

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1292
Economic Matters

(Delegate Ali, *et al.*)

Finance

Consumer Protection - Consumer Credit Contracts - Prohibited Provisions

This bill prohibits a person from including or enforcing a provision in a consumer credit contract, without the consumer's prior written consent, that triggers a default under the contract or authorizes a party to alter the terms of the contract based on a prohibited risk factor. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a "prohibited risk factor" as the identity of a person from whom a consumer lawfully obtains consumer credit, consumer goods, or consumer services; or a person who makes or holds a mortgage loan on a consumer's home. A prohibited risk factor cannot be used to (1) accelerate a payment owed; (2) increase the interest rate payable; (3) reduce the available credit limit; or (4) alter a term of the contract in any other manner adverse to the consumer.

Each consumer credit contract must contain a clear and conspicuous statement that informs the consumer of the types of provisions prohibited by the bill. A consumer credit contract that contains an aforementioned provision is void and unenforceable. However, the bill does not prohibit a person from using information to detect or prevent fraudulent activity in connection with the provision of consumer credit.

Current Law: State statutory law is currently silent on the permissibility of accelerated payment or default provisions in consumer contracts. Under the Contracts Clause of the U.S. Constitution and corresponding decisions by the U.S. Supreme Court, new laws generally may not be created that substantially impair an already existing private contractual relationship.

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: Recent reports indicate that, in some cases, credit card companies are making credit determinations based on where a cardholder shops or which mortgage lender a cardholder uses. The bill prohibits a consumer credit provider from using such criteria to trigger a default under, or alter the terms of, a consumer credit contract.

Additional Information

Prior Introductions: HB 1178 of 2008 included similar provisions. HB 1178 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2009
mcp/ljm Revised - House Third Reader - April 1, 2009

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