

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 75

(Senators Astle and Muse)

Finance

Economic Matters

Commercial Law - Maryland Consumer Protection Act - Scope

This bill expands the scope of the Maryland Consumer Protection Act (MCPA) to encompass certain transactions in which a consumer sells goods to a merchant. Specifically, the bill prohibits a merchant from engaging in unfair or deceptive trade practices in the purchase or offer for purchase of consumer goods or consumer realty from a consumer; however, the merchant's business has to include paying off consumer debt in connection with any such purchase. The bill also expands the definitions of "consumer" and "merchant."

Violation of the bill is an unfair or deceptive trade practice under MCPA, subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. 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: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands the definition of “consumer” to include an individual who sells or offers for sale to a merchant consumer goods or consumer realty that the individual acquired primarily for personal, household, family, or agricultural purposes. The definition of “merchant” is expanded to include a person (1) who directly or indirectly purchases or offers to purchase any consumer good or consumer realty from a consumer; and (2) whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

Current Law: “Consumer” is defined as an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit. The term encompasses a co-obligor or surety for a consumer or a licensee or recipient of computer information or programs under a consumer contract.

A “merchant” means a person who directly or indirectly either offers or makes available to consumers any consumer goods, consumer services, consumer realty, or consumer credit.

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.

Additional Information

Prior Introductions: None.

Cross File: HB 128 (Delegate Jameson, *et al.*) - Economic Matters.

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

Fiscal Note History: First Reader - February 7, 2011
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