

HOUSE BILL 291

N1

3lr1540
CF SB 383

By: **Delegate Feldman**

Introduced and read first time: January 23, 2013

Assigned to: Environmental Matters and Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2013

CHAPTER _____

1 AN ACT concerning

2 **Real Property – ~~Stopping Fraud in Maryland Mortgage Assistance Relief~~**
3 **Services Act of 2013**

4 FOR the purpose of ~~requiring certain mortgage assistance relief service providers to~~
5 establishing that a mortgage assistance relief service provider providing
6 mortgage assistance relief service in connection with a dwelling in the State
7 that does not comply with certain provisions of federal law is in violation of this
8 Act; authorizing the Attorney General or the Commissioner of Financial
9 Regulation to seek an injunction to prohibit a violation of certain provisions of
10 this Act; authorizing the Commissioner to enforce the provisions of this Act by
11 exercising certain powers and requiring a violator to take certain affirmative
12 action under certain circumstances; authorizing the Attorney General and the
13 State’s Attorney to conduct the criminal investigation and prosecution of
14 mortgage assistance relief services violations under certain provisions of this
15 Act; authorizing a private right of action for a violation of certain provisions
16 of this Act under certain circumstances; establishing the venue for certain actions
17 violations of this Act; imposing certain penalties for a violation of certain
18 provisions of this Act under certain circumstances; making a violation of this
19 Act an unfair or deceptive trade practice under the Maryland Consumer
20 Protection Act and subject to certain enforcement and penalty provisions;
21 establishing that a certain attorney exception in federal law applies only to
22 certain individuals; altering the definition of “credit services business” for
23 purposes of certain provisions of law regulating credit services businesses to
24 exclude, beginning on a certain date, certain mortgage assistance relief service
25 providers; defining certain terms; ~~establishing that this Act supersedes certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~provisions of law under certain circumstances~~ declaring the intent of the
 2 General Assembly; and generally relating to mortgage assistance relief services.

3 BY repealing and reenacting, without amendments,
 4 Article – Commercial Law
 5 Section 14–1901(a) and (e)(1)
 6 Annotated Code of Maryland
 7 (2005 Replacement Volume and 2012 Supplement)

8 BY repealing and reenacting, with amendments,
 9 Article – Commercial Law
 10 Section 14–1901(e)(3)(viii) and (ix)
 11 Annotated Code of Maryland
 12 (2005 Replacement Volume and 2012 Supplement)

13 BY adding to
 14 Article – Commercial Law
 15 Section 14–1901(e)(3)(x)
 16 Annotated Code of Maryland
 17 (2005 Replacement Volume and 2012 Supplement)

18 BY adding to
 19 Article – Real Property
 20 Section 7–501 through ~~7–510~~ 7–511 to be under the new subtitle “Subtitle 5.
 21 Maryland Mortgage Assistance Relief Services Act”
 22 Annotated Code of Maryland
 23 (2010 Replacement Volume and 2012 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Commercial Law**

27 14–1901.

28 (a) In this subtitle the following words have the meanings indicated.

29 (e) (1) “Credit services business” means any person who, with respect to
 30 the extension of credit by others, sells, provides, or performs, or represents that such
 31 person can or will sell, provide, or perform, any of the following services in return for
 32 the payment of money or other valuable consideration:

33 (i) Improving a consumer’s credit record, history, or rating or
 34 establishing a new credit file or record;

35 (ii) Obtaining an extension of credit for a consumer; or

1 (iii) Providing advice or assistance to a consumer with regard to
 2 either subparagraph (i) or (ii) of this paragraph.

3 (3) “Credit services business” does not include:

4 (viii) Any consumer reporting agency as defined in the federal
 5 Fair Credit Reporting Act (15 U.S.C. §§ 1681 – 1681t) or in § 14–1201(e) of this title;
 6 [or]

7 (ix) An individual licensed by the Maryland Board of Public
 8 Accountancy when the individual renders services within the course and scope of
 9 practice by the individual as a certified public accountant and does not engage in the
 10 credit services business on a regular and continuing basis; OR

11 (X) BEGINNING JULY 1, 2013, A MORTGAGE ASSISTANCE
 12 RELIEF SERVICE PROVIDER REGULATED UNDER TITLE 7, SUBTITLE 5 OF THE
 13 REAL PROPERTY ARTICLE.

