

SENATE BILL 830

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II

2000 Regular Session
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CF HB 727

By: **Senators Sfikas, Dorman, Conway, Pinsky, Hughes, Teitelbaum, and Della**

Introduced and read first time: February 18, 2000
Assigned to: Rules
Re-referred to: Finance, February 25, 2000

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 27, 2000

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 each fiscal year to the Division of Financial
11 Regulation to fund the positions necessary to implement the investigative and
12 enforcement powers authorized under this Act; authorizing the Commissioner to
13 make investigations under certain circumstances to determine whether a person
14 has violated ~~or is about to violate~~ a provision of law, regulation, rule, or order
15 over which the Commissioner has jurisdiction; authorizing the Commissioner to
16 administer oaths, subpoena witnesses, compel the attendance of witnesses, take
17 evidence, and require the production of certain documents for the purpose of an
18 investigation or inquiry under certain circumstances; ~~limiting the right of a~~
19 ~~person not to testify or produce documents under order of~~ authorizing a court to
20 issue an order to require a person to appear before the Commissioner under
21 certain circumstances; authorizing the Commissioner to issue a summary cease
22 and desist order for a certain violation prior to a hearing under certain
23 circumstances; authorizing the Commissioner to take certain actions for a
24 certain violation after a certain notice and hearing under certain circumstances;
25 requiring the Commissioner to consider certain factors in determining the
26 amount of a financial penalty for a certain violation under certain

1 circumstances; authorizing the Commissioner to bring certain actions to obtain
 2 certain remedies under certain circumstances; altering the authority of the
 3 Commissioner to issue a cease and desist order under the Maryland Consumer
 4 Loan Law under certain circumstances; authorizing the Commissioner to issue a
 5 summary cease and desist order under the Maryland Consumer Loan Law
 6 under certain circumstances; defining a certain term; and generally relating to
 7 the investigative and enforcement powers of the Commissioner of Financial
 8 Regulation.

9 BY adding to
 10 Article - Financial Institutions
 11 Section 2-113 through 2-116, inclusive
 12 Annotated Code of Maryland
 13 (1998 Replacement Volume and 1999 Supplement)

14 BY repealing and reenacting, with amendments,
 15 Article - Financial Institutions
 16 Section 11-215
 17 Annotated Code of Maryland
 18 (1998 Replacement Volume and 1999 Supplement)

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

21 **Article - Financial Institutions**

22 2-113.

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

25 ~~(A)~~ (B) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE
 26 INVESTIGATIVE AND ENFORCEMENT POWERS OF THE COMMISSIONER AUTHORIZED
 27 UNDER THIS SUBTITLE ARE IN ADDITION TO ANY INVESTIGATIVE OR ENFORCEMENT
 28 POWERS OF THE COMMISSIONER AUTHORIZED UNDER ANY OTHER PROVISION OF
 29 LAW.

30 ~~(B)~~ (C) BEGINNING IN FISCAL YEAR 2001, THE GOVERNOR SHALL
 31 APPROPRIATE IN EACH FISCAL YEAR TO THE DIVISION OF FINANCIAL REGULATION
 32 TO FUND THE POSITIONS NECESSARY TO IMPLEMENT THE INVESTIGATIVE AND
 33 ENFORCEMENT POWERS AUTHORIZED UNDER THIS SUBTITLE.

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

36 (1) ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN
 37 ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED UNDER THE LAWS

1 OF THIS STATE OR THE UNITED STATES THAT MAINTAINS ITS PRINCIPAL OFFICE IN
2 THIS STATE;

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

5 (3) ANY INSTITUTION INCORPORATED UNDER FEDERAL LAW AS A
6 SAVINGS ASSOCIATION OR SAVINGS BANK THAT DOES NOT MAINTAIN ITS PRINCIPAL
7 OFFICE IN THIS STATE BUT HAS A BRANCH THAT ACCEPTS DEPOSITS IN THIS STATE;
8 OR

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

11 2-114.

