

Chapter 296

(House Bill 777)

AN ACT concerning

Commercial Law – Credit Card Processors – ~~Service~~ Merchant Processing Agreements

FOR the purpose of ~~requiring~~ prohibiting a credit card processor to send a summary of a certain services agreement to certain businesses; ~~requiring a business to acknowledge a certain services agreement by signing, dating, and returning a copy of the summary of the services agreement to a certain credit card processor before entering into a services agreement with the credit card processor~~ from assessing or charging certain fees under certain circumstances; requiring ~~the summary a merchant processing agreement~~ to include certain information; requiring a credit card processor to provide a certain notice regarding a services agreement renewal before a certain date; ~~requiring the notice to disclose certain information~~ that certain information be provided in a certain manner in the merchant processing agreement; authorizing the Commissioner of Financial Regulation to take certain actions; ~~establishing certain civil penalties for a violation of this Act~~; providing for the application of this Act; defining certain terms; and generally relating to credit card processors and ~~service~~ merchant processing agreements.

BY adding to

Article – Commercial Law

Section 12-1401 through ~~12-1405~~ 12-1404 to be under the new subtitle “Subtitle 14. Credit Card Processors”

Annotated Code of Maryland

(2013 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

SUBTITLE 14. CREDIT CARD PROCESSORS.

12-1401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “CREDIT CARD PROCESSOR” MEANS A PERSON THAT PROCESSES CREDIT CARD OR ELECTRONIC COMMERCE TRANSACTIONS ON BEHALF OF A BUSINESS ENTITY FOR A FEE.

(2) “CREDIT CARD PROCESSOR” INCLUDES:

- (I) A MERCHANT SERVICES PROVIDER;**
- (II) A FINANCIAL INSTITUTION;**
- (III) AN INDEPENDENT SALES ORGANIZATION; AND**

(IV) ANY SUBSIDIARY OR AFFILIATE OF AN ENTITY LISTED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

(C) “~~SERVICES~~ MERCHANT PROCESSING AGREEMENT” MEANS A CONTRACT BETWEEN A CREDIT CARD PROCESSOR AND A BUSINESS ENTITY UNDER WHICH THE BUSINESS ENTITY AGREES TO PAY THE CREDIT CARD PROCESSOR FOR PROCESSING CREDIT CARD OR ELECTRONIC COMMERCE TRANSACTIONS ON BEHALF OF THE BUSINESS ENTITY.

12-1402.

THIS SUBTITLE DOES NOT APPLY TO A ~~SERVICES~~ MERCHANT PROCESSING AGREEMENT BETWEEN A CREDIT CARD PROCESSOR AND A BUSINESS ENTITY THAT:

(1) THAT MAY BE TERMINATED WITHOUT ASSESSMENT OF FEES, FINES, PENALTIES, OR LIQUIDATED DAMAGES; OR

(2) IF AT THE TIME OF ENTRY INTO THE MERCHANT PROCESSING AGREEMENT, THE BUSINESS ENTITY EMPLOYS 50 OR MORE EMPLOYEES OR REASONABLY ESTIMATES THAT IT WILL GENERATE MORE THAN \$2,000,000 IN CREDIT CARD OR ELECTRONIC COMMERCE TRANSACTIONS EACH YEAR.

12-1403.

(A) ~~(1) A CREDIT CARD PROCESSOR SHALL SEND TO EACH BUSINESS WITH WHOM IT HAS, OR INTENDS TO HAVE, A SERVICES AGREEMENT A SUMMARY OF THE SERVICES AGREEMENT.~~

~~(2) BEFORE ENTERING INTO A SERVICES AGREEMENT WITH A CREDIT CARD PROCESSOR, THE BUSINESS SHALL ACKNOWLEDGE THE SERVICES AGREEMENT BY SIGNING, DATING, AND RETURNING A COPY OF THE SUMMARY OF THE SERVICES AGREEMENT TO THE CREDIT CARD PROCESSOR~~ IF A BUSINESS ENTITY CANCELS A MERCHANT PROCESSING AGREEMENT BEFORE THE EXPIRATION OF THE INITIAL TERM AGREED ON BY THE CREDIT CARD PROCESSOR AND THE

BUSINESS ENTITY, THE CREDIT CARD PROCESSOR MAY NOT ASSESS OR CHARGE A FEE, FINE, OR PENALTY THAT EXCEEDS \$500.

~~(B) THE SUMMARY REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:~~

~~(1) THE INTEREST RATE AUTHORIZED UNDER THE SERVICES AGREEMENT;~~

~~(2) THE AMOUNT AND PURPOSE OF EACH FEE, FINE, OR PENALTY THAT THE CREDIT CARD PROCESSOR MAY CHARGE OR ASSESS UNDER THE SERVICES AGREEMENT;~~

~~(3) THE EXPIRATION DATE OF THE SERVICES AGREEMENT;~~

~~(4) THE SERVICES AGREEMENT RENEWAL DATE; AND~~

~~(5) THE NAME, TELEPHONE NUMBER, MAILING ADDRESS, AND E-MAIL ADDRESS OF AN AUTHORIZED REPRESENTATIVE OF THE CREDIT CARD PROCESSOR~~ IF A BUSINESS ENTITY TERMINATES THE MERCHANT PROCESSING AGREEMENT AFTER THE EXPIRATION OF THE INITIAL TERM AGREED ON BY A CREDIT CARD PROCESSOR AND A BUSINESS ENTITY, THE CREDIT CARD PROCESSOR MAY NOT ASSESS A FEE, FINE, OR PENALTY, UNLESS A CREDIT CARD PROCESSOR AND A BUSINESS ENTITY HAVE ENTERED INTO A SEPARATE RENEWAL MERCHANT PROCESSING AGREEMENT.

