

HB1297/853598/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 1297
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after “of” insert “authorizing a lender to elect to make a certain loan to a borrower under certain circumstances; providing that certain provisions of law do not apply to certain loans under certain circumstances;”; strike beginning with “receiving” in line 5 down through “compensation” in line 6 and substitute “collecting or attempting to collect in a certain manner certain money or enforcing or attempting to enforce a certain contract in a certain manner”; in line 8, after “loans” insert “under certain circumstances”; in line 16, after “borrower,” insert “repealing a certain prohibition against a lender taking certain actions;”; in line 20, after “manner;” insert “providing for the application of certain provisions of this Act;”; in line 25, after “12-114,” insert “12-301,”; and in the same line, after “12-314,” insert “12-401,”.

On page 2, in line 1, strike “12-114.1” and substitute “12-101.1, 12-114.1, and 12-402.1”; and after line 3, insert:

“BY repealing

Article – Commercial Law

Section 12-313

Annotated Code of Maryland

(2013 Replacement Volume and 2017 Supplement)”.

AMENDMENT NO. 2

On page 2, in line 31, after “means” insert “A LICENSEE OR”; and in the same line, strike “under” and substitute “SUBJECT TO”.

On page 3, before line 1, insert:

(Over)

“(G) “LICENSEE” MEANS A PERSON THAT IS REQUIRED TO BE LICENSED TO MAKE LOANS SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.”;

in line 1, strike **“(G)”** and substitute **“(H)”**; in line 3, after **“CREDIT”** insert **“IS OR”**; in line 4, strike **“A”** and substitute **“:**

(I) A”;

in the same line, after **“LOAN”** insert **“OR ADVANCE OF MONEY OR CREDIT”**; in line 5, after **“TITLE”** insert **“, UNLESS A WRITTEN ELECTION IS MADE UNDER § 12-101.1 OF THIS SUBTITLE;**

(II) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION IS MADE UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE; OR

(III) AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE”;

in lines 6, 9, 13, 15, 18, and 20, strike **“(H)”**, **“(I)”**, **“(J)”**, **“(K)”**, **“(L)”**, and **“(M)”**, respectively, and substitute **“(I)”**, **“(J)”**, **“(K)”**, **“(L)”**, **“(M)”**, and **“(N)”**, respectively; and in line 20, strike **“his”** and substitute **“THE EMPLOYEE’S”**.

AMENDMENT NO. 3

On page 3, after line 22, insert:

“12-101.1.

(A) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER'S OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

(B) IF A LENDER MAKES A WRITTEN ELECTION IN THE AGREEMENT, NOTE, OR OTHER EVIDENCE OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN THE LOAN, SUBTITLES 3, 4, 5, 6, 9, AND 10 OF THIS TITLE DO NOT APPLY TO THE LOAN.

(C) IF A LENDER THAT MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE, THIS SUBTITLE STILL APPLIES TO THE LOAN IF THE LOAN IS:

(1) FOR AN AMOUNT OVER \$25,000; OR

(2) (I) FOR AN AMOUNT OF \$25,000 OR LESS; AND

(II) NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE.”.

On page 4, in line 28, after the comma insert “MADE FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES,”; and strike beginning with “A” in line 30 down through “TITLE” in line 31 and substitute “:

1. A LOAN OR AN ADVANCE OF MONEY OR CREDIT SUBJECT TO SUBTITLE 3 OF THIS TITLE, UNLESS A WRITTEN ELECTION IS MADE UNDER § 12-101.1 OF THIS SUBTITLE;

2. A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION HAS BEEN MADE UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE; OR

3. AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE”.

On page 5, strike in their entirety lines 1 through 3, inclusive; in line 4, strike “(4)” and substitute “(3)”; strike beginning with “BY” in line 7 down through “STATE” in line 9 and substitute “TO ANY PERSON”; in line 17, strike “EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, A” and substitute “A”; in lines 19 and 20, strike “PARAGRAPH (6) OF THIS SUBSECTION AND”; and in line 29, strike “ANY PAYMENT IS RECEIVED” and substitute “THE FIRST PAYMENT IS DUE”.

On page 6, strike in their entirety lines 3 through 12, inclusive.

AMENDMENT NO. 4

On page 6, before line 13, insert:

“(4) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION, A PERSON MAY NOT:

(I) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY, ANY AMOUNT FROM THE BORROWER;

(II) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST ANY PROPERTY SECURING THE LOAN; OR

(III) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER PERSON.

12-301.

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

(b) “Commissioner” means the Commissioner of Financial Regulation.

(c) “Lender” means a LICENSEE OR A person who makes a loan [under] SUBJECT TO this subtitle.

(d) “Licensee” means a person who is REQUIRED TO BE licensed under Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law – Licensing Provisions, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

(e) **(1)** “Loan” means any loan or advance of money or credit [made under] SUBJECT TO this subtitle, REGARDLESS OF WHETHER THE LOAN OR ADVANCE OF MONEY OR CREDIT IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE.

(2) “LOAN” DOES NOT INCLUDE AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE.