12 (A) THE COMMISSIONER MAY:

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

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

18 (II) AID IN THE ENFORCEMENT OF A LAW OR IN THE PRESCRIBING
19 OF REGULATIONS, RULES, AND ORDERS OVER WHICH THE COMMISSIONER HAS
20 JURISDICTION;

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

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

28 (B) FOR THE PURPOSE OF AN INVESTIGATION OR PROCEEDING, THE
29 COMMISSIONER OR AN OFFICER DESIGNATED BY THE COMMISSIONER MAY
30 ADMINISTER OATHS AND AFFIRMATIONS, SUBPOENA WITNESSES, COMPEL THEIR
31 ATTENDANCE, TAKE EVIDENCE, AND REQUIRE THE PRODUCTION OF BOOKS, PAPERS,
32 CORRESPONDENCE, MEMORANDA, AGREEMENTS, OR OTHER DOCUMENTS OR
33 RECORDS WHICH THE COMMISSIONER CONSIDERS RELEVANT OR MATERIAL TO THE
34 INQUIRY.

35 (C) (1) IN CASE OF CONTUMACY BY OR REFUSAL TO OBEY A SUBPOENA
36 ISSUED TO A PERSON, THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PERSON
37 RESIDES OR TRANSACTS BUSINESS, ON APPLICATION BY THE COMMISSIONER, MAY
38 ISSUE TO THE PERSON AN ORDER REQUIRING THE PERSON TO APPEAR BEFORE THE

1 COMMISSIONER OR THE OFFICER DESIGNATED BY THE COMMISSIONER TO PRODUCE
2 DOCUMENTARY EVIDENCE IF SO ORDERED OR TO GIVE EVIDENCE TOUCHING THE
3 MATTER UNDER INVESTIGATION OR IN QUESTION.

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

6 ~~(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON IS NOT~~
7 ~~EXCUSED FROM ATTENDING AND TESTIFYING OR FROM PRODUCING A DOCUMENT~~
8 ~~OR RECORD BEFORE THE COMMISSIONER, OR IN OBEDIENCE TO THE SUBPOENA OF~~
9 ~~THE COMMISSIONER OR AN OFFICER DESIGNATED BY THE COMMISSIONER, OR IN A~~
10 ~~PROCEEDING INSTITUTED BY THE COMMISSIONER, ON THE GROUND THAT THE~~
11 ~~TESTIMONY OR EVIDENCE, DOCUMENTARY OR OTHERWISE, REQUIRED OF THE~~
12 ~~PERSON MAY TEND TO INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A~~
13 ~~PENALTY OR FORFEITURE.~~

14 ~~(2) AN INDIVIDUAL MAY NOT BE PROSECUTED OR SUBJECTED TO A~~
15 ~~PENALTY OR FORFEITURE FOR OR ON ACCOUNT OF A SPECIFIC SUBJECT~~
16 ~~CONCERNING WHICH THE INDIVIDUAL IS COMPELLED, AFTER CLAIMING THE~~
17 ~~INDIVIDUAL'S PRIVILEGE AGAINST SELF INCRIMINATION AS TO THAT SPECIFIC~~
18 ~~SUBJECT, TO TESTIFY OR PRODUCE EVIDENCE, DOCUMENTARY OR OTHERWISE,~~
19 ~~EXCEPT THAT THE INDIVIDUAL TESTIFYING IS NOT EXEMPT FROM PROSECUTION~~
20 ~~AND PUNISHMENT FOR PERJURY OR CONTEMPT COMMITTED IN TESTIFYING.~~

21 2-115.

22 (A) WHEN THE COMMISSIONER DETERMINES THAT A PERSON HAS ENGAGED
23 ~~OR IS ABOUT TO ENGAGE~~ IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A
24 LAW, REGULATION, RULE OR ORDER OVER WHICH THE COMMISSIONER HAS
25 JURISDICTION, AND THAT IMMEDIATE ACTION AGAINST THE PERSON IS IN THE
26 PUBLIC INTEREST, THE COMMISSIONER MAY IN THE COMMISSIONER'S DISCRETION
27 ISSUE, WITHOUT A PRIOR HEARING, A SUMMARY ORDER DIRECTING THE PERSON TO
28 CEASE AND DESIST FROM ENGAGING IN THE ACTIVITY, PROVIDED THAT THE
29 SUMMARY CEASE AND DESIST ORDER GIVES THE PERSON:

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

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

36 (B) WHEN THE COMMISSIONER DETERMINES AFTER NOTICE AND A HEARING
37 ~~IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT,~~ UNLESS THE RIGHT
38 TO NOTICE AND A HEARING IS WAIVED, THAT A PERSON HAS ENGAGED IN AN ACT OR
39 PRACTICE CONSTITUTING A VIOLATION OF A LAW, REGULATION, RULE OR ORDER
40 OVER WHICH THE COMMISSIONER HAS JURISDICTION, THE COMMISSIONER MAY IN
41 THE COMMISSIONER'S DISCRETION AND IN ADDITION TO TAKING ANY OTHER
42 ACTION AUTHORIZED BY LAW:

