

# SENATE BILL 347

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EMERGENCY BILL

8lr2119

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By: **Senators Middleton and Astle**

Introduced and read first time: January 28, 2008

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation – Credit Grantor Provisions – Fees, Charges, and Penalties**

3 FOR the purpose of clarifying that certain fees or charges may be collected by a credit  
4 grantor at any time; providing that certain penalties do not apply for certain  
5 acts or omissions arising from conformity to or reliance on certain opinions,  
6 interpretations, or approvals by certain persons under certain circumstances;  
7 providing that certain provisions of this Act may not be construed to limit  
8 certain penalties or limit certain powers of the Commissioner of Financial  
9 Regulation or the courts under certain circumstances; providing for the  
10 application of certain provisions of this Act; making the provisions of this Act  
11 severable; making this Act an emergency measure; and generally relating to  
12 regulation of credit grantors.

13 BY repealing and reenacting, with amendments,  
14 Article – Commercial Law  
15 Section 12–905(b), 12–1005(d), and 12–1009(e)  
16 Annotated Code of Maryland  
17 (2005 Replacement Volume and 2007 Supplement)

18 BY adding to  
19 Article – Commercial Law  
20 Section 12–918.1 and 12–1018.1  
21 Annotated Code of Maryland  
22 (2005 Replacement Volume and 2007 Supplement)

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

25 **Article – Commercial Law**

26 12–905.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) Except as provided in subsection (f) of this section, with respect to  
2 a secured open end credit plan, fees or charges may not be imposed on a consumer  
3 borrower in addition to interest or finance charges except for actual and verifiable fees  
4 incurred by the credit grantor and not retained by the credit grantor for the following:

5 [(1)] (I) Attorney's fees for services rendered in connection with the  
6 preparation, closing, or disbursement of the loan;

7 [(2)] (II) Any expense, tax, or charge paid to a governmental agency;

8 [(3)] (III) Examination of title, appraisal, or other costs necessary or  
9 appropriate to the security of the loan; and

10 [(4)] (IV) Premiums for any insurance coverage permitted under this  
11 subtitle.

12 (2) **THE ADDITIONAL FEES OR CHARGES PERMITTED UNDER THIS**  
13 **SUBSECTION MAY BE IMPOSED, CHARGED, AND COLLECTED AT ANY TIME.**

14 12-1005.

15 In addition to interest at a periodic percentage rate or rates permitted by §§  
16 12-1003 and 12-1004 of this subtitle, a credit grantor may charge and collect:

17 (d) (1) In the case of a loan to a consumer borrower, a fee permitted under  
18 subsection (b) of this section may not be charged and collected unless:

19 [(1)] (I) The agreement, note, or other evidence of the loan permits;

20 [(2)] (II) The fee is an actual and verifiable expense of the credit  
21 grantor not retained by him; and

22 [(3)] (III) Limited to charges for:

23 [(i)] 1. Attorney's fees for services rendered in connection  
24 with the preparation, closing, or disbursement of the loan;

25 [(ii)] 2. Any expense, tax, or charge paid to a governmental  
26 agency;

27 [(iii)] 3. Examination of title, appraisal, or other costs  
28 necessary or appropriate to the security of the loan; and

29 [(iv)] 4. Premiums for any insurance coverage permitted  
30 under this subtitle.

1           **(2) NOTWITHSTANDING § 12-1009(E) OF THIS SUBTITLE, FEES**  
2 **AND CHARGES PERMITTED UNDER THIS SUBSECTION MAY BE IMPOSED,**  
3 **CHARGED, AND COLLECTED AT ANY TIME.**

4 12-1009.

5           **(e) [In] EXCEPT AS PROVIDED IN § 12-1005(D) OF THIS SUBTITLE, IN**  
6 **connection with any prepayment of any loan by a consumer borrower, the credit**  
7 **grantor may not impose any prepayment charge.**

8           SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
9 read as follows:

10   **Article - Commercial Law**

11 **12-918.1.**

12           **(A) IN THIS SECTION, “COMMISSIONER” MEANS THE COMMISSIONER OF**  
13 **FINANCIAL REGULATION.**

14           **(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE**  
15 **PENALTY PROVIDED UNDER § 12-918(A)(2) OF THIS SUBTITLE DOES NOT APPLY**  
16 **IF A CREDIT GRANTOR:**

17                                   **(1) PERFORMED OR OMITTED TO PERFORM AN ACT IN**  
18 **CONFORMITY WITH OR IN RELIANCE ON:**

19   **(I) A WRITTEN OPINION OF THE ATTORNEY GENERAL OF**  
20 **MARYLAND OR A REGULATION ADOPTED BY THE COMMISSIONER;**

21   **(II) A WRITTEN OPINION BY THE COMMISSIONER OR**  
22 **DEPUTY COMMISSIONER; OR**

23   **(III) AN INTERPRETATION BY THE COMMISSIONER IN A**  
24 **WRITTEN NOTICE OR EXAMINATION REPORT; OR**

25                                   **(2) USED A FORM OR PROCEDURE THAT HAS BEEN APPROVED IN**  
26 **WRITING BY THE COMMISSIONER AND THE ATTORNEY GENERAL.**

