

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1156 (Delegate Conaway)
Economic Matters

Consumer Protection - Automatic Recurring Payments

This bill requires merchants that enroll consumers in automatic recurring payments for goods or services provided or sold over the Internet to include in a prominent place on its website a link to a web page that allows the consumer to cancel the contract. The bill further requires merchants that enroll consumers in automatic recurring payments for goods or services provided over the Internet, by mail, or over the telephone to (1) provide the consumer an electronic or physical form that allows the consumer to opt out of the automatic recurring payments (or cancel the contract before any payment is drawn from the consumer account) and (2) present the recurring automatic payment terms to the consumer in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled. The bill applies only prospectively and may not be applied (or interpreted) to have any effect on (or application to) any recurring automatic payment contract entered into before the bill's effective date. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: A “recurring automatic payment” means a contract, plan, or arrangement between a merchant and a consumer that:

- requires a consumer to make periodic payments for consumer goods or services;
- allows the merchant to collect the payments directly from the consumer’s account; and
- is automatically renewed at the end of a definite term for a subsequent term.

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

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

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

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

CFPB notes that some consumers have reported having trouble stopping automatic payments after providing a company with their account information.

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

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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