- 1 (1) ISSUE A FINAL CEASE AND DESIST ORDER AGAINST THE PERSON;
- 2 (2) SUSPEND OR REVOKE THE LICENSE OF THE PERSON;
- 3 (3) ISSUE A PENALTY ORDER AGAINST THE PERSON IMPOSING A CIVIL
4 PENALTY UP TO THE MAXIMUM AMOUNT OF \$1,000 FOR A FIRST VIOLATION AND A
5 MAXIMUM AMOUNT OF \$5,000 FOR A EACH SUBSEQUENT VIOLATION; OR
- 6 (4) TAKE ANY COMBINATION OF THE ACTIONS SPECIFIED IN THIS
7 SUBSECTION.

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

- 11 (1) THE SERIOUSNESS OF THE VIOLATION;
- 12 (2) THE GOOD FAITH OF THE VIOLATOR;
- 13 (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;
- 14 (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND
15 THE INDUSTRY INVOLVED;
- 16 (5) THE ASSETS OF THE VIOLATOR; AND
- 17 (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE
18 FINANCIAL PENALTY.

19 (D) NOTICE OF ANY HEARING UNDER THIS SECTION SHALL BE GIVEN AND
20 THE HEARING SHALL BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE
21 PROCEDURE ACT.

22 2-116.

23 (A) WHEN IT APPEARS TO THE COMMISSIONER THAT A PERSON IS ABOUT TO
24 ENGAGE IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A LAW,
25 REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS
26 JURISDICTION, THE COMMISSIONER MAY BRING AN ACTION IN THE CIRCUIT COURT
27 OF THE COUNTY IN WHICH THE PERSON RESIDES OR TRANSACTS BUSINESS TO
28 OBTAIN ONE OR MORE OF THE FOLLOWING REMEDIES:

- 29 (1) A TEMPORARY RESTRAINING ORDER; OR
- 30 (2) A TEMPORARY OR PERMANENT INJUNCTION.

31 (B) WHEN IT APPEARS TO THE COMMISSIONER THAT A PERSON HAS ENGAGED
32 IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A LAW, REGULATION, RULE,
33 OR ORDER OVER WHICH THE COMMISSIONER HAS JURISDICTION, THE
34 COMMISSIONER MAY BRING AN ACTION IN THE CIRCUIT COURT OF THE COUNTY IN

1 WHICH THE PERSON RESIDES OR TRANSACTS BUSINESS TO OBTAIN ONE OR MORE OF
2 THE FOLLOWING REMEDIES:

- 3 (1) A TEMPORARY RESTRAINING ORDER;
- 4 (2) A TEMPORARY OR PERMANENT INJUNCTION;
- 5 (3) A CIVIL PENALTY UP TO A MAXIMUM AMOUNT OF \$1,000 FOR A FIRST
6 VIOLATION AND A MAXIMUM AMOUNT OF \$5,000 FOR ~~A~~ EACH SUBSEQUENT
7 VIOLATION;
- 8 (4) A DECLARATORY JUDGMENT;
- 9 (5) AN ORDER PREVENTING ACCESS TO THE VIOLATOR'S ASSETS;
- 10 (6) RESCISSION;
- 11 (7) RESTITUTION; AND
- 12 (8) ANY OTHER RELIEF AS THE COURT DEEMS JUST.

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

15 11-215.

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

20 (B) (1) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS
21 SUBSECTION, WHEN THE COMMISSIONER DETERMINES THAT A LICENSEE OR ANY
22 OTHER PERSON IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE CONSTITUTING AN
23 EVASION OR VIOLATION OF THE MARYLAND CONSUMER LOAN LAW OR OF ANY RULE
24 OR REGULATION ADOPTED UNDER THE MARYLAND CONSUMER LOAN LAW, AND
25 THAT IMMEDIATE ACTION AGAINST THE LICENSEE OR PERSON IS IN THE PUBLIC
26 INTEREST, THE COMMISSIONER MAY IN THE COMMISSIONER'S DISCRETION ISSUE,
27 WITHOUT A PRIOR HEARING, A SUMMARY ORDER DIRECTING THE LICENSEE OR
28 PERSON TO CEASE AND DESIST FROM ENGAGING IN THE ACT OR PRACTICE.

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

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

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

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