I) WHETHER THE TRANSACTION IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE;

(II) WHETHER THE TRANSACTION IS OR PURPORTS TO BE AN INSTALLMENT LOAN;

(III) THE DURATION OF THE REPAYMENT PERIOD;

(IV) WHETHER THE TRANSACTION IS OR PURPORTS TO BE NONRECOURSE OR CONTINGENT; AND

(V) WHETHER THE TRANSACTION PURPORTS TO BE THE PURCHASE OF WAGES, PENSIONS, GOVERNMENTAL BENEFITS, OR OTHER SIMILAR FUTURE PAYMENT STREAMS.

(3) THIS SUBTITLE DOES NOT APPLY TO:

(I) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION HAS BEEN MADE UNDER SUBTITLE 1, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE;

(II) A LOAN MADE BY AN INDIVIDUAL PROVIDED THE INDIVIDUAL:

1. DOES NOT MAKE MORE THAN THREE LOANS IN A CALENDAR YEAR; AND

2. DOES NOT ENGAGE IN THE BUSINESS OF MAKING LOANS; OR

(III) A LOAN BETWEEN AN EMPLOYER AND AN EMPLOYEE.”;

in lines 14, 16, and 28, strike “(a)”, “(b)”, and “(c)”, respectively, and substitute “(B)”, “(C)”, and “(D)”, respectively; in lines 15 and 19, in each instance, strike “\$12,000” and substitute “\$25,000”; and in line 14, strike “under” and substitute “SUBJECT TO”.

On page 11, strike in their entirety lines 3 through 15, inclusive; and in lines 17 and 21, in each instance, strike “\$12,000” and substitute “\$25,000”.

On page 12, after line 6, insert:

“[12-313.

(a) With respect to any loan, a lender may not:

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(1) Directly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle;

(2) Divide into separate parts any contract made for the purpose or with the effect of obtaining charges in excess of those permitted by this subtitle; or

(3) Enforce a contract of surety or guarantee unless the loan contract with the borrower is executed also by the surety or guarantor.

(b) If any amount in excess of the charges permitted by this subtitle is directly or indirectly contracted for, charged, or received by a licensee or a person who is exempt from licensing, and (1) if the excess charge was made willfully for the benefit of the lender, then the lender may not receive or retain any interest or compensation with respect to the loan; or (2) if the excess charge was not made willfully for the benefit of the lender, and if the lender does not correct the error before the borrower makes the next payment on the loan, then the lender is liable to the borrower for an amount equal to three times the excess amount, but the lender may continue to receive principal, interest, or compensation with respect to the loan.];

and in lines 8 and 17, in each instance, strike “\$12,000” and substitute “\$25,000”.

On page 13, in line 5, strike “OR BEFORE any payment is received under the loan”; in line 9, strike “a licensee or who is”; and strike in their entirety lines 18 through 22, inclusive, and substitute:

“(D) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION, A PERSON MAY NOT:

(1) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY, ANY AMOUNT FROM THE BORROWER;

(2) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST ANY PROPERTY SECURING THE LOAN; OR

(3) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER PERSON.

12-401.

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

(b) “Lender” means:

(1) A licensee; or

(2) A person who makes a secondary mortgage loan but is exempt expressly from the licensing requirements of the Maryland Mortgage Lender Law.

(c) “Licensee” means a person who is REQUIRED TO BE licensed under the Maryland Mortgage Lender Law, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

12-402.1.

(A) (1) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER’S OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

(2) IN ORDER TO MAKE A LOAN UNDER THIS SUBTITLE, A LENDER SHALL MAKE A WRITTEN ELECTION IN THE AGREEMENT, NOTE, OR OTHER

(Over)

EVIDENCE OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN THE LOAN.

(B) (1) IF A LENDER ELECTS TO MAKE A LOAN UNDER THIS SUBTITLE IN ACCORDANCE WITH THIS SECTION, SUBTITLES 1, 3, 9, AND 10 OF THIS TITLE DO NOT APPLY TO THE LOAN.

(2) IF A LENDER WHO MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 1, SUBTITLE 3, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE:

(i) SUBTITLE 1 OF THIS TITLE WILL APPLY TO THE LOAN IF THE LOAN IS:

1. FOR AN AMOUNT OVER \$25,000; OR
2. A. FOR AN AMOUNT OF \$25,000 OR LESS; AND
B. NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE; OR

(ii) SUBTITLE 3 OF THIS TITLE WILL APPLY TO THE LOAN IF THE LOAN IS:

1. FOR AN AMOUNT OF \$25,000 OR LESS; AND
2. SUBJECT TO SUBTITLE 3 OF THIS TITLE.”.

AMENDMENT NO. 4

On page 13, after line 29, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Commercial Law”.

On page 19, in line 22, strike “**PROHIBITED UNDER**” and substitute “**THAT VIOLATES**”.

On pages 19 through 23, strike in their entirety the lines beginning with line 24 on page 19 through line 11 on page 23, inclusive.

On page 27, strike in their entirety lines 4 through 29, inclusive.

On page 28, in line 14, strike “**THE**” and substitute “**WHENEVER THE OFFICE AND THE COMMISSIONER CONSIDER IT APPROPRIATE, THE**”; and in line 16, after “**ACTIONS**” insert “**OR OTHER APPROPRIATE PROCEEDINGS**”.

On pages 29 and 30, strike in their entirety the lines beginning with line 15 on page 29 through line 25 on page 30, inclusive.

AMENDMENT NO. 5

On pages 30 and 31, strike in their entirety the lines beginning with line 27 on page 30 through line 5 on page 31, inclusive, and substitute:

“2-115.

(b) When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

(Over)

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty [up to the maximum amount of \$1,000] **NOT EXCEEDING:**
 - (I) **\$2,500** for a first violation; and
 - (II) [a maximum amount of \$5,000] **\$10,000** for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

2-116.

