

HOUSE BILL 727

Unofficial Copy  
II

2000 Regular Session  
(01r2320)

**ENROLLED BILL**

-- Commerce and Government Matters/Finance --

Introduced by **Delegates McIntosh, Wood, Krysiak, Bobo, Rosenberg,  
Sophocleus, Dypski, DeCarlo, Malone, Benson, Paige, Bronrott, Mandel,  
Riley, Swain, Clagett, and ~~Dobson~~ Dobson, Arnick, Brinkley, Glassman,  
Kittleman, Parrott, Shank, and Snodgrass**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Commissioner of Financial Regulation - Investigative and Enforcement**  
3 **Powers**

4 FOR the purpose of providing that ~~the certain~~ investigative and enforcement powers  
5 of the Commissioner of Financial Regulation authorized under this Act are in  
6 addition to any investigative or enforcement powers of the Commissioner  
7 authorized under any other provision of law; exempting certain financial  
8 institutions from the applicability of certain investigative and enforcement  
9 powers authorized under this Act; beginning in fiscal year 2001, requiring the  
10 Governor to appropriate in the State budget in each fiscal year to the Division of  
11 Financial Regulation ~~to fund~~ funding for the positions necessary to implement  
12 the investigative and enforcement powers authorized under this Act;  
13 authorizing the Commissioner to make investigations under certain  
14 circumstances to determine whether a person has violated ~~or is about to violate~~

1 a provision of law, regulation, rule, or order over which the Commissioner has  
 2 jurisdiction; authorizing the Commissioner to administer oaths, subpoena  
 3 witnesses, compel the attendance of witnesses, take evidence, and require the  
 4 production of certain documents for the purpose of an investigation or inquiry  
 5 under certain circumstances; ~~limiting the right of a person not to testify or~~  
 6 ~~produce documents under order of~~ authorizing a court to issue an order to  
 7 require a person to appear before the Commissioner under certain  
 8 circumstances; authorizing the Commissioner to issue a summary cease and  
 9 desist order for a certain violation prior to a hearing under certain  
 10 circumstances; authorizing the Commissioner to take certain actions for a  
 11 certain violation after a certain notice and hearing under certain circumstances;  
 12 requiring the Commissioner to consider certain factors in determining the  
 13 amount of a financial penalty for a certain violation under certain  
 14 circumstances; authorizing the Commissioner to bring certain actions to obtain  
 15 certain remedies under certain circumstances; altering the authority of the  
 16 Commissioner to issue a cease and desist order under the Maryland Consumer  
 17 Loan Law under certain circumstances; authorizing the Commissioner to issue a  
 18 summary cease and desist order under the Maryland Consumer Loan Law  
 19 under certain circumstances; defining a certain term; and generally relating to  
 20 the investigative and enforcement powers of the Commissioner of Financial  
 21 Regulation.

22 BY adding to  
 23 Article - Financial Institutions  
 24 Section 2-113 through 2-116, inclusive  
 25 Annotated Code of Maryland  
 26 (1998 Replacement Volume and 1999 Supplement)

27 BY repealing and reenacting, with amendments,  
 28 Article - Financial Institutions  
 29 Section 11-215  
 30 Annotated Code of Maryland  
 31 (1998 Replacement Volume and 1999 Supplement)

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

34 **Article - Financial Institutions**

35 2-113.

36 (A) IN THIS SECTION, "AFFILIATE" HAS THE MEANING STATED IN § 5-401(B) OF  
 37 THIS ARTICLE.

38 ~~(A)~~ (B) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE  
 39 INVESTIGATIVE AND ENFORCEMENT POWERS OF THE COMMISSIONER AUTHORIZED  
 40 UNDER THIS SUBTITLE ARE IN ADDITION TO ANY INVESTIGATIVE OR ENFORCEMENT

1 POWERS OF THE COMMISSIONER AUTHORIZED UNDER ANY OTHER PROVISION OF  
2 LAW.

3 ~~(B)~~ (C) BEGINNING IN FISCAL YEAR 2001, THE GOVERNOR SHALL  
4 APPROPRIATE *IN THE STATE BUDGET* IN EACH FISCAL YEAR TO THE DIVISION OF  
5 FINANCIAL REGULATION ~~TO FUND~~ *FUNDING FOR* THE POSITIONS NECESSARY TO  
6 IMPLEMENT THE INVESTIGATIVE AND ENFORCEMENT POWERS AUTHORIZED UNDER  
7 THIS SUBTITLE.

