

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1166
Economic Matters

(Delegates Fennell and Davis)

Commercial Law - Credit Services Businesses - Authority to Charge and Receive
Consideration

This bill authorizes a credit services business to charge and receive money (or other valuable consideration) prior to full and complete performance of the services it has agreed to perform for (or on behalf of) a consumer if specified requirements are met. In addition, the bill *limits* the circumstances in which a credit services business is prohibited from charging or receiving any money or other valuable consideration prior to full and complete performance of services it has agreed to perform, as specified.

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

The bill takes effect July 1, 2017.

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: Potential meaningful.

Analysis

Bill Summary: Specifically, the services for which valuable consideration may be paid prior to full and complete performance by the credit services company, must be related to (1) improving a consumer's credit record, history, or rating or (2) providing advice or assistance to a consumer with regard to improving a consumer credit record, history, or rating. In addition, the consumer must have entered into a written agreement (1) in which the consumer agrees to pay for the services during the term of the agreement; (2) that allows the consumer to make periodic payments for the ongoing services; and (3) that may be canceled by the consumer at any time.

The bill limits the prohibition against charging or receiving money or other valuable consideration prior to full and complete performance of credit services to only those services related to obtaining, or providing advice or assistance to a consumer with regard to obtaining, an extension of credit.

Current Law: A "credit services business" is defined as any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

- improving a consumer's credit record, history, or rating or establishing a new credit file or record;
- obtaining an extension of credit for a consumer; or
- providing advice or assistance to a consumer with regard to either of the above.

A credit services business includes a person who sells (or attempts to sell) written materials containing information that the person represents will enable a consumer to establish a new credit file or record.

A credit services business, its employees, and independent contractors who sell (or attempt to sell) the services of a credit services business are, among other things, prohibited from charging or receiving any money or other valuable consideration prior to full and complete performance of the services that the business has agreed to perform on behalf of the consumer.

Complaints and Violations of Maryland Credit Services Businesses Act

Written complaints against credit services businesses may be filed with the Commissioner of Financial Regulation. If the commissioner determines that the business (or other specified person acting on behalf of the business) has engaged or is engaging in any act or practice that is prohibited under the Maryland Credit Services Businesses Act, the

commissioner must issue a cease and desist order and may order that restitution be paid to an aggrieved consumer.

Any credit services business that *willfully* fails to comply with any requirement under the Maryland Credit Services Businesses Act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- any actual damages sustained by the consumer as a result of the failure;
- a monetary award equal to three times the total amount collected from the consumer (as ordered by the commissioner);
- punitive damages as allowed by a court; and
- in the case of any successful action to enforce any liability, the costs of the action, in addition to reasonable attorney's fees (as determined by the court).

In addition, any credit services business which is negligent in failing to comply with any requirement under the Maryland Credit Services Businesses Act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- any actual damages sustained by the consumer as a result of the failure; and
- in the case of any successful action to enforce any liability, the cost of the action, in addition to reasonable attorney's fees (as determined by the court).

Each sale of the services of a credit services business that violates a provision of the Maryland Credit Services Businesses Act is an unfair or deceptive trade practice as defined under Title 13 of the Commercial Law Article. In addition, the Consumer Protection Division of the Office of the Attorney General is authorized to institute a proceeding against violators under MCPA.

In general, any person who violates any provision of the Maryland Credit Services Businesses Act is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$5,000 or imprisonment for up to three years, or both – in addition to any civil penalties. However, a person may not be imprisoned for violating any provision of an order of the commissioner or the Attorney General entered pursuant to the Maryland Credit Services Businesses Act or MCPA.

Unfair or Deceptive Trade Practices

An unfair or deceptive trade practice under MCPA includes, among other acts, 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 services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. 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: The Office of the Commissioner of Financial Regulation advises that, as of January 2017, it licenses 13 main office credit services businesses that maintain 4 branches – resulting in a total of 17 locations.

Small Business Effect: Under the bill, any credit services businesses that qualify as small businesses are permitted to charge consumers sooner than is otherwise allowed under State law. Thus, such businesses benefit under the bill. Allowing periodic payments may also increase the overall volume of consumers seeking credit services, which benefits small businesses as well. However, the bill also requires that consumers opting to make periodic payments be allowed to cancel the service at any time, which may offset any gains under the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 893 (Senator Feldman) - Finance.

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

Fiscal Note History: First Reader - March 9, 2017
fn/kdm

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