

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

Senate Bill 145 (Senator Bromwell)

Finance

Consumer Protection - Contracts - Late Fees

This bill authorizes the parties to a “consumer contract” to agree to the payment of a “late fee” when a party fails to make a payment by the due date as an exception to the legal rate of interest established in the Maryland Constitution. A late fee is any charge or fee imposed because a payment is not made when due under the terms of the contract. A late fee imposed under a consumer contract is neither interest, a finance charge, liquidated damages, nor a penalty. A consumer contract imposing a late fee must disclose the amount of the late fee, the conditions under which the late fee will be imposed, and the timing for the late fee’s imposition. The bill establishes a limit on late fees in consumer contracts that applies retroactively and up until October 1, 2000. Beginning October 1, 2000, the bill sets alternative methods of calculating permissible late fees in consumer contracts and provides for a grace period before a late fee may be imposed.

Also beginning June 1, 2000, the bill authorizes homeowners associations to charge late fees for delinquent assessments or installments. The bill sets limits for these fees and provides for a grace period before a late fee may be imposed.

The bill applies to all late fees provided for in contracts entered into or in effect on or after November 5, 1995. The bill does not apply to late fees imposed before November 5, 1995. The bill applies to any case pending or filed on or after the bill’s June 1, 2000 effective date, but may not be applied to any case for which a final judgement has been rendered and for which appeals have been exhausted prior to June 1, 2000.

Except for the provisions relating to homeowners associations, the bill sunsets October 1, 2005.

Fiscal Summary

State Effect: None. Fees and charges collected at the direction of and paid to a government or governmental agency are exempt by statute from the 6% legal rate of interest established in the Maryland Constitution.

Local Effect: None. Fees and charges collected at the direction of and paid to a governmental agency are exempt from the legal rate.

Small Business Effect: Meaningful.

Analysis

Current Law: Article III, Section 57 of the Maryland Constitution sets the legal rate of interest at 6% per annum, unless otherwise provided by the General Assembly. Late charges have been authorized by statute in various instances, e.g., mortgages, residential leases, service charges for commercial loans secured by inventory or accounts receivable, retail credit accounts, charges by a government or governmental agency. No provision of law addresses late fees for contracts for the payment of money.

A condominium's bylaws may provide for a limited late fee on delinquent assessments or installments after the expiration of the required grace period.

Background: Under *United Cable v. Burch*, 354 Md. 658 (1999), without authorization by the General Assembly, a contract for the payment of money, such as a cable bill or utility bill, may not contain a late fee beyond the legal rate. Under Maryland law, damages for breach of a contract for the payment of money equal the amount due plus interest at the legal rate.

Small Business Effect: Many small businesses charge late fees to customers who do not pay on time. In addition to encouraging a customer to pay on time, a late fee helps to cover the costs to the business of the late payment, including collection costs. Without a statutory exemption, businesses, including small businesses, may either: (1) charge late fees and risk lawsuit; or (2) raise their rates and pass on the cost of late paying customers to all customers.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Maryland Chamber of Commerce, Department of Legislative Services

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