8 (D) THE PROVISIONS OF §§ 2-114 THROUGH 2-116, INCLUSIVE, OF THIS  
9 SUBTITLE DO NOT APPLY TO:

10 (1) ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN  
11 ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED UNDER THE LAWS  
12 OF THIS STATE OR THE UNITED STATES THAT MAINTAINS ITS PRINCIPAL OFFICE IN  
13 THIS STATE;

14 (2) ANY OUT-OF-STATE BANK, AS DEFINED IN § 5-1001 OF THIS ARTICLE,  
15 HAVING A BRANCH THAT ACCEPTS DEPOSITS IN THIS STATE;

16 (3) ANY INSTITUTION INCORPORATED UNDER FEDERAL LAW AS A  
17 SAVINGS ASSOCIATION OR SAVINGS BANK THAT DOES NOT MAINTAIN ITS PRINCIPAL  
18 OFFICE IN THIS STATE BUT HAS A BRANCH THAT ACCEPTS DEPOSITS IN THIS STATE;  
19 OR

20 (4) AN AFFILIATE OF AN INSTITUTION DESCRIBED IN PARAGRAPH (1), (2),  
21 OR (3) OF THIS SUBSECTION.

22 2-114.

23 (A) THE COMMISSIONER MAY:

24 (1) MAKE PUBLIC OR PRIVATE INVESTIGATIONS ~~WITHIN OR OUTSIDE OF~~  
25 ~~THIS STATE~~ AS THE COMMISSIONER CONSIDERS NECESSARY TO:

26 (I) DETERMINE WHETHER A PERSON HAS VIOLATED ~~OR IS ABOUT~~  
27 ~~TO VIOLATE~~ A PROVISION OF LAW, REGULATION, RULE, OR ORDER OVER WHICH THE  
28 COMMISSIONER HAS JURISDICTION; OR

29 (II) AID IN THE ENFORCEMENT OF A LAW OR IN THE PRESCRIBING  
30 OF REGULATIONS, RULES, AND ORDERS OVER WHICH THE COMMISSIONER HAS  
31 JURISDICTION;

32 (2) REQUIRE OR PERMIT A PERSON TO FILE A STATEMENT IN WRITING,  
33 UNDER OATH OR OTHERWISE AS THE COMMISSIONER DETERMINES, AS TO ALL THE  
34 FACTS AND CIRCUMSTANCES CONCERNING THE MATTER TO BE INVESTIGATED; AND

35 (3) SUBJECT TO THE PROVISIONS OF TITLE 10, SUBTITLE 6 OF THE  
36 STATE GOVERNMENT ARTICLE, PUBLISH INFORMATION CONCERNING A VIOLATION

1 OF A LAW, REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS  
2 JURISDICTION.

3 (B) FOR THE PURPOSE OF AN INVESTIGATION OR PROCEEDING, THE  
4 COMMISSIONER OR AN OFFICER DESIGNATED BY THE COMMISSIONER MAY  
5 ADMINISTER OATHS AND AFFIRMATIONS, SUBPOENA WITNESSES, COMPEL THEIR  
6 ATTENDANCE, TAKE EVIDENCE, AND REQUIRE THE PRODUCTION OF BOOKS, PAPERS,  
7 CORRESPONDENCE, MEMORANDA, AGREEMENTS, OR OTHER DOCUMENTS OR  
8 RECORDS WHICH THE COMMISSIONER CONSIDERS RELEVANT OR MATERIAL TO THE  
9 INQUIRY.

10 (C) (1) IN CASE OF CONTUMACY BY OR REFUSAL TO OBEY A SUBPOENA  
11 ISSUED TO A PERSON, THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PERSON  
12 RESIDES OR TRANSACTS BUSINESS, ON APPLICATION BY THE COMMISSIONER, MAY  
13 ISSUE TO THE PERSON AN ORDER REQUIRING THE PERSON TO APPEAR BEFORE THE  
14 COMMISSIONER OR THE OFFICER DESIGNATED BY THE COMMISSIONER TO PRODUCE  
15 DOCUMENTARY EVIDENCE IF SO ORDERED OR TO GIVE EVIDENCE TOUCHING THE  
16 MATTER UNDER INVESTIGATION OR IN QUESTION.

17 (2) FAILURE TO OBEY THE ORDER OF THE COURT MAY BE PUNISHED BY  
18 THE COURT AS A CONTEMPT OF COURT.

