

HOUSE BILL 1297

I2, I1

8lr1549

By: **Delegates Aumann and Frick**

Introduced and read first time: February 9, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Consumer Loans and Credit – Miscellaneous Provisions**

3 FOR the purpose of prohibiting certain persons from making certain loans under certain
4 circumstances; providing that certain loans are void and unenforceable under certain
5 circumstances; prohibiting certain persons from receiving or retaining certain
6 principal, interest, fees, or other compensation under certain circumstances;
7 prohibiting certain persons from selling, assigning, or otherwise transferring certain
8 loans; authorizing a certain lender to collect a certain rate of interest, charge,
9 discount, or other consideration; altering the circumstances under which certain
10 lenders may make certain loans; altering the application of certain provisions of law
11 regarding interest and usury and certain small consumer loans; altering a certain
12 prohibition on a certain lender contracting for, charging, or receiving certain fees or
13 charges; altering a certain prohibition on a certain lender taking a certain security
14 interest; altering a certain prohibition on a person lending a certain amount under
15 certain circumstances; prohibiting a certain person from collecting or attempting to
16 collect a certain amount from a borrower; requiring a certain person who makes
17 installment loans or engages in credit services business activities to be licensed
18 under certain provisions of law and specifying that the person is subject to certain
19 provisions; requiring certain licensing, investigatory, enforcement, and penalty
20 provisions to be interpreted, construed, and applied in a certain manner; defining
21 and altering certain terms; making stylistic and conforming changes; and generally
22 relating to consumer loans and credit.

23 BY repealing and reenacting, with amendments,

24 Article – Commercial Law

25 Section 12–101, 12–111, 12–112, 12–114, 12–303, 12–311(c), 12–314, and 12–601(k)

26 Annotated Code of Maryland

27 (2013 Replacement Volume and 2017 Supplement)

28 BY adding to

29 Article – Commercial Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 12–114.1
2 Annotated Code of Maryland
3 (2013 Replacement Volume and 2017 Supplement)

4 BY repealing and reenacting, without amendments,
5 Article – Commercial Law
6 Section 12–601(f)
7 Annotated Code of Maryland
8 (2013 Replacement Volume and 2017 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article – Financial Institutions
11 Section 11–303
12 Annotated Code of Maryland
13 (2011 Replacement Volume and 2017 Supplement)

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

16 **Article – Commercial Law**

17 12–101.

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

19 (b) “Borrower” means a person who borrows money under this subtitle.

20 (c) “Commercial loan” means a loan which is made:

21 (1) Solely to acquire or carry on a business or commercial enterprise; or

22 (2) To any business or commercial organization.

23 (d) “Effective rate of simple interest” means the yield to maturity rate of interest
24 received or to be received by a lender on the face amount of a loan, computed in accordance
25 with § 12–107 of this subtitle.

26 (e) “Interest” means, except as specifically provided in § 12–105 of this subtitle,
27 any compensation directly or indirectly imposed by a lender for the extension of credit for
28 the use or forbearance of money, including any loan fee, origination fee, service and
29 carrying charge, investigator’s fee, time–price differential, and any amount payable as a
30 discount or point or otherwise payable for services.

31 (f) “Lender” means a person who makes a loan under this subtitle.

1 **(G) (1) “LOAN” MEANS A LOAN OR AN ADVANCE OF MONEY OR CREDIT**
2 **SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE LOAN OR ADVANCE OF**
3 **MONEY OR CREDIT PURPORTS TO BE MADE UNDER THIS SUBTITLE.**

4 **(2) “LOAN” DOES NOT INCLUDE A LOAN SUBJECT TO SUBTITLE 3 OF**
5 **THIS TITLE.**

6 **[(g)] (H) “Person” includes an individual, corporation, business trust, statutory**
7 **trust, estate, trust, partnership, association, two or more persons having a joint or common**
8 **interest, or any other legal or commercial entity.**

9 **[(h)] (I) “Point” means a fee, premium, bonus, loan origination fee, service**
10 **charge, or any other charge equal to 1 percent of the principal amount of a loan which is**
11 **charged by the lender at or before the time the loan is made as additional compensation for**
12 **the loan.**

13 **[(i)] (J) “Simple interest” means interest charged on the principal amount**
14 **loaned to the borrower.**

15 **[(j)] (K) “Stated rate of interest” means the annual rate of interest stated in**
16 **percentage which appears on the face of the bond, draft, mortgage, deed of trust, security**
17 **agreement, promissory note, or other instrument which evidences the indebtedness.**

18 **[(k)] (L) “Usury” means the charging of interest by a lender in an amount which**
19 **is greater than that allowed by this subtitle.**

20 **[(l)] (M) “Wages” means all remuneration paid to any employee for his**
21 **employment, including the cash value of all remuneration paid in any medium other than**
22 **cash.**

23 12–111.

24 **(A) THIS SECTION DOES NOT APPLY TO A LOAN SUBJECT TO § 12–114.1 OF**
25 **THIS SUBTITLE.**

26 **(B) [An] A PRIVATE action for usury under this subtitle may not be brought more**
27 **than [six] 6 months after the loan is satisfied.**

28 12–112.

