

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 379

(Delegate Rosenberg, *et al.*)

Economic Matters

Finance

Consumer Protection - Transparency in Consumer Arbitrations Act

This bill creates the Transparency in Consumer Arbitrations Act. Under the bill, an arbitration organization that performs 50 or more binding consumer arbitrations during a five-year period must collect, publish, and make publicly available specified information about the parties involved, types of claims handled, and arbitration outcomes. The information must be updated by the organization at least every quarter and may be considered in determining whether a consumer arbitration agreement is unconscionable or unenforceable under law. The failure of an arbitration organization to collect and make available the required information is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA) and subject to MCPA's civil and criminal penalty provisions. The bill also grants a consumer the power to seek injunctive relief against an arbitration organization.

The bill takes effect July 1, 2010.

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 “consumer arbitration” as a binding arbitration conducted in accordance with a consumer arbitration agreement. Consumer arbitration does not include a binding arbitration in accordance with specified insurance policies. A “consumer arbitration agreement” is defined as a standardized contract (1) between a consumer and nonconsumer; (2) that provides for the sale or lease of goods, services, real property, or credit primarily for personal, family, or household purposes; and (3) requires that disputes arising under the contract be submitted to binding arbitration. A consumer arbitration agreement does not include a public- or private-sector collective bargaining agreement.

Current Law: Except as otherwise provided by the Maryland Uniform Arbitration Act, a written agreement or provision in a contract to submit any future controversy arising between the parties to arbitration is valid and enforceable. The provision or agreement is irrevocable, except upon grounds that exist at law or in equity for the revocation of a contract.

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 \$1,000 and/or imprisonment for one year.

Background: In July 2009, the Minnesota Attorney General sued the National Arbitration Forum (NAF) accusing it of consumer fraud and widespread conflicts of interest. The Minnesota Attorney General argued that the reportedly independent NAF, which is the largest consumer debt-collection arbitrator in the nation, shared common ownership with Mann-Bracken, a debt-collection firm with 24 offices nationwide. Under the terms of a settlement with the Minnesota Attorney General, NAF stopped accepting any new consumer debt collection disputes.

In January 2010, the Maryland Collection Agency Licensing Board within the Office of the Commissioner of Financial Regulation suspended all of Mann-Bracken's consumer debt collection activities, including approximately 27,000 collection actions filed in State courts.

Arbitration firms are called on to render objective decisions regarding the resolution of disputes brought under their purview. The actions of the Minnesota Attorney General and other financial regulators highlight the sometimes intricate and complex network of corporate ownerships and relationships involving arbitration firms. Consumers, who are often required to accept binding arbitration as a condition of an extension of credit, generally have not had access to information which could help them determine which arbitration firm could best take on a truly objective role when resolving a credit dispute.

The bill is intended to arm Maryland consumers with readily accessible information regarding the composition and performance of arbitration firms. While the bill does not prohibit an arbitration organization from doing business with a consumer credit company, the bill requires an arbitration organization to disclose information on a continuing basis that would otherwise not be available to public scrutiny.

California and the District of Columbia have enacted similar disclosure legislation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *Baltimore Sun, The Daily Record*, Minnesota Office of the Attorney General, Maryland Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

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