27           **(C) THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION DO NOT**  
28 **APPLY TO AN ACT OR OMISSION TO ACT THAT OCCURS AFTER:**

1           (1) THE OPINION, REGULATION, OR INTERPRETATION RELIED ON  
2 IS AMENDED, REPEALED, OR DETERMINED TO BE INVALID FOR ANY REASON BY  
3 ANY JUDICIAL OR OTHER AUTHORITY; OR

4           (2) APPROVAL FOR A FORM OR PROCEDURE IS AMENDED,  
5 RESCINDED, OR DETERMINED TO BE INVALID FOR ANY REASON BY ANY  
6 JUDICIAL OR OTHER AUTHORITY.

7           (D) THIS SECTION MAY NOT BE CONSTRUED TO:

8           (1) LIMIT THE IMPOSITION OF ANY CIVIL OR CRIMINAL PENALTY  
9 FOR A KNOWING OR WILLFUL VIOLATION OF THIS SUBTITLE; OR

10          (2) LIMIT THE POWER OF THE COMMISSIONER OR THE COURTS  
11 TO ORDER A REFUND TO A BORROWER OF MONEYS COLLECTED IN VIOLATION  
12 OF THIS SUBTITLE.

13 **12-1018.1.**

14          (A) IN THIS SECTION, "COMMISSIONER" MEANS THE COMMISSIONER OF  
15 FINANCIAL REGULATION.

16          (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE  
17 PENALTY PROVIDED UNDER § 12-1018(A)(2) OF THIS SUBTITLE DOES NOT  
18 APPLY IF A CREDIT GRANTOR:

19           (1) PERFORMED OR OMITTED TO PERFORM AN ACT IN  
20 CONFORMITY WITH OR IN RELIANCE UPON:

21           (I) A WRITTEN OPINION OF THE ATTORNEY GENERAL OF  
22 MARYLAND OR A REGULATION ADOPTED BY THE COMMISSIONER;

23           (II) A WRITTEN OPINION BY THE COMMISSIONER OR THE  
24 DEPUTY COMMISSIONER; OR

25           (III) AN INTERPRETATION BY THE COMMISSIONER IN A  
26 WRITTEN NOTICE OR EXAMINATION REPORT; OR

27          (2) USED A FORM OR PROCEDURE THAT HAS BEEN APPROVED IN  
28 WRITING BY THE COMMISSIONER AND THE ATTORNEY GENERAL.

29          (C) THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION DO NOT  
30 APPLY TO AN ACT OR OMISSION TO ACT THAT OCCURS AFTER:

1           **(1) THE OPINION, REGULATION, OR INTERPRETATION RELIED ON**  
2 **IS AMENDED, REPEALED, OR DETERMINED TO BE INVALID FOR ANY REASON BY**  
3 **ANY JUDICIAL OR OTHER AUTHORITY; OR**

4           **(2) APPROVAL FOR A FORM OR PROCEDURE IS AMENDED,**  
5 **RESCINDED, OR DETERMINED TO BE INVALID FOR ANY REASON BY ANY**  
6 **JUDICIAL OR OTHER AUTHORITY.**

7           **(D) THIS SECTION MAY NOT BE CONSTRUED TO:**

8           **(1) LIMIT THE IMPOSITION OF ANY CIVIL OR CRIMINAL PENALTY**  
9 **FOR A KNOWING OR WILLFUL VIOLATION OF THIS SUBTITLE; OR**

10           **(2) LIMIT THE POWER OF THE COMMISSIONER OR THE COURTS**  
11 **TO ORDER A REFUND TO A BORROWER OF MONEYS COLLECTED IN VIOLATION**  
12 **OF THIS SUBTITLE.**

13           SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act  
14 shall apply to contracts entered into prior to, on, or after the effective date of this Act,  
15 but this Act may not be applied to any case for which a final judgment has been  
16 rendered and for which all judicial appeals have been exhausted prior to the effective  
17 date of this Act.

18           SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this  
19 Act or the application thereof to any person or circumstance is held invalid for any  
20 reason in a court of competent jurisdiction, the invalidity does not affect other  
21 provisions or any other application of this Act which can be given effect without the  
22 invalid provision or application, and for this purpose the provisions of this Act are  
23 declared severable.

24           SECTION 5. AND BE IT FURTHER ENACTED, That this Act is an emergency  
25 measure, is necessary for the immediate preservation of the public health or safety,  
26 has been passed by a yea and nay vote supported by three-fifths of all the members  
27 elected to each of the two Houses of the General Assembly, and shall take effect from  
28 the date it is enacted.