(b) When it appears to the Commissioner that a person has engaged in an act or practice constituting a violation of a law, regulation, rule, or order over which the Commissioner has jurisdiction, the Commissioner may bring an action in the circuit court of the county in which the person resides or transacts business to obtain one or more of the following remedies:

- (1) A temporary restraining order;
- (2) A temporary or permanent injunction;
- (3) A civil penalty [up to a maximum amount of \$1,000] **NOT EXCEEDING:**
 - (I) **\$2,500** for a first violation; and

(II) [a maximum amount of \$5,000] \$10,000 for each subsequent violation;

- (4) A declaratory judgment;
- (5) An order preventing access to the violator's assets;
- (6) Rescission;
- (7) Restitution; and
- (8) Any other relief as the court deems just.

11-219.

(a) A [licensee] PERSON may not sell a loan account to any person who is not licensed under this subtitle.

(b) A loan account that is acquired by a person who is not licensed under this subtitle is not enforceable.”.

On page 31, in line 7, strike “(A)”; and strike in their entirety lines 10 through 30, inclusive.

On page 32, before line 1, insert:

“11-504.

A person may not act as a mortgage lender unless the person is:

- (1) A licensee; or

(Over)

(2) A person exempted from licensing under this subtitle.

11-517.

(c) (1) The Commissioner may enforce the provisions of this subtitle, regulations adopted under § 11-503 of this subtitle, and the applicable provisions of Title 12 of the Commercial Law Article by:

(i) Issuing an order:

1. To cease and desist from the violation and any further similar violations; and

2. Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation; and

(ii) Imposing a civil penalty not exceeding [~~\$5,000~~] **\$10,000** for each violation.

(2) If a violator fails to comply with an order issued under paragraph (1)(i) of this subsection, the Commissioner may impose a civil penalty not exceeding [~~\$5,000~~] **\$25,000** for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.”;

strike in their entirety lines 1 through 16, inclusive; and after line 20 insert:

“11-610.

(a) There is a Nondepository Special Fund that consists of:

(1) Revenue received for the licensing of individuals under this subtitle;

**(2) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER
SUBTITLE 2 OF THIS TITLE;**

**(3) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER
SUBTITLE 3 OF THIS TITLE;**

**(4) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER
SUBTITLE 4 OF THIS TITLE;**

**[(2)](5) Revenue received for the licensing of persons under Subtitle
5 of this title;**

**(6) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER
TITLE 12, SUBTITLE 1 OF THIS ARTICLE;**

**[(3)](7) Revenue received for the licensing of persons under Title 12,
Subtitle 4 of this article;**

**[(4)](8) Revenue received for the licensing of persons under Title 12,
Subtitle 9 of this article;**

**[(5)](9) Revenue received for the registration of persons under Title
12, Subtitle 10 of this article;**

**(10) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER
TITLE 12, SUBTITLE 11 OF THIS ARTICLE;**

**(11) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER
TITLE 7 OF THE BUSINESS REGULATION ARTICLE;**

(Over)

(12) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW ARTICLE;

[(6)] (13) Income from the investments that the State Treasurer makes for the Fund; and

[(7)] (14) Any other fee, examination assessment, or revenue received by the Commissioner AND THE STATE COLLECTION AGENCY LICENSING BOARD under TITLE 2, SUBTITLE 1 OF THIS ARTICLE, this subtitle, [Subtitle] SUBTITLES 2, 3, 4, AND 5 of this title, [and] Title 12, Subtitles 1, 4, 9, [and] 10, AND 11 of this article, TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW ARTICLE, AND TITLE 7 OF THE BUSINESS REGULATION ARTICLE.

(b) Notwithstanding subsection (a) of this section, the Commissioner shall pay all fines and penalties collected by the Commissioner AND THE STATE COLLECTION AGENCY LICENSING BOARD under TITLE 2, SUBTITLE 1 OF THIS ARTICLE, this subtitle, [Subtitle] SUBTITLES 2, 3, 4, AND 5 of this title, [and] Title 12, Subtitles 1, 4, 9, [and] 10, AND 11 of this article, TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW ARTICLE, AND TITLE 7 OF THE BUSINESS REGULATION ARTICLE into the General Fund of the State.

(c) The purpose of the Fund is to cover the direct and indirect costs of fulfilling the statutory and regulatory duties of the Commissioner AND THE STATE COLLECTION AGENCY LICENSING BOARD related to:

(1) TITLE 2, SUBTITLE 1 OF THIS ARTICLE;

(2) This subtitle;

(3) SUBTITLE 2 OF THIS TITLE;

(4) SUBTITLE 3 OF THIS TITLE;

(5) SUBTITLE 4 OF THIS TITLE;

[(2)](6) Subtitle 5 of this title;

(7) TITLE 12, SUBTITLE 1 OF THIS ARTICLE;

[(3)](8) Title 12, Subtitle 4 of this article;

[(4)](9) Title 12, Subtitle 9 of this article;

[(5)](10) Title 12, Subtitle 10 of this article; [and]

(11) TITLE 12, SUBTITLE 11 OF THIS ARTICLE;

(12) TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW ARTICLE;

(13) TITLE 7 OF THE BUSINESS REGULATION ARTICLE; AND

[(6)](14) Any other expense authorized in the State budget.

(d) (1) The annual State budget shall include the costs and expenses of the Commissioner relating to the [regulation] SUPERVISION of CONSUMER LENDING, INSTALLMENT LENDING, SALES FINANCE COMPANIES, mortgage lending, mortgage origination, CHECK CASHING SERVICES, money transmission, debt management services, [and] debt settlement services, STUDENT LOAN SERVICERS, AND CREDIT

(Over)

SERVICES BUSINESSES, AND THE STATE COLLECTION AGENCY LICENSING BOARD RELATING TO COLLECTION AGENCIES.

(2) Any expenditures from the Fund to cover costs and expenses of the Commissioner AND THE STATE COLLECTION AGENCY LICENSING BOARD may be made only:

(i) With an appropriation from the Fund approved by the General Assembly in the annual State budget; or

(ii) By the budget amendment procedure provided for in § 7-209 of the State Finance and Procurement Article.