~~(C) (1) AT LEAST 90 DAYS BEFORE A BUSINESS ENTITY MUST CANCEL A SERVICES AGREEMENT TO PREVENT AUTOMATIC RENEWAL OF THE AGREEMENT, A CREDIT CARD PROCESSOR SHALL PROVIDE WRITTEN NOTICE TO THE BUSINESS ENTITY THAT THE SERVICES AGREEMENT WILL AUTOMATICALLY RENEW.~~

~~(2) THE REQUIRED NOTICE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL DISCLOSE:~~

~~(I) THAT THE SERVICES AGREEMENT WILL AUTOMATICALLY RENEW UNLESS THE BUSINESS ENTITY CANCELS THE AGREEMENT;~~

~~(II) THE DATE BY WHICH THE BUSINESS ENTITY MUST CANCEL THE SERVICES AGREEMENT TO PREVENT THE AGREEMENT FROM RENEWING;~~

~~(III) PROCEDURES FOR CANCELING THE SERVICES AGREEMENT;~~
~~AND~~

~~(IV) THAT THE SERVICES AGREEMENT HAS CHANGED, IF APPLICABLE~~ SUBJECT TO SUBSECTION (D) OF THIS SECTION, A MERCHANT PROCESSING AGREEMENT SHALL DISCLOSE CLEARLY AND CONSPICUOUSLY IN BOLD, 12 POINT FONT THE FOLLOWING INFORMATION:

(1) THE AMOUNT OF ANY EARLY TERMINATION FEE, FINE, PENALTY, OR LIQUIDATED DAMAGES THAT MAY BE ASSESSED BY THE CREDIT CARD PROCESSOR FOR TERMINATION OF A MERCHANT PROCESSING AGREEMENT BEFORE THE EXPIRATION OF THE INITIAL TERM;

(2) THE EXPIRATION DATE OF THE MERCHANT PROCESSING AGREEMENT;

(3) THE RENEWAL DATE OF THE MERCHANT PROCESSING AGREEMENT; AND

(4) THE CUSTOMER SERVICE CONTACT INFORMATION OF THE CREDIT CARD PROCESSOR, INCLUDING TELEPHONE NUMBER, MAILING ADDRESS, AND E-MAIL ADDRESS.

(D) THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION SHALL BE:

(1) PROVIDED ON THE SIGNATURE PAGE OF A MERCHANT ~~SERVICES~~ PROCESSING AGREEMENT; AND

(2) INITIALED SEPARATELY BY THE BUSINESS ENTITY.

(E) THE CREDIT CARD PROCESSOR SHALL PROVIDE A COPY OF THE MERCHANT PROCESSING AGREEMENT IN ELECTRONIC OR PAPER FORM TO THE BUSINESS ENTITY AT THE TIME THE BUSINESS ENTITY SIGNS THE MERCHANT PROCESSING AGREEMENT.

12-1404.

IF A COMPLAINT ABOUT A VIOLATION OF § 12-1403 OF THIS SUBTITLE IS FILED WITH THE COMMISSIONER OF FINANCIAL REGULATION, THE COMMISSIONER MAY INVESTIGATE THE COMPLAINT AND USE ANY OF THE INVESTIGATIVE AND ENFORCEMENT POWERS PROVIDED UNDER TITLE 2, SUBTITLE 1 OF THE FINANCIAL INSTITUTIONS ARTICLE.

~~12-1405.~~

~~(A) A PERSON THAT VIOLATES § 12-1403 OF THIS SUBTITLE IS SUBJECT TO A FINE NOT EXCEEDING \$100 FOR EACH VIOLATION.~~

~~(B) A PERSON THAT HAS BEEN FOUND TO HAVE VIOLATED THIS SUBTITLE AND THAT SUBSEQUENTLY REPEATS THE SAME VIOLATION IS SUBJECT TO A FINE OF NOT MORE THAN \$500 FOR EACH SUBSEQUENT VIOLATION.~~

~~(C) THE FINES PROVIDED FOR IN SUBSECTIONS (A) AND (B) OF THIS SECTION ARE CIVIL PENALTIES AND ARE RECOVERABLE BY THE COMMISSIONER OF FINANCIAL REGULATION IN A CIVIL ACTION OR AN ADMINISTRATIVE CEASE AND DESIST ACTION UNDER § 2-115 OF THE FINANCIAL INSTITUTIONS ARTICLE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any merchant processing agreement entered into or renewed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 30, 2019.