19 ~~(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON IS NOT~~  
20 ~~EXCUSED FROM ATTENDING AND TESTIFYING OR FROM PRODUCING A DOCUMENT~~  
21 ~~OR RECORD BEFORE THE COMMISSIONER, OR IN OBEDIENCE TO THE SUBPOENA OF~~  
22 ~~THE COMMISSIONER OR AN OFFICER DESIGNATED BY THE COMMISSIONER, OR IN A~~  
23 ~~PROCEEDING INSTITUTED BY THE COMMISSIONER, ON THE GROUND THAT THE~~  
24 ~~TESTIMONY OR EVIDENCE, DOCUMENTARY OR OTHERWISE, REQUIRED OF THE~~  
25 ~~PERSON MAY TEND TO INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A~~  
26 ~~PENALTY OR FORFEITURE.~~

27 ~~(2) AN INDIVIDUAL MAY NOT BE PROSECUTED OR SUBJECTED TO A~~  
28 ~~PENALTY OR FORFEITURE FOR OR ON ACCOUNT OF A SPECIFIC SUBJECT~~  
29 ~~CONCERNING WHICH THE INDIVIDUAL IS COMPELLED, AFTER CLAIMING THE~~  
30 ~~INDIVIDUAL'S PRIVILEGE AGAINST SELF-INCRIMINATION AS TO THAT SPECIFIC~~  
31 ~~SUBJECT, TO TESTIFY OR PRODUCE EVIDENCE, DOCUMENTARY OR OTHERWISE,~~  
32 ~~EXCEPT THAT THE INDIVIDUAL TESTIFYING IS NOT EXEMPT FROM PROSECUTION~~  
33 ~~AND PUNISHMENT FOR PERJURY OR CONTEMPT COMMITTED IN TESTIFYING.~~

34 2-115.

35 (A) WHEN THE COMMISSIONER DETERMINES THAT A PERSON HAS ENGAGED  
36 ~~OR IS ABOUT TO ENGAGE~~ IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A  
37 LAW, REGULATION, RULE OR ORDER OVER WHICH THE COMMISSIONER HAS  
38 JURISDICTION, AND THAT IMMEDIATE ACTION AGAINST THE PERSON IS IN THE  
39 PUBLIC INTEREST, THE COMMISSIONER MAY IN THE COMMISSIONER'S DISCRETION  
40 ISSUE, WITHOUT A PRIOR HEARING, A SUMMARY ORDER DIRECTING THE PERSON TO  
41 CEASE AND DESIST FROM ENGAGING IN THE ACTIVITY, PROVIDED THAT THE  
42 SUMMARY CEASE AND DESIST ORDER GIVES THE PERSON:

1 (1) NOTICE OF THE OPPORTUNITY FOR A HEARING BEFORE THE  
2 COMMISSIONER TO DETERMINE WHETHER THE SUMMARY CEASE AND DESIST  
3 ORDER SHOULD BE VACATED, MODIFIED, OR ENTERED AS FINAL; AND

4 (2) NOTICE THAT THE SUMMARY CEASE AND DESIST ORDER WILL BE  
5 ENTERED AS FINAL IF THE PERSON DOES NOT REQUEST A HEARING WITHIN 15 DAYS  
6 OF RECEIPT OF THE SUMMARY CEASE AND DESIST ORDER.

7 (B) WHEN THE COMMISSIONER DETERMINES AFTER NOTICE AND A HEARING  
8 ~~IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT~~, UNLESS THE RIGHT  
9 TO NOTICE AND A HEARING IS WAIVED, THAT A PERSON HAS ENGAGED IN AN ACT OR  
10 PRACTICE CONSTITUTING A VIOLATION OF A LAW, REGULATION, RULE OR ORDER  
11 OVER WHICH THE COMMISSIONER HAS JURISDICTION, THE COMMISSIONER MAY IN  
12 THE COMMISSIONER'S DISCRETION AND IN ADDITION TO TAKING ANY OTHER  
13 ACTION AUTHORIZED BY LAW:

14 (1) ISSUE A FINAL CEASE AND DESIST ORDER AGAINST THE PERSON;

15 (2) SUSPEND OR REVOKE THE LICENSE OF THE PERSON;

16 (3) ISSUE A PENALTY ORDER AGAINST THE PERSON IMPOSING A CIVIL  
17 PENALTY UP TO THE MAXIMUM AMOUNT OF \$1,000 FOR A FIRST VIOLATION AND A  
18 MAXIMUM AMOUNT OF \$5,000 FOR A EACH SUBSEQUENT VIOLATION; OR

19 (4) TAKE ANY COMBINATION OF THE ACTIONS SPECIFIED IN THIS  
20 SUBSECTION.

21 (C) IN DETERMINING THE AMOUNT OF FINANCIAL PENALTY TO BE IMPOSED  
22 UNDER SUBSECTION (B) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER  
23 THE FOLLOWING FACTORS:

24 (1) THE SERIOUSNESS OF THE VIOLATION;

25 (2) THE GOOD FAITH OF THE VIOLATOR;

26 (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;

27 (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND  
28 THE INDUSTRY INVOLVED;

29 (5) THE ASSETS OF THE VIOLATOR; AND

30 (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE  
31 FINANCIAL PENALTY.