(3) If, in any fiscal year, the amount of the revenue collected by the Commissioner AND THE STATE COLLECTION AGENCY LICENSING BOARD and deposited into the Fund exceeds the actual appropriation for the Commissioner to [regulate] SUPERVISE CONSUMER LENDING UNDER SUBTITLE 2 OF THIS TITLE; INSTALLMENT LENDING UNDER SUBTITLE 3 OF THIS TITLE; SALES FINANCE COMPANIES UNDER SUBTITLE 4 OF THIS TITLE; mortgage lending under Subtitle 5 of this title; mortgage origination under this subtitle; CHECK CASHING SERVICES UNDER TITLE 12, SUBTITLE 1 OF THIS ARTICLE; money transmission under Title 12, Subtitle 4 of this article; debt management services under Title 12, Subtitle 9 of this article; [and] debt settlement services under Title 12, Subtitle 10 of this article; STUDENT LOAN SERVICERS UNDER TITLE 12, SUBTITLE 11 OF THIS ARTICLE; CREDIT SERVICES BUSINESSES UNDER TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW ARTICLE; AND COLLECTION AGENCIES UNDER TITLE 7 OF THE BUSINESS REGULATION ARTICLE, the excess amount shall be carried forward within the Fund.

(e) (1) The State Treasurer is the custodian of the Fund.

(2) The State Treasurer shall deposit payments received from the Commissioner into the Fund.

(f) (1) (i) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(ii) The Fund may not be deemed a part of the General Fund of the State.

(2) Unless otherwise provided by law, no part of the Fund may revert or be credited to:

(i) The General Fund of the State; or

(ii) Any other special fund of the State.”.

On page 33, after line 23, insert:

“12-405.

(a) A person may not engage in the business of money transmission if that person, or the person with whom that person engages in the business of money transmission, is located in the State unless that person:

(1) Is licensed by the Commissioner;

(2) Is an authorized delegate of a licensee under whose name the business of money transmission occurs; or

(3) Is a person exempted from licensing under this subtitle.

12-426.

(Over)

(e) (2) If a violator fails to comply with an order issued under paragraph (1) of this subsection, the Commissioner may impose a civil penalty [of up to \$1,000] NOT EXCEEDING:

(I) \$10,000 for the first violation; and

(II) [\$5,000] \$25,000 for each subsequent violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action.”.

On page 34, in line 27, strike “2.” and substitute “4.”.

AMENDMENT NO. 6

On page 37, in line 21, strike “MAINLY”; in the same line, after “FINANCING” insert “POST-SECONDARY”; in the same line, after “OTHER” insert “POST-SECONDARY”; and in line 25, strike “AN INDIVIDUAL” and substitute “A RESIDENT”.

On page 38, strike beginning with the colon in line 4 down through “A” in line 5 and substitute “A”; strike beginning with the semicolon in line 6 down through “STATE” in line 8; and in line 18, strike “EDUCATION”.

On pages 38 through 42, strike in their entirety the lines beginning with line 22 on page 38 through line 15 on page 42, inclusive, and substitute:

“12-1104.

(A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL SATISFY THE COMMISSIONER THAT THE APPLICANT IS OF GOOD MORAL CHARACTER, AND HAS SUFFICIENT FINANCIAL RESPONSIBILITY, BUSINESS EXPERIENCE, AND GENERAL FITNESS TO:

(1) ENGAGE IN THE BUSINESS OF STUDENT LOAN SERVICER;

(2) WARRANT THE BELIEF THAT THE BUSINESS WILL BE CONDUCTED LAWFULLY, HONESTLY, FAIRLY, AND EFFICIENTLY; AND

(3) COMMAND THE CONFIDENCE OF THE PUBLIC.

(B) THE COMMISSIONER MAY DENY AN APPLICATION FOR A LICENSE TO ANY PERSON WHO HAS BEEN OFFICIALLY REPRIMANDED OR HAS COMMITTED ANY ACT THAT WOULD BE GROUNDS FOR SUSPENSION OR REVOCATION OF A LICENSE UNDER THIS SUBTITLE.

12-1105.

(A) THIS SECTION DOES NOT APPLY TO ANY CORPORATION IF SECURITIES OF THE CORPORATION ARE EXEMPT FROM REGISTRATION UNDER § 11-601(8) OR (12) OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(B) IN CONNECTION WITH AN INITIAL APPLICATION FOR A LICENSE UNDER § 12-1106 OF THIS SUBTITLE, AND AT ANY OTHER TIME THE COMMISSIONER REQUESTS, AN APPLICANT OR LICENSEE SHALL PROVIDE TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CONCERNING THE APPLICANT'S IDENTITY, AS WELL AS OTHER INFORMATION THAT THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY REQUIRES, INCLUDING:

(1) FINGERPRINTS FOR SUBMISSION TO THE FEDERAL BUREAU OF INVESTIGATION, AND ANY OTHER GOVERNMENTAL AGENCY OR ENTITY

(Over)

AUTHORIZED TO RECEIVE THE INFORMATION, FOR A STATE, NATIONAL, OR INTERNATIONAL CRIMINAL HISTORY BACKGROUND CHECK; AND

(2) PERSONAL HISTORY AND EXPERIENCE IN A FORM PRESCRIBED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, INCLUDING THE SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY AND THE COMMISSIONER TO OBTAIN:

(I) AN INDEPENDENT CREDIT REPORT FROM A CONSUMER REPORTING AGENCY DESCRIBED IN THE FEDERAL FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681A(P); AND

(II) INFORMATION RELATED TO ANY ADMINISTRATIVE, CIVIL, OR CRIMINAL FINDINGS BY ANY GOVERNMENTAL JURISDICTION.

