

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 678

(Senator Della, *et al.*)

Finance

Economic Matters

Commercial Law - Credit Services Businesses - Limitation on Fees

This bill amends the Maryland Credit Services Businesses Act (MCSBA) to limit the fees that may be collected in connection with an extension of credit. Specifically, the bill prohibits a credit services business from charging or receiving a fee in connection with an extension of credit that, when combined with an interest charge, would exceed the interest rate permitted by law. Existing penalties that apply to violations of MCSBA also apply to this offense.

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

Current Law: Credit services businesses must obtain licenses from the Commissioner of Financial Regulation. A credit services business, its employees, and its independent contractors may not:

- receive payment for referring a customer to a credit grantor who will or may extend credit to the consumer, if the credit is extended on substantially similar terms available to the general public;
- make, assist, or advise a consumer to make false statements connected with a credit application;
- make or use false or misleading representations in offering or selling its services;
- engage in an act, practice, or course of business that operates as a fraud or deception in connection with offering or selling its services;
- accept payment before rendering full and complete performance of the contracted services;
- create or assist a consumer in creating a new consumer credit report by obtaining and using a different name, address, telephone number, Social Security number, or employer tax identification number; or
- assist a consumer in obtaining an extension of credit at an interest rate which, except for federal preemption, would be prohibited under the State's consumer credit provisions.

Violation of MCSBA is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

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.

In addition to criminal and civil penalties for violations of MCPA, any person who violates MCSBA is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$5,000, imprisonment for up to three years, or both. Additional civil penalties may also be imposed. However, a person may not be imprisoned for violating a provision of an order of the Commissioner of Financial Regulation or of the Attorney General.

Background: A credit services business is a person who, with respect to the extension of credit by others, represents that the person can or will, in exchange for payment: (1) improve a consumer's credit record, history, or rating or establish a new credit file or record; (2) obtain an extension of credit for a consumer; or (3) provide advice or assistance to a consumer about (a) improving the consumer's credit record, history, or rating; (b) establishing a new credit file or record; or (c) obtaining an extension of credit.

Under Maryland law, the maximum permissible annual interest rate for small loans (under \$6,000) varies with the amount of the loan, up to 33%. Recently, the Office of the Commissioner of Financial Regulation has received complaints of licensed credit services businesses partnering with third parties that provide certain elements of the transaction for additional fees. These fees, when combined with the permissible interest rate of the loan, create a high-cost loan for the borrower that would not otherwise be allowed under State law.

Additional Information

Prior Introductions: None.

Cross File: HB 79 (Chair, Economic Matters Committee)(By Request - Departmental - Labor, Licensing and Regulation) - Economic Matters.

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

Fiscal Note History: First Reader - February 26, 2010
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