Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1048 (Delegate Frick, *et al.*)
Economic Matters Finance

Commercial Law - Consumer Contracts - Prohibited Provisions

This bill prohibits a person from including provisions in a consumer contract that (1) allow a person to change a material term that detrimentally affects a consumer's existing obligations; or (2) trigger a default or similar penalty based on events unrelated to the consumer's performance of the existing contract. The bill does not apply to consumer contracts freely negotiated by parties with equal bargaining power. Violation is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalties.

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: Minimal.

Analysis

Bill Summary: The bill defines a "consumer contract" as a written agreement for the sale, lease, or provision of consumer goods, consumer services, or consumer credit between a person and a consumer who resides in the State, when such goods, services, and credit are primarily for personal, household, or family purposes.

A consumer contract may not waive any rights or protections afforded by the bill by choice of law or arbitration. Any such prohibited provisions included in a consumer contract in violation of the bill are void and unenforceable.

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 of the Office of the Attorney General 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: Many financial service companies, including credit card issuers, include provisions in consumer contracts through which the consumer contractually agrees to a practice known as “universal default.” In a universal default provision, a consumer agrees that the lender may change the initial terms of loan to specified default terms in the event that the consumer defaults on a completely different loan or contract with another lender. Since 2003, the U.S. Congress has considered several bills to end this practice, and in 2007 Citibank became the first major consumer lender to eliminate its universal default provisions. It is estimated that approximately half of consumer lenders in the nation utilize universal default provisions, but most such lenders do not enforce these provisions with consistency.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510