(C) THE COMMISSIONER MAY REQUEST FROM THE FEDERAL BUREAU OF INVESTIGATION OR THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, AS APPLICABLE, FOR EACH APPLICANT OR LICENSEE WHO IS REQUIRED TO PROVIDE FINGERPRINTS UNDER SUBSECTION (B) OF THIS SECTION:

(1) (I) THE STATE, NATIONAL, OR INTERNATIONAL CRIMINAL HISTORY RECORDS OF THE APPLICANT OR LICENSEE; AND

(II) A PRINTED STATEMENT LISTING ANY CONVICTION OR OTHER DISPOSITION OF, AND ANY PLEA OF GUILTY OR NOLO CONTENDERE TO, ANY CRIMINAL CHARGE;

(2) (I) AN UPDATE OF THE INITIAL CRIMINAL HISTORY RECORDS CHECK OR CRIMINAL HISTORY BACKGROUND CHECK OF THE APPLICANT OR LICENSEE; AND

(II) A REVISED STATEMENT LISTING ANY CONVICTION OR OTHER DISPOSITION OF, AND ANY PLEA OF GUILTY OR NOLO CONTENDERE TO, ANY CRIMINAL CHARGE OCCURRING AFTER THE DATE OF THE INITIAL CRIMINAL HISTORY RECORDS CHECK OR CRIMINAL HISTORY BACKGROUND CHECK; AND

(3) AN ACKNOWLEDGED RECEIPT OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK OR CRIMINAL HISTORY BACKGROUND CHECK OF THE APPLICANT OR LICENSEE.

(D) AN APPLICANT OR LICENSEE WHO IS REQUIRED TO PROVIDE FINGERPRINTS UNDER SUBSECTION (B) OF THIS SECTION SHALL PAY ANY PROCESSING OR OTHER FEES REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION AND THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

(E) TO IMPLEMENT THIS SUBTITLE, THE COMMISSIONER MAY USE THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY AS A CHANNELING AGENT TO REQUEST INFORMATION FROM AND DISTRIBUTE INFORMATION TO THE DEPARTMENT OF JUSTICE, ANY OTHER GOVERNMENTAL AGENCY WITH SUBJECT MATTER JURISDICTION, AND ANY OTHER STATE LICENSING ENTITY THAT HAS LOAN ORIGINATORS REGISTERED WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

12-1106.

(Over)

(A) TO APPLY FOR A LICENSE, AN APPLICANT SHALL:

(1) COMPLETE, SIGN, AND SUBMIT TO THE COMMISSIONER AN APPLICATION MADE UNDER OATH IN THE FORM, AND IN ACCORDANCE WITH THE PROCESS, THAT THE COMMISSIONER REQUIRES; AND

(2) PROVIDE ALL INFORMATION THAT THE COMMISSIONER REQUESTS.

(B) THE APPLICANT SHALL COMPLY WITH ALL CONDITIONS AND PROVISIONS OF THE APPLICATION FOR LICENSURE AND BE ISSUED A LICENSE BEFORE ACTING AS A STUDENT LOAN SERVICER.

(C) WITH EACH APPLICATION, THE APPLICANT SHALL PAY THE FOLLOWING FEES TO THE COMMISSIONER:

(1) A NONREFUNDABLE LICENSE FEE OF \$1,000; AND

(2) A NONREFUNDABLE INVESTIGATION FEE OF \$800.

(D) IN ADDITION TO THE LICENSE FEE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION, AN APPLICANT FOR AN INITIAL LICENSE SHALL PAY TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ANY FEES THAT THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY IMPOSES IN CONNECTION WITH THE APPLICATION.

(E) FOR EACH LICENSE FOR WHICH AN APPLICANT APPLIES, THE APPLICANT SHALL:

(1) SUBMIT A SEPARATE APPLICATION; AND

(2) PAY ALL FEES REQUIRED UNDER THIS SECTION.

(F) A PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT UNDER OATH ON AN APPLICATION FILED WITH THE COMMISSIONER UNDER THIS SECTION IS GUILTY OF PERJURY AND ON CONVICTION IS SUBJECT TO THE PENALTIES OF § 9-101 OF THE CRIMINAL LAW ARTICLE.

(G) THE COMMISSIONER MAY ADOPT REGULATIONS THAT REQUIRE AN APPLICANT THAT SERVICES LESS THAN 100 BORROWERS TO INCLUDE IN AN APPLICATION UNDER SUBSECTION (A) OF THIS SECTION A NONREFUNDABLE LICENSE FEE OR NONREFUNDABLE INVESTIGATION FEE THAT IS LOWER THAN THE FEES UNDER SUBSECTION (C) OF THIS SECTION.

12-1107.

(A) WITH THE APPLICATION FOR A NEW LICENSE, AN APPLICANT SHALL FILE A SURETY BOND WITH THE COMMISSIONER.

(B) (1) THE BOND SHALL RUN TO THE COMMISSIONER, AS OBLIGEE, FOR THE BENEFIT OF:

(I) THE STATE; AND

(II) ANY STUDENT LOAN BORROWER WHO HAS BEEN DAMAGED BY A VIOLATION COMMITTED BY A LICENSEE OF ANY LAW OR REGULATION GOVERNING THE ACTIVITIES OF STUDENT LOAN SERVICES.

(Over)

(2) THE BOND SHALL BE:

(i) IN AN AMOUNT DETERMINED BY THE COMMISSIONER;

(ii) ISSUED BY A SURETY COMPANY THAT:

1. IS AUTHORIZED TO DO BUSINESS IN THE STATE;

AND

2. HOLDS A CERTIFICATE OF AUTHORITY ISSUED BY THE MARYLAND INSURANCE COMMISSIONER; AND

(iii) CONDITIONED THAT THE LICENSEE SHALL COMPLY WITH ALL MARYLAND AND FEDERAL LAWS REGULATING THE STUDENT LOAN SERVICERS.

