

CHAPTER 34

(Senate Bill 347)

AN ACT concerning

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

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

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

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

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

Article – Commercial Law

12–905.

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

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

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

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

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

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

12-1005.

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

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

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

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

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

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

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

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

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

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

12-1009.

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

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

Article – Commercial Law

12-918.1.

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

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

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

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

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

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

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

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

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

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

(D) THIS SECTION MAY NOT BE CONSTRUED TO:

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

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

12-1018.1.

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

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

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

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

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

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

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

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

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

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

(D) THIS SECTION MAY NOT BE CONSTRUED TO:

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

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

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

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

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

Approved by the Governor, April 8, 2008.