14 **Article – Real Property**

15 **SUBTITLE 5. MARYLAND MORTGAGE ASSISTANCE RELIEF SERVICES ACT.**

16 **7-501.**

17 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 18 **INDICATED.**

19 **(B) “COMMISSIONER” MEANS THE COMMISSIONER OF FINANCIAL**
 20 **REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.**

21 **(C) “DWELLING” HAS THE MEANING STATED IN 12 C.F.R. § 1015.2 AND**
 22 **ANY SUBSEQUENT REVISION OF THAT REGULATION.**

23 **(D) “MORTGAGE ASSISTANCE RELIEF SERVICE” HAS THE MEANING**
 24 **STATED IN 12 C.F.R. § 1015.2 AND ANY SUBSEQUENT REVISION OF THAT**
 25 **REGULATION.**

26 **(E) (1) “MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER” ~~HAS~~**
 27 **~~THE MEANING STATED IN 12 C.F.R. § 1015.2 AND ANY SUBSEQUENT REVISION~~**
 28 **~~OF THAT REGULATION~~ MEANS ANY PERSON THAT PROVIDES, OFFERS TO**
 29 **PROVIDE, OR ARRANGES FOR ANOTHER PERSON TO PROVIDE, ANY MORTGAGE**
 30 **ASSISTANCE RELIEF SERVICE.**

31 **(2) “MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER” DOES**
 32 **NOT INCLUDE:**

1 **(I) A HOLDER, OR ANY CONTRACTOR OF A HOLDER, OF A**
2 **LOAN ON A DWELLING; OR**

3 **(II) A SERVICER, OR ANY CONTRACTOR OF A SERVICER, OF**
4 **A LOAN ON A DWELLING.**

5 **~~(F) "PERSON" HAS THE MEANING STATED IN 12 C.F.R. § 1015.2 AND~~**
6 **~~ANY SUBSEQUENT REVISION OF THAT REGULATION.~~**

7 **7-502.**

8 **~~(A) A MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER WHO OFFERS~~**
9 **~~PROVIDING~~ MORTGAGE ASSISTANCE RELIEF SERVICE IN CONNECTION WITH A**
10 **DWELLING IN THE STATE ~~SHALL~~ THAT DOES NOT COMPLY WITH 12 C.F.R. §§**
11 **1015.1 THROUGH 1015.11 AND ANY SUBSEQUENT REVISION OF THOSE**
12 **REGULATIONS.**

13 **~~(B) A MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER WHO DOES~~**
14 **~~NOT COMPLY WITH SUBSECTION (A) OF THIS SECTION~~ IS IN VIOLATION OF THIS**
15 **SUBTITLE.**

16 **7-503.**

17 **THE ATTORNEY EXEMPTIONS IN 12 C.F.R. § 1015.7 APPLY ONLY TO AN**
18 **INDIVIDUAL ADMITTED TO PRACTICE LAW IN THE STATE WHO PROVIDES**
19 **MORTGAGE ASSISTANCE RELIEF SERVICE AS PART OF THE INDIVIDUAL'S**
20 **REGULAR PRACTICE OF LAW.**

21 **7-504.**

22 **FOR THE PURPOSE OF VENUE UNDER THIS SUBTITLE, A VIOLATION OF**
23 **THIS SUBTITLE SHALL BE CONSIDERED TO HAVE BEEN COMMITTED:**

24 **(1) IN THE COUNTY IN WHICH THE DWELLING IS LOCATED FOR**
25 **WHICH MORTGAGE ASSISTANCE RELIEF SERVICE IS BEING PROVIDED;**

26 **(2) IN THE COUNTY IN WHICH AN ACT WAS PERFORMED IN**
27 **FURTHERANCE OF THE VIOLATION; AND**

28 **(3) IN THE COUNTY IN WHICH A PERSON ALLEGED TO HAVE**
29 **VIOLATED THIS SUBTITLE HAD CONTROL OR POSSESSION OF ANY PROCEEDS OF**
30 **THE VIOLATION.**

1 **7-505.**

2 (A) THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION TO PROHIBIT
3 A PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS
4 SUBTITLE FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.

5 (B) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO:

6 (1) PREVENT THE USE BY A PERSON OF ANY PROHIBITED
7 PRACTICE;

8 (2) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL
9 PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY PROHIBITED
10 PRACTICE; OR

11 (3) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION OF
12 THIS SUBTITLE.

13 (C) IN ANY ACTION BROUGHT BY THE ATTORNEY GENERAL UNDER THIS
14 SECTION, THE ATTORNEY GENERAL IS ENTITLED TO RECOVER THE COSTS OF
15 THE ACTION FOR THE USE OF THE STATE.

16 **7-506.**

17 (A) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS
18 SUBTITLE BY EXERCISING ANY OF THE POWERS PROVIDED UNDER §§ 2-113
19 THROUGH 2-116 OF THE FINANCIAL INSTITUTIONS ARTICLE.

20 (B) (1) THE COMMISSIONER MAY SEEK AN INJUNCTION TO PROHIBIT
21 A PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS
22 SUBTITLE FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.

23 (2) THE COURT MAY ENTER ANY ORDER OR JUDGMENT
24 NECESSARY TO:

25 (I) PREVENT THE USE BY A PERSON OF ANY PROHIBITED
26 PRACTICE;

27 (II) RESTORE TO A PERSON ANY MONEY OR REAL OR
28 PERSONAL PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY
29 PROHIBITED PRACTICE; OR

30 (III) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION
31 OF THIS SUBTITLE.

1 (3) IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER
2 THIS SECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF
3 THE ACTION FOR THE USE OF THE STATE.

4 (C) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS
5 SUBTITLE BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE ACTION TO
6 CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR
7 PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.

