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By: **Delegate Kach**

Introduced and read first time: February 12, 1999

Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation - Secondary Mortgage Loans - Credit Provisions**

3 FOR the purpose of providing that certain fees and charges collected by certain  
4 persons are not subject to regulation under certain provisions of law governing  
5 secondary mortgage laws and may not be included in any computation of any  
6 permitted fees or charges collected by or for a lender; providing that a lender  
7 who violates certain provisions of the secondary mortgage loan law may collect  
8 charges paid to third parties for certain services; altering certain definitions;  
9 declaring the intent of the General Assembly; and generally relating to credit  
10 provisions of secondary mortgage loans.

11 BY repealing and reenacting, without amendments,  
12 Article - Commercial Law  
13 Section 12-401(a)  
14 Annotated Code of Maryland  
15 (1990 Replacement Volume and 1998 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article - Commercial Law  
18 Section 12-401(d) and (i) and 12-413  
19 Annotated Code of Maryland  
20 (1990 Replacement Volume and 1998 Supplement)

21 BY adding to  
22 Article - Commercial Law  
23 Section 12-405(d)  
24 Annotated Code of Maryland  
25 (1990 Replacement Volume and 1998 Supplement)

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

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**Article - Commercial Law**

2 12-401.

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

4 (d) "Lien on real property" includes:

5 (1) A confessed judgment note or consent judgment required by a person  
6 who ordinarily requires such an instrument for the purpose of [acquiring a lien]  
7 SECURING REPAYMENT OF A LOAN SECURED BY A MORTGAGE OR DEED OF TRUST on  
8 property described in subsection (i) of this section; and

9 (2) A sale and leaseback required by a person for that purpose.

10 (i) (1) "Secondary mortgage loan" means a loan or deferred purchase price  
11 secured in whole or in part by a mortgage, deed of trust, security agreement, or other  
12 lien on real property located in the State, WHICH LIEN IS INTENDED TO BE A  
13 SUBORDINATE LIEN AND which property:

14 (i) Is subject to the lien of one or more prior [encumbrances, except  
15 a ground rent or other leasehold interest] MORTGAGES OR DEEDS OF TRUST; and

16 (ii) Has a dwelling on it designed principally as a residence with  
17 accommodations for not more than four families.

18 (2) "Secondary mortgage loan" does not include:

19 (i) A loan to any corporation unless the lender required the  
20 borrower to incorporate as a condition for obtaining the loan; or

21 (ii) A commercial loan of more than \$75,000, as defined in §  
22 12-101(c) of this article.

23 (3) If a commercial loan of \$75,000 or less is made in the name of an  
24 individual, secured by owner-occupied residential real property and not to a business  
25 or commercial organization, the mortgage lender, as defined by the provisions of §  
26 11-501 of the Financial Institutions Article, shall document independent evidence  
27 that the borrower is seeking funds for a legitimate commercial enterprise before the  
28 lender grants any loan for that purpose. An affidavit is not by itself evidence of a  
29 commercial loan. However, if the borrower is seeking funds to start a business and  
30 has not yet incorporated or prepared documentation of proof of ownership of a  
31 commercial enterprise, an affidavit by itself is sufficient if it states the purpose for  
32 which the proceeds are to be used and the nature of the business conducted by the  
33 borrower.

34 12-405.

35 (D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, FEES AND  
36 CHARGES COLLECTED BY A THIRD PARTY OTHER THAN A LENDER OR LOAN BROKER,

1 FOR SERVICES RENDERED TO A BORROWER OR LENDER IN CONNECTION WITH A  
2 LOAN, ARE NOT REGULATED UNDER THIS SUBTITLE AND SUCH FEES AND CHARGES  
3 COLLECTED BY THIRD PARTIES ARE NOT TO BE INCLUDED IN ANY COMPUTATION OF  
4 ANY PERMITTED FEES OR CHARGES COLLECTED BY OR FOR A LENDER UNDER THIS  
5 SUBTITLE.

6 12-413.

7 Except for a bona fide error of computation, if a lender violates any provision of  
8 this subtitle he may collect only the principal amount of the loan and THOSE  
9 CHARGES PAID TO THIRD PARTIES FOR SERVICES RENDERED IN CONNECTION WITH  
10 THE LOAN AS DESCRIBED IN § 12-405(D) OF THIS ARTICLE, AND may not collect any  
11 interest, costs, or other charges with respect to the loan. In addition, a lender who  
12 knowingly violates any provision of this subtitle also shall forfeit to the borrower  
13 three times the amount of interest and charges collected in excess of that authorized  
14 by law.

15 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the  
16 General Assembly that third party fees under § 12-405(d) of the Commercial Law  
17 Article, as enacted by Section 1 of this Act, contemplate those fees charged for services  
18 rendered in connection to a loan by title companies, pest inspectors, well and septic  
19 inspectors, surveyors, title abstractors, appraisers, credit reporting agencies,  
20 attorneys and others that provide services as part of the loan transaction on behalf of  
21 the borrowers or the lenders.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 1999.