(3) THE LIABILITY OF THE SURETY:

(i) SHALL BE CONTINUOUS;

(ii) MAY NOT BE AGGREGATED OR CUMULATIVE, WHETHER OR NOT THE BOND IS RENEWED, CONTINUED, REPLACED, OR MODIFIED;

(iii) MAY NOT BE DETERMINED BY ADDING TOGETHER THE PENAL SUM OF THE BOND, OR ANY PART OF THE PENAL SUM OF THE BOND, IN EXISTENCE AT ANY TWO OR MORE POINTS IN TIME;

(IV) SHALL BE CONSIDERED TO BE ONE CONTINUOUS OBLIGATION, REGARDLESS OF INCREASES OR DECREASES IN THE PENAL SUM OF THE BOND;

(V) MAY NOT BE AFFECTED BY:

1. THE INSOLVENCY OR BANKRUPTCY OF THE LICENSEE;

2. ANY MISREPRESENTATION, BREACH OF WARRANTY, FAILURE TO PAY A PREMIUM, OR ANY OTHER ACT OR OMISSION OF THE LICENSEE OR AN AGENT OF THE LICENSEE; OR

3. THE SUSPENSION OF THE LICENSEE'S LICENSE;

(VI) MAY NOT REQUIRE AN ADMINISTRATIVE ENFORCEMENT ACTION BY THE COMMISSIONER AS A PREREQUISITE TO LIABILITY; AND

(VII) SHALL CONTINUE FOR 3 YEARS AFTER THE LATER OF THE DATE ON WHICH:

1. THE BOND IS CANCELED; OR

2. THE LICENSEE, FOR ANY REASON, CEASES TO BE LICENSED.

(4) (I) A BOND MAY BE CANCELED BY THE SURETY OR THE LICENSEE BY GIVING NOTICE OF CANCELLATION TO THE COMMISSIONER.

(II) NOTICE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:

1. BE IN WRITING; AND
2. BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

(III) A CANCELLATION OF A BOND UNDER THIS PARAGRAPH IS NOT EFFECTIVE UNTIL 90 DAYS AFTER RECEIPT OF A NOTICE OF CANCELLATION BY THE COMMISSIONER.

(5) A CLAIM AGAINST THE BOND MAY BE FILED WITH THE SURETY BY:

- (I) A CLAIMANT; OR
- (II) THE COMMISSIONER FOR THE BENEFIT OF A CLAIMANT OR THE STATE.

(6) IF THE AMOUNT OF CLAIMS AGAINST A BOND EXCEEDS THE AMOUNT OF THE BOND, THE SURETY:

- (I) SHALL PAY THE AMOUNT OF THE BOND TO THE COMMISSIONER FOR PRO RATA DISTRIBUTION TO CLAIMANTS; AND
- (II) IS RELIEVED OF LIABILITY UNDER THE BOND.

(7) IF THE PENAL AMOUNT OF A BOND IS REDUCED BY PAYMENT OF A CLAIM OR JUDGMENT, THE LICENSEE SHALL FILE A NEW OR ADDITIONAL BOND WITH THE COMMISSIONER.

(8) A PENALTY IMPOSED AGAINST A LICENSEE UNDER §12-1120 OF THIS SUBTITLE MAY BE COLLECTED AND PAID FROM THE PROCEEDS OF A BOND REQUIRED UNDER THIS SECTION.

12-1108.

(A) WHEN AN APPLICANT FOR A LICENSE FILES A COMPLETED APPLICATION AND PAYS THE FEES REQUIRED BY § 12-1106 OF THIS SUBTITLE, THE COMMISSIONER SHALL CONDUCT AN INVESTIGATION TO DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS OF § 12-1104 OF THIS SUBTITLE.

(B) THE COMMISSIONER SHALL APPROVE OR DENY AN APPLICATION WITHIN 60 DAYS AFTER THE COMMISSIONER RECEIVES A COMPLETED APPLICATION.

12-1109.

(A) IF AN APPLICANT DOES NOT MEET THE REQUIREMENTS § 12-1104 OF OF THIS SUBTITLE, THE COMMISSIONER SHALL:

(1) IMMEDIATELY NOTIFY THE APPLICANT IN WRITING OF THIS FACT; AND

(2) RETURN THE BOND FILED UNDER § 12-1107 OF THIS SUBTITLE.

(B) WITHIN 30 DAYS AFTER THE COMMISSIONER DENIES AN APPLICATION, THE COMMISSIONER SHALL:

(1) FILE IN THE COMMISSIONER'S OFFICE A WRITTEN DECISION CONTAINING THE FINDINGS AND CONCLUSIONS ON WHICH THE DENIAL WAS BASED;

(2) SEND A COPY OF THE DECISION TO THE APPLICANT; AND

(3) NOTIFY THE APPLICANT BY CERTIFIED MAIL OF THE APPLICANT'S RIGHT TO A HEARING TO BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(C) (1) AN APPLICANT WHO SEEKS A HEARING ON A LICENSE APPLICATION DENIAL SHALL FILE A WRITTEN REQUEST FOR A HEARING WITHIN 45 DAYS FOLLOWING RECEIPT OF THE NOTICE TO THE APPLICANT OF THE APPLICANT'S RIGHT TO A HEARING.

(2) A HEARING DATE ESTABLISHED IN RESPONSE TO THE FILING OF A REQUEST FOR A HEARING UNDER THIS SUBSECTION MAY BE POSTPONED ONLY ONCE FOR A PERIOD OF UP TO 30 DAYS AFTER THE INITIAL HEARING DATE.

12-1110.

(A) AN INITIAL LICENSE TERM SHALL:

(1) BEGIN ON THE DAY THE LICENSE IS ISSUED; AND

(2) EXPIRE ON DECEMBER 31 OF THE YEAR:

(I) THE LICENSE IS ISSUED, IF THE LICENSE IS ISSUED BEFORE NOVEMBER 1; OR

(II) SUCCEEDING THE YEAR THAT THE LICENSE WAS ISSUED, IF THE LICENSE IS ISSUED ON OR AFTER NOVEMBER 1.

(B) AT LEAST 60 DAYS BEFORE ITS EXPIRATION, A LICENSE MAY BE RENEWED IF THE LICENSEE:

(1) OTHERWISE IS ENTITLED TO BE LICENSED;

(2) PAYS TO THE COMMISSIONER A NONREFUNDABLE RENEWAL FEE SET BY THE COMMISSIONER; AND

(3) SUBMITS TO THE COMMISSIONER A RENEWAL APPLICATION ON THE FORM THAT THE COMMISSIONER REQUIRES.

(C) SUBJECT TO ANY REGULATIONS THE COMMISSIONER ADOPTS IN CONNECTION WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, A RENEWAL TERM SHALL:

(1) BE FOR A PERIOD OF 1 YEAR;

(2) BEGIN ON JANUARY 1 OF EACH YEAR AFTER THE INITIAL TERM; AND

(3) EXPIRE ON DECEMBER 31 OF THE YEAR THE RENEWAL TERM BEGINS.”.

