

SENATE BILL 830

Unofficial Copy
II

2000 Regular Session
(01r2970)

ENROLLED BILL

-- Finance/Commerce and Government Matters --

Introduced by **Senators Sfikas, Dorman, Conway, Pinsky, Hughes, Teitelbaum,
and Della**

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.

President.

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~~
15 a provision of law, regulation, rule, or order over which the Commissioner has
16 jurisdiction; authorizing the Commissioner to administer oaths, subpoena

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

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

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

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

32 **Article - Financial Institutions**

33 2-113.

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

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

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

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

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

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

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

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

20 2-114.

21 (A) THE COMMISSIONER MAY:

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

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

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

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

33 (3) SUBJECT TO THE PROVISIONS OF TITLE 10, SUBTITLE 6 OF THE
34 STATE GOVERNMENT ARTICLE, PUBLISH INFORMATION CONCERNING A VIOLATION
35 OF A LAW, REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS
36 JURISDICTION.

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

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

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

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

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

32 2-115.

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