8 (D) THE COMMISSIONER MAY:

9 (1) INVESTIGATE VIOLATIONS OF THIS SUBTITLE; AND

10 (2) AID ANY OTHER UNIT OF STATE GOVERNMENT THAT HAS
11 REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE
12 VIOLATOR.

13 (E) THE COMMISSIONER MAY COOPERATE IN THE INVESTIGATION AND
14 PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH ~~THE~~:

15 (1) THE OFFICE OF THE ATTORNEY GENERAL, A STATE'S
16 ATTORNEY, OR ANY OTHER UNIT OF LAW ENFORCEMENT,~~OR WITH THE~~ IN THE
17 STATE; OR

18 (2) THE FEDERAL TRADE COMMISSION, THE CONSUMER
19 FINANCIAL PROTECTION BUREAU, OR THE U.S. DEPARTMENT OF HOUSING
20 AND URBAN DEVELOPMENT.

21 **7-507.**

22 (A) (1) IN ADDITION TO ANY ACTION AUTHORIZED UNDER THIS
23 SUBTITLE AND ANY OTHER ACTION OTHERWISE AUTHORIZED BY LAW, A PERSON
24 MAY BRING AN ACTION FOR DAMAGES INCURRED AS THE RESULT OF A
25 VIOLATION OF THIS SUBTITLE.

26 (2) A PERSON MAY BRING AN ACTION FOR DAMAGES UNDER THIS
27 SECTION:

28 (I) WITHOUT HAVING TO EXHAUST ADMINISTRATIVE
29 REMEDIES UNDER THIS SUBTITLE; AND

30 (II) REGARDLESS OF THE STATUS OF AN ADMINISTRATIVE
31 ACTION OR A CRIMINAL PROSECUTION, IF ANY, UNDER THIS SUBTITLE.

1 **(B) A PERSON WHO BRINGS AN ACTION UNDER THIS SECTION AND WHO**
2 **IS AWARDED DAMAGES ALSO MAY SEEK, AND THE COURT MAY AWARD,**
3 **REASONABLE ATTORNEY'S FEES.**

4 **(C) IF THE COURT FINDS THAT THE DEFENDANT VIOLATED THIS**
5 **SUBTITLE, THE COURT MAY AWARD DAMAGES EQUAL TO THREE TIMES THE**
6 **AMOUNT OF ACTUAL DAMAGES.**

7 **7-508.**

8 **(A) THE ATTORNEY GENERAL AND THE STATE'S ATTORNEY ARE**
9 **AUTHORIZED TO CONDUCT THE CRIMINAL INVESTIGATION AND PROSECUTION**
10 **OF ALL CASES ALLEGING A VIOLATION OF THIS SUBTITLE.**

11 **(B) THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY, AS**
12 **APPROPRIATE, SHALL REPORT PROMPTLY A CONVICTION UNDER THIS**
13 **SUBTITLE TO THE UNIT OF STATE GOVERNMENT THAT HAS REGULATORY**
14 **JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE PERSON CONVICTED.**

15 **7-509.**

16 **(A) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS**
17 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO**
18 **IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$10,000**
19 **OR BOTH.**

20 **(B) (1) A PERSON CONVICTED OF VIOLATING THIS SUBTITLE SHALL**
21 **PAY RESTITUTION TO ANY PERSON DAMAGED BY THE VIOLATION.**

22 **(2) RESTITUTION SHALL BE ORDERED IN ADDITION TO A FINE OR**
23 **IMPRISONMENT OR BOTH.**

24 **(C) EACH VIOLATION OF THIS SUBTITLE CONSTITUTES A SEPARATE**
25 **OFFENSE AND SHALL NOT MERGE WITH ANY OTHER CRIMES SET FORTH IN THE**
26 **CRIMINAL LAW ARTICLE.**

27 **(D) A PERSON WHO VIOLATES THIS SUBTITLE IS SUBJECT TO § 5-106(B)**
28 **OF THE COURTS ARTICLE.**

29 **7-510.**

30 **A VIOLATION OF THIS SUBTITLE IS:**

1 **(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE**
2 **MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND**

3 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
4 **CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.**

5 **7-511.**

6 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND MORTGAGE**
7 **ASSISTANCE RELIEF SERVICES ACT.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That ~~the authority of the~~
9 ~~Commissioner of Financial Regulation to regulate mortgage assistance relief services~~
10 ~~under Title 14, Subtitle 19 of the Commercial Law Article for any violation committed~~
11 ~~after the effective date of this Act is superseded by this Act~~ it is the intent of the
12 General Assembly, in enacting Title 7, Subtitle 5 of the Real Property Article in
13 Section 1 of this Act, to implement in State law the consumer protections available
14 under federal regulations governing mortgage assistance relief service providers. This
15 Act is not intended, and may not be construed, to have any effect on the authority of
16 the Commissioner of Financial Regulation to regulate mortgage assistance relief
17 service providers under Title 14, Subtitle 19 of the Commercial Law Article, or on any
18 enforcement actions, including litigation, taken under that authority as it existed and
19 based on actions that occurred before the effective date of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 July 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.