(Over)

On page 42, in line 16, strike “~~12-1109.~~” and substitute “12-1111.”.

On page 43, strike in their entirety lines 3 through 6, inclusive; in lines 7 and 17, strike “~~12-1110.~~” and “~~12-1111.~~”, respectively, and substitute “12-1112.” and “12-1113.”, respectively; in line 11, strike “AND”; in line 13, after the second “ADDRESS” insert “;AND”

(3) NOTIFY THE COMMISSIONER IN WRITING OF ANY CHANGE IN CONTROL AND RECEIVE WRITTEN APPROVAL FROM THE COMMISSIONER FOR THE CHANGE IN CONTROL BEFORE THE LICENSEE UNDERGOES THE CHANGE IN CONTROL”;

and strike beginning with “EXCEPT” in line 18 down through the second “A” in line 20 and substitute “A”.

AMENDMENT NO. 7

On page 44, strike beginning with “THE” in line 4 down through “(2)” in line 6; in lines 12 and 15, strike “(3)” and “(4)”, respectively, and substitute “(2)” and “(3)”, respectively; in lines 20 and 24, strike “~~12-1112.~~” and “~~12-1113.~~”, respectively, and substitute “12-1114.” and “12-1116.”, respectively; strike beginning with the comma in line 22 down through “ACT” in line 23; and after line 23, insert:

“12-1115.”

(A) IN THIS SECTION, “NONCONFORMING PAYMENT” MEANS A PAYMENT ON A STUDENT EDUCATION LOAN OF A STUDENT LOAN BORROWER THAT IS MORE OR LESS THAN THE REQUIRED PAYMENT.

(B) EXCEPT AS OTHERWISE PROVIDED IN FEDERAL LAW, FEDERAL STUDENT EDUCATION LOAN AGREEMENTS, OR A CONTRACT BETWEEN THE

FEDERAL GOVERNMENT AND A LICENSEE, A LICENSEE SHALL TAKE THE ACTIONS UNDER THIS SECTION.

(C) A LICENSEE SHALL RESPOND TO A WRITTEN INQUIRY FROM A STUDENT LOAN BORROWER OR THE REPRESENTATIVE OF A STUDENT LOAN BORROWER WITHIN 30 DAYS AFTER RECEIVING THE INQUIRY.

(D) (1) IF A LICENSEE RECEIVES A NONCONFORMING PAYMENT ON A STUDENT EDUCATION LOAN OF A STUDENT LOAN BORROWER, A LICENSEE SHALL ASK THE STUDENT LOAN BORROWER HOW THE BORROWER PREFERS THE LICENSEE TO APPLY THE NONCONFORMING PAYMENT.

(2) A LICENSEE SHALL:

(I) NOTE HOW THE STUDENT LOAN BORROWER PREFERS THE LICENSEE TO APPLY A NONCONFORMING PAYMENT;

(II) APPLY THE NONCONFORMING PAYMENT IN THE MANNER PREFERRED BY THE STUDENT LOAN BORROWER; AND

(III) UNTIL THE STUDENT LOAN BORROWER INDICATES OTHERWISE, APPLY ANY FUTURE NONCONFORMING PAYMENTS IN THE SAME MANNER PREFERRED BY THE BORROWER UNDER ITEM (I) OF THIS PARAGRAPH.

(E) (1) THIS SUBSECTION APPLIES TO THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN THAT RESULTS IN A CHANGE IN THE IDENTITY OF THE PERSON TO WHOM A STUDENT LOAN BORROWER IS REQUIRED TO:

(Over)

(I) SEND PAYMENTS; OR

(II) DIRECT ANY COMMUNICATIONS CONCERNING THE STUDENT EDUCATION LOAN.

(2) AS A CONDITION OF A SALE, AN ASSIGNMENT, OR ANY OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN, A LICENSEE SHALL REQUIRE THE NEW STUDENT LOAN SERVICER TO:

(I) HONOR ALL BENEFITS ORIGINALLY REPRESENTED AS AVAILABLE TO A STUDENT LOAN BORROWER DURING THE REPAYMENT OF THE STUDENT EDUCATION LOAN; AND

(II) PRESERVE THE AVAILABILITY OF THE BENEFITS UNDER ITEM (I) OF THIS PARAGRAPH, INCLUDING ANY BENEFITS FOR WHICH THE STUDENT LOAN BORROWER HAS NOT YET QUALIFIED.

(3) A LICENSEE SHALL TRANSFER TO THE NEW STUDENT LOAN SERVICER SERVICING THE STUDENT EDUCATION LOAN ALL INFORMATION REGARDING:

(I) THE STUDENT LOAN BORROWER;

(II) THE ACCOUNT OF THE STUDENT LOAN BORROWER; AND

(III) THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

(4) THE INFORMATION REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION INCLUDES:

(I) THE REPAYMENT STATUS OF THE STUDENT LOAN BORROWER; AND

(II) ANY BENEFITS ASSOCIATED WITH THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

(5) A LICENSEE SHALL COMPLETE THE TRANSFER OF INFORMATION REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION WITHIN 45 DAYS AFTER THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN.

(6) THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN SHALL BE COMPLETED AT LEAST 7 DAYS BEFORE THE NEXT PAYMENT ON THE LOAN IS DUE.

(F) (1) THIS SUBSECTION APPLIES TO A LICENSEE WHO OBTAINS THE RIGHT TO SERVICE A STUDENT EDUCATION LOAN.

(2) A LICENSEE SHALL ADOPT POLICIES AND PROCEDURES TO VERIFY THAT THE LICENSEE HAS RECEIVED ALL INFORMATION REGARDING:

(I) THE STUDENT LOAN BORROWER;

(II) THE ACCOUNT OF THE STUDENT LOAN BORROWER; AND

(Over)

(III) THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

(3) THE INFORMATION REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION INCLUDES:

(I) THE REPAYMENT STATUS OF THE STUDENT LOAN BORROWER; AND

(II) ANY BENEFITS ASSOCIATED WITH THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.”.

On page 45, in line 32, strike “**12-1114.**” and substitute “**12-1117.**”.