(f) “Person” includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) “Wages” means all remuneration paid to any employee for [his] THE EMPLOYEE’S employment, including the cash value of all remuneration paid in any medium other than cash.”;

after line 13, insert:

(Over)

“(A) (1) THIS SUBTITLE APPLIES TO A LOAN OF \$25,000 OR LESS MADE FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SUBTITLE APPLIES REGARDLESS OF:

(I) WHETHER THE TRANSACTION IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE;

(II) WHETHER THE TRANSACTION IS OR PURPORTS TO BE AN INSTALLMENT LOAN;

(III) THE DURATION OF THE REPAYMENT PERIOD;

(IV) WHETHER THE TRANSACTION IS OR PURPORTS TO BE NONRECOURSE OR CONTINGENT; AND

(V) WHETHER THE TRANSACTION PURPORTS TO BE THE PURCHASE OF WAGES, PENSIONS, GOVERNMENTAL BENEFITS, OR OTHER SIMILAR FUTURE PAYMENT STREAMS.

(3) THIS SUBTITLE DOES NOT APPLY TO:

(I) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION HAS BEEN MADE UNDER SUBTITLE 1, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE;

(II) A LOAN MADE BY AN INDIVIDUAL PROVIDED THE INDIVIDUAL:

1. DOES NOT MAKE MORE THAN THREE LOANS IN A CALENDAR YEAR; AND

2. DOES NOT ENGAGE IN THE BUSINESS OF MAKING LOANS; OR

(III) A LOAN BETWEEN AN EMPLOYER AND AN EMPLOYEE.”;

in lines 14, 16, and 28, strike “(a)”, “(b)”, and “(c)”, respectively, and substitute “**(B)**”, “**(C)**”, and “**(D)**”, respectively; in line 14, strike “under” and substitute “**SUBJECT TO**”; and in lines 15 and 19, in each instance, strike “**\$12,000**” and substitute “**\$25,000**”.

On page 7, strike in their entirety lines 3 through 15, inclusive; and in lines 17 and 21, in each instance, strike “**\$12,000**” and substitute “**\$25,000**”.

On page 8, after line 6, insert:

“12-313.

(a) With respect to any loan, a lender may not:

(1) Directly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle;

(2) Divide into separate parts any contract made for the purpose or with the effect of obtaining charges in excess of those permitted by this subtitle; or

(3) Enforce a contract of surety or guarantee unless the loan contract with the borrower is executed also by the surety or guarantor.

(Over)

(b) If any amount in excess of the charges permitted by this subtitle is directly or indirectly contracted for, charged, or received by a licensee or a person who is exempt from licensing, and (1) if the excess charge was made willfully for the benefit of the lender, then the lender may not receive or retain any interest or compensation with respect to the loan; or (2) if the excess charge was not made willfully for the benefit of the lender, and if the lender does not correct the error before the borrower makes the next payment on the loan, then the lender is liable to the borrower for an amount equal to three times the excess amount, but the lender may continue to receive principal, interest, or compensation with respect to the loan.]”;

and in lines 8 and 17, in each instance, strike “\$12,000” and substitute “\$25,000”.

On page 9, in line 5, strike “**OR BEFORE** any payment is received under the loan”; in line 9, strike “a licensee or who is”; and strike in their entirety lines 18 through 22, inclusive, and substitute:

“(D) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION, A PERSON MAY NOT:

(1) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY, ANY AMOUNT FROM THE BORROWER;

(2) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST ANY PROPERTY SECURING THE LOAN; OR

(3) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER PERSON.

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

(b) “Lender” means:

(1) A licensee; or

(2) A person who makes a secondary mortgage loan but is exempt expressly from the licensing requirements of the Maryland Mortgage Lender Law.

(c) “Licensee” means a person who is REQUIRED TO BE licensed under the Maryland Mortgage Lender Law, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

12-402.1.

(A) (1) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER’S OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

(2) IN ORDER TO MAKE A LOAN UNDER THIS SUBTITLE, A LENDER SHALL MAKE A WRITTEN ELECTION IN THE AGREEMENT, NOTE, OR OTHER EVIDENCE OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN THE LOAN.

(B) (1) IF A LENDER ELECTS TO MAKE A LOAN UNDER THIS SUBTITLE IN ACCORDANCE WITH THIS SECTION, SUBTITLES 1, 3, 9, AND 10 OF THIS TITLE DO NOT APPLY TO THE LOAN.

(2) IF A LENDER WHO MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 1, SUBTITLE 3, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE:

(i) SUBTITLE 1 OF THIS TITLE WILL APPLY TO THE LOAN IF THE LOAN IS:

- 1. FOR AN AMOUNT OVER \$25,000; OR**
- 2. A. FOR AN AMOUNT OF \$25,000 OR LESS; AND**
B. NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE; OR

(ii) SUBTITLE 3 OF THIS TITLE WILL APPLY TO THE LOAN IF THE LOAN IS:

- 1. FOR AN AMOUNT OF \$25,000 OR LESS; AND**
- 2. SUBJECT TO SUBTITLE 3 OF THIS TITLE.”.**