32 (D) NOTICE OF ANY HEARING UNDER THIS SECTION SHALL BE GIVEN AND  
33 THE HEARING SHALL BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE  
34 PROCEDURE ACT.

1 2-116.

2 (A) WHEN IT APPEARS TO THE COMMISSIONER THAT A PERSON IS ABOUT TO  
3 ENGAGE IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A LAW,  
4 REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS  
5 JURISDICTION, THE COMMISSIONER MAY BRING AN ACTION IN THE CIRCUIT COURT  
6 OF THE COUNTY IN WHICH THE PERSON RESIDES OR TRANSACTS BUSINESS TO  
7 OBTAIN ONE OR MORE OF THE FOLLOWING REMEDIES:

8 (1) A TEMPORARY RESTRAINING ORDER; OR

9 (2) A TEMPORARY OR PERMANENT INJUNCTION.

10 (B) WHEN IT APPEARS TO THE COMMISSIONER THAT A PERSON HAS ENGAGED  
11 IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A LAW, REGULATION, RULE,  
12 OR ORDER OVER WHICH THE COMMISSIONER HAS JURISDICTION, THE  
13 COMMISSIONER MAY BRING AN ACTION IN THE CIRCUIT COURT OF THE COUNTY IN  
14 WHICH THE PERSON RESIDES OR TRANSACTS BUSINESS TO OBTAIN ONE OR MORE OF  
15 THE FOLLOWING REMEDIES:

16 (1) A TEMPORARY RESTRAINING ORDER;

17 (2) A TEMPORARY OR PERMANENT INJUNCTION;

18 (3) A CIVIL PENALTY UP TO A MAXIMUM AMOUNT OF \$1,000 FOR A FIRST  
19 VIOLATION AND A MAXIMUM AMOUNT OF \$5,000 FOR ~~A~~ EACH SUBSEQUENT  
20 VIOLATION;

21 (4) A DECLARATORY JUDGMENT;

22 (5) AN ORDER PREVENTING ACCESS TO THE VIOLATOR'S ASSETS;

23 (6) RESCISSION;

24 (7) RESTITUTION; AND

25 (8) ANY OTHER RELIEF AS THE COURT DEEMS JUST.

26 (C) THE COMMISSIONER MAY NOT BE REQUIRED TO POST A BOND IN AN  
27 ACTION UNDER THIS SECTION.

28 11-215.

29 (A) Subject to the hearing provisions of § 11-217 of this subtitle, the  
30 Commissioner may order a licensee OR ANY OTHER PERSON to cease and desist from  
31 a course of conduct if the course of conduct results in an evasion or violation of the  
32 Maryland Consumer Loan Law or of any rule or regulation adopted under it.

33 (B) (1) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS  
34 SUBSECTION, WHEN THE COMMISSIONER DETERMINES THAT A LICENSEE OR ANY  
35 OTHER PERSON IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE CONSTITUTING AN

1 EVASION OR VIOLATION OF THE MARYLAND CONSUMER LOAN LAW OR OF ANY RULE  
2 OR REGULATION ADOPTED UNDER THE MARYLAND CONSUMER LOAN LAW, AND  
3 THAT IMMEDIATE ACTION AGAINST THE LICENSEE OR PERSON IS IN THE PUBLIC  
4 INTEREST, THE COMMISSIONER MAY IN THE COMMISSIONER'S DISCRETION ISSUE,  
5 WITHOUT A PRIOR HEARING, A SUMMARY ORDER DIRECTING THE LICENSEE OR  
6 PERSON TO CEASE AND DESIST FROM ENGAGING IN THE ACT OR PRACTICE.

7                   (2)       A SUMMARY CEASE AND DESIST ORDER ISSUED UNDER PARAGRAPH  
8 (1) OF THIS SUBSECTION SHALL GIVE THE LICENSEE OR PERSON:

9                   (I)       SUBJECT TO THE HEARING PROVISIONS OF § 11-217 OF THIS  
10 SUBTITLE, NOTICE OF THE OPPORTUNITY FOR A HEARING TO DETERMINE WHETHER  
11 THE SUMMARY CEASE AND DESIST ORDER SHOULD BE VACATED, MODIFIED, OR  
12 ENTERED AS FINAL; AND

13                   (II)       NOTICE THAT THE SUMMARY CEASE AND DESIST ORDER WILL  
14 BE ENTERED AS FINAL IF THE LICENSEE OR PERSON DOES NOT REQUEST A HEARING  
15 WITHIN 15 DAYS OF RECEIPT OF THE SUMMARY CEASE AND DESIST ORDER.

16       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 June 1, 2000.