

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 172

(Senator Middleton, *et al.*)

Finance

Economic Matters

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Consumer Protection - Late Fee Requirements in Consumer Contracts - Repeal  
of Sunset

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This bill repeals the October 1, 2005 sunset provision applicable to the authorization for a late fee in a consumer contract.

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Fiscal Summary

**State Effect:** The bill would not directly affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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Analysis

**Current Law:** Under § 14-1315 of the Commercial Law Article, the parties to a consumer contract may agree to the payment of a late fee when a party fails to make a payment by the due date. A late fee is any charge or fee imposed because a payment is not made when due under the terms of the contract. The permissible amount for a late fee is determined by one of two alternative methods. Under the first method, the late fee may be the greater of up to either \$5 per month or 10% per month of the past due amount; however, no more than three monthly late fees may be imposed for any single payment amount that is past due. Under the second method, the amount of the late fee may be up to 1.5% per month of the past due payment amount.

Under statute, a late fee imposed under a consumer contract is distinguished from interest, a finance charge, liquidated damages, or 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.

Under Chapter 59 of 2000, § 14-1315 of the Commercial Law Article sunsets October 1, 2005.

**Background:** In *United Cable v. Burch*, 354 Md. 658 (1999), the Court of Appeals held that 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 of 6% per year established under Article III, Section 57 of the Maryland Constitution. Chapter 59 was enacted in response to that holding.

**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.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 455 (Delegate Krysiak, *et al.*) – Economic Matters.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2004  
r/mdr

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