On page 46, strike beginning with the colon in line 1 down through “**RETAIN**” in line 2 and substitute “**RETAIN**”; in line 3, strike “**EXAMINERS, AUDITORS, OR**”; in line 4, strike the semicolon and substitute a period; strike in their entirety lines 5 through 22, inclusive; in line 23, strike “**12-1115.**” and substitute “**12-1118.**”; in lines 24 and 25, strike “**AND EXAMINATIONS**”; and strike beginning with the colon in line 25 down through “**AND**” in line 29.

On page 47, in line 1, strike “**(3) DISCOVERING**” and substitute “**DISCOVERING**”; and after line 1, insert:

“(B) A LICENSEE SHALL PAY TO THE COMMISSIONER A PER-DAY FEE SET BY THE COMMISSIONER FOR EACH OF THE COMMISSIONER’S EMPLOYEES ENGAGED IN THE INVESTIGATION AND OTHER COSTS ASSOCIATED WITH THE INVESTIGATION.”.

On pages 47 and 48, strike in their entirety the lines beginning with line 2 on page 47 through line 18 on page 48, inclusive.

On page 48, in line 19, strike “**12-1116.**” and substitute “**12-1119.**”; in line 20, before “**THE**” insert “**(A)**”; in lines 20 and 21, strike “**A STUDENT LOAN SERVICER**” and substitute “**ANY PERSON**”; in line 23, after “**OR**” insert “**IS NOT**”; and after line 25, insert:

“(B) THIS SECTION APPLIES TO ANY PERSON WHO IS ENGAGED IN THE BUSINESS OF SERVICING STUDENT EDUCATION LOANS IN THE STATE ACTUALLY OR THROUGH SUBTERFUGE.”

On pages 48 and 49, strike in their entirety the lines beginning with line 26 on page 48 through line 24 on page 49, inclusive, and substitute:

“12-1120.

(A) SUBJECT TO THE HEARING PROVISIONS OF § 12-1121 OF THIS SUBTITLE, THE COMMISSIONER MAY SUSPEND OR REVOKE THE LICENSE OF ANY LICENSEE IF THE LICENSEE OR ANY OWNER, DIRECTOR, OFFICER, MEMBER, PARTNER, STOCKHOLDER, EMPLOYEE, OR AGENT OF THE LICENSEE:

(1) MAKES ANY MATERIAL MISSTATEMENT IN AN APPLICATION FOR A LICENSE;

(2) IS CONVICTED UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE OF:

(i) A FELONY; OR

(Over)

(II) A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE FITNESS AND QUALIFICATION OF THE PERSON TO ENGAGE IN STUDENT LOAN SERVICING;

(3) IN CONNECTION WITH ANY STUDENT EDUCATION LOAN:

(I) COMMITS ANY FRAUD;

(II) ENGAGES IN ANY ILLEGAL OR DISHONEST ACTIVITIES;

OR

(III) MISREPRESENTS OR FAILS TO DISCLOSE ANY MATERIAL FACTS TO ANYONE ENTITLED TO THAT INFORMATION;

(4) VIOLATES ANY PROVISION OF THIS SUBTITLE OR ANY RULE OR REGULATION ADOPTED UNDER IT OR ANY OTHER LAW REGULATING STUDENT LOAN SERVICERS IN THE STATE; OR

(5) OTHERWISE DEMONSTRATES UNWORTHINESS, BAD FAITH, DISHONESTY, OR ANY OTHER QUALITY THAT INDICATES THAT THE BUSINESS OF THE LICENSEE HAS NOT BEEN OR WILL NOT BE CONDUCTED HONESTLY, FAIRLY, EQUITABLY, AND EFFICIENTLY.

(B) IN DETERMINING WHETHER THE LICENSE OF A LICENSEE SHOULD BE SUSPENDED OR REVOKED FOR A REASON DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

(1) THE NATURE OF THE CRIME;

(2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED BY THE LICENSE;

(3) WITH RESPECT TO A MISDEMEANOR, THE RELEVANCE OF THE CONVICTION TO THE FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN STUDENT LOAN SERVICING;

(4) THE LENGTH OF TIME SINCE THE CONVICTION; AND

(5) THE BEHAVIOR AND ACTIVITIES OF THE LICENSEE SINCE THE CONVICTION.

(c) (1) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS SUBTITLE AND REGULATIONS ADOPTED UNDER THIS SUBTITLE BY:

(i) ISSUING AN ORDER:

1. TO CEASE AND DESIST FROM THE VIOLATION AND ANY FURTHER SIMILAR VIOLATIONS; AND

2. REQUIRING THE VIOLATOR TO TAKE AFFIRMATIVE ACTION TO CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION; AND

(ii) IMPOSING A CIVIL PENALTY NOT EXCEEDING \$5,000 FOR EACH VIOLATION.

(d) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER ISSUED UNDER SUBSECTION (c)(1)(i) OF THIS SECTION, THE COMMISSIONER MAY IMPOSE A

(Over)

CIVIL PENALTY NOT EXCEEDING \$100,000 FOR EACH VIOLATION FROM WHICH THE VIOLATOR FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR FAILED TO TAKE AFFIRMATIVE ACTION TO CORRECT.

(E) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR ANY COUNTY SEEKING ENFORCEMENT OF AN ORDER ISSUED UNDER THIS SECTION.

(F) IN DETERMINING THE AMOUNT OF A FINANCIAL PENALTY TO BE IMPOSED UNDER SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

- (1) THE SERIOUSNESS OF THE VIOLATION;
- (2) THE GOOD FAITH OF THE VIOLATOR;
- (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;
- (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND STUDENT LOAN SERVICER INDUSTRY;
- (5) THE ASSETS OF THE VIOLATOR; AND
- (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE FINANCIAL PENALTY.

12-1121.

(A) BEFORE THE COMMISSIONER TAKES ANY ACTION UNDER § 12-1120 OF THIS SUBTITLE, THE COMMISSIONER SHALL GIVE THE LICENSEE AN OPPORTUNITY FOR A HEARING.

(B) NOTICE OF THE HEARING SHALL BE GIVEN AND THE HEARING SHALL BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(C) THE HEARING NOTICE TO THE LICENSEE SHALL BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PRINCIPAL PLACE OF BUSINESS OF THE LICENSEE AT LEAST 30 DAYS BEFORE THE HEARING.

12-1122.

(A) A LICENSEE WHO WILLFULLY FAILS TO COMPLY WITH ANY REQUIREMENT IMPOSED UNDER THIS SUBTITLE WITH RESPECT TO A STUDENT LOAN BORROWER IS LIABLE TO THE BORROWER IN AN AMOUNT EQUAL TO THE SUM OF:

(1) ANY ACTUAL DAMAGES SUSTAINED BY THE BORROWER AS A RESULT OF THE FAILURE;

(2) A MONETARY AWARD EQUAL TO 3 TIMES THE TOTAL AMOUNT THE LICENSEE COLLECTED FROM THE BORROWER, AS DETERMINED BY THE COMMISSIONER;

(3) PUNITIVE DAMAGES AS THE COURT MAY ALLOW; AND

(4) IF A BORROWER PREVAILS IN AN ACTION UNDER THIS SUBSECTION:

(I) THE COSTS OF THE ACTION; AND

(II) REASONABLE ATTORNEY’S FEES AS DETERMINED BY THE COURT.

(B) A LICENSEE WHO NEGLIGENTLY FAILS TO COMPLY WITH ANY REQUIREMENT IMPOSED UNDER THIS SUBTITLE WITH RESPECT TO A STUDENT LOAN BORROWER IS LIABLE TO THAT BORROWER IN AN AMOUNT EQUAL TO THE SUM OF:

(1) ANY ACTUAL DAMAGES SUSTAINED BY THE CONSUMER AS A RESULT OF THE FAILURE; AND

(2) IF A BORROWER PREVAILS IN AN ACTION UNDER THIS SUBSECTION:

(I) THE COSTS OF THE ACTION; AND

(II) REASONABLE ATTORNEY’S FEES AS DETERMINED BY THE COURT.”.

On page 49, in line 25, strike “12-1118.” and substitute “12-1123.”; and in line 27, after “ASSEMBLY” insert “, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE,”.

On page 50, in line 2, after the semicolon insert “AND”; strike beginning with the semicolon in line 4 down through “SERVICERS” in line 6; in line 7, strike “12-1119.” and substitute “12-1124.”; in line 8, before “THE” insert “(A)”; in line 9, after “SUBTITLE” insert “THAT ARE:”

(1) CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE; AND

(2) APPROPRIATE FOR THE EFFECTIVE ADMINISTRATION OF THIS
SUBTITLE.

(B) REGULATIONS THAT THE COMMISSIONER ADOPTS UNDER THIS
SUBTITLE SHALL INCLUDE REGULATIONS:

(1) REGARDING THE ACTIVITIES OF STUDENT LOAN SERVICERS
THAT ARE NECESSARY AND APPROPRIATE FOR THE PROTECTION OF STUDENT
LOAN BORROWERS IN THE STATE;

(2) NECESSARY AND APPROPRIATE TO DEFINE UNFAIR AND
DECEPTIVE PRACTICES BY STUDENT LOAN SERVICERS;

(3) DEFINING THE TERMS USED IN THIS SUBTITLE;

(4) NECESSARY AND APPROPRIATE TO INTERPRET AND
IMPLEMENT THIS SUBTITLE; AND

(5) NECESSARY FOR THE ENFORCEMENT OF THIS SUBTITLE”;

and before line 10, insert:

“12-1125.

(A) ALL REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER
THIS SUBTITLE AND ANY OTHER FEE, INVESTIGATION FEE OR ASSESSMENT, OR
REVENUE RECEIVED BY THE COMMISSIONER UNDER THIS SUBTITLE SHALL BE:

(Over)

(1) CREDITED TO THE NONDEPOSITORY SPECIAL FUND ESTABLISHED UNDER TITLE 11, SUBTITLE 6 OF THIS ARTICLE; AND

(2) USED IN ACCORDANCE WITH § 11-610 OF THIS ARTICLE.

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE COMMISSIONER SHALL PAY ALL FINES AND PENALTIES COLLECTED BY THE COMMISSIONER UNDER THIS SUBTITLE INTO THE GENERAL FUND OF THE STATE.”.

AMENDMENT NO. 8

On page 50, in lines 10, 20, 26, and 31, strike “3.”, “4.”, “5.”, and “6.”, respectively, and substitute “5.”, “6.”, “7.”, and “8.”, respectively; in line 23, after “study” insert “:

(i)”;

in the same line, after “cryptocurrencies” insert “, initial coin offerings, cryptocurrency exchanges.”;

in the same line, strike the second “and”; after line 23, insert:

“(ii) the Consumer Financial Protection Bureau arbitration rule and the Model State Consumer and Employee Justice Enforcement Act, including reviewing similar laws adopted in other states;

(iii) the possible exemption of retailers of manufactured homes from the definition of “mortgage originator” in federal law; and

(iv) the U.S. Department of Labor rule and any Securities and Exchange Commission actions in addressing conflicts of interest of broker-dealers

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offering of investment advice by aligning the standard of care for broker-dealers with that of the fiduciary duty of investment advisors; and”;

in line 24, strike “for State actions to regulate cryptocurrencies”; in line 25, after “and” insert “, in accordance with § 2-1246 of the State Government Article,”; and in the same line, after “Assembly” insert “regarding:”

(i) State action to regulate cryptocurrencies, initial coin offerings, and cryptocurrency exchanges;

(ii) changes to State law to provide the protection intended by the Model State Consumer and Employee Justice Enforcement Act;

(iii) changes to State law to provide the protection intended by the U.S. Department of Labor conflicts of interest rule addressing fiduciary duty standards of care; and

(iv) clarification of State law to ensure that Maryland buyers of manufactured homes are protected in their homebuying transaction”.

On page 51, after line 4, insert:

“SECTION 9. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect January 1, 2019.”;

in line 5, strike “7.” and substitute “10.”; and in the same line, after “That” insert “, except as provided in Section 9 of this Act,”.