29 **(A) THIS SECTION DOES NOT APPLY TO A LOAN SUBJECT TO § 12–114.1 OF**
30 **THIS SUBTITLE.**

31 **(B) A claim or plea of usury is not available against a legal or equitable assignee,**
32 **endorsee, or transferee of any bond, draft, mortgage, deed of trust, security agreement,**

1 promissory note, or other instrument or evidence of indebtedness, if he receives it for a bona
2 fide and legal consideration without notice of any usury in its creation or subsequent
3 assignment.

4 12-114.

5 **(A) THIS SECTION DOES NOT APPLY TO A LOAN SUBJECT TO § 12-114.1 OF**
6 **THIS SUBTITLE.**

7 **[(a)] (B)** (1) Any person who violates the usury provisions of this subtitle
8 shall forfeit to the borrower the greater of:

9 (i) Three times the amount of interest and charges collected in
10 excess of the interest and charges authorized by this subtitle; or

11 (ii) The sum of \$500.

12 (2) A claim or plea of usury is not valid if, within 30 days from the date the
13 loan contract was executed, the lender:

14 (i) Notifies the borrower and any other party to the loan contract
15 that the loan was usurious; and

16 (ii) Agrees to modify it by substituting for the usurious rate of
17 interest a legal rate of interest not exceeding the stated rate of interest.

18 **[(b)] (C)** Any person who violates the disclosure provisions of § 12-106(b) and (c)
19 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
20 \$1,000 or imprisonment not exceeding **[one] 1** year or both.

21 **[(c)] (D)** Even if a loan document is executed outside of the State, this section is
22 applicable if the loan is made to a resident of Maryland and is secured by property located
23 within the State.

24 **12-114.1.**

25 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
26 **INDICATED.**

27 **(2) (I) “COVERED LOAN” MEANS A LOAN SUBJECT TO §**
28 **12-103(A)(3) OR (C) OF THIS SUBTITLE, REGARDLESS OF WHETHER THE LOAN IS OR**
29 **PURPORTS TO BE MADE UNDER THIS SUBTITLE.**

30 **(II) “COVERED LOAN” DOES NOT INCLUDE A LOAN SUBJECT TO**
31 **SUBTITLE 3 OF THIS TITLE.**

1 **(3) “OUT-OF-STATE LENDER” MEANS A PERSON WHO MAKES A LOAN**
2 **VALIDLY IN ANOTHER STATE THAT COMPLIES WITH A COMPARABLE LOAN LAW OF**
3 **THE OTHER STATE.**

4 **(4) “UNLICENSED PERSON” MEANS A PERSON WHO IS NOT:**

5 **(I) LICENSED IN THE STATE TO MAKE A COVERED LOAN; AND**

6 **(II) EXEMPT FROM LICENSING IN THE STATE.**

7 **(B) THIS SECTION APPLIES TO A COVERED LOAN MADE BY A PERSON**
8 **DOMICILED IN ANOTHER STATE TO A BORROWER WHO IS A RESIDENT OF THE STATE**
9 **IF THE APPLICATION FOR THE LOAN ORIGINATED IN THE STATE.**

10 **(C) (1) AN UNLICENSED PERSON MAY NOT MAKE A COVERED LOAN.**

11 **(2) A PERSON MAY NOT MAKE A COVERED LOAN IF THE PERSON**
12 **DIRECTLY OR INDIRECTLY CONTRACTS FOR, CHARGES, OR RECEIVES A RATE OF**
13 **INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION THAT IS GREATER THAN**
14 **THE AMOUNT AUTHORIZED UNDER STATE LAW.**

15 **(3) A PERSON MAY NOT MAKE A COVERED LOAN THAT VIOLATES THE**
16 **FEDERAL MILITARY LENDING ACT.**

17 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, A**
18 **COVERED LOAN MADE BY AN UNLICENSED PERSON IS VOID AND UNENFORCEABLE.**

19 **(2) (I) EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS**
20 **SUBSECTION AND SUBPARAGRAPH (II) OF THIS PARAGRAPH, A COVERED LOAN IS**
21 **VOID AND UNENFORCEABLE IF A PERSON CONTRACTS FOR A COVERED LOAN THAT**
22 **HAS A RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION**
23 **GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW.**

24 **(II) A COVERED LOAN IS NOT VOID AND UNENFORCEABLE IF:**

25 **1. A CLERICAL ERROR OR MISTAKE RESULTED IN THE**
26 **RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION BEING**
27 **GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW; AND**

28 **2. A PERSON CORRECTS THE ERROR OR MISTAKE**
29 **BEFORE ANY PAYMENT IS RECEIVED UNDER THE LOAN.**

1 **(3) A COVERED LOAN THAT VIOLATES THE FEDERAL MILITARY**
2 **LENDING ACT IS VOID AND UNENFORCEABLE.**

3 **(4) A PERSON MAY NOT RECEIVE OR RETAIN ANY PRINCIPAL,**
4 **INTEREST, FEES, OR OTHER COMPENSATION WITH RESPECT TO ANY LOAN THAT IS**
5 **VOID AND UNENFORCEABLE UNDER THIS SECTION.**

6 **(5) A PERSON MAY NOT SELL, ASSIGN, OR OTHERWISE TRANSFER A**
7 **LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION.**

8 **(6) (I) IF AN OUT-OF-STATE LENDER MAKES A COVERED LOAN,**
9 **THE COVERED LOAN IS NOT VOID AND UNENFORCEABLE.**

10 **(II) AN OUT-OF-STATE LENDER MAY NOT COLLECT A RATE OF**
11 **INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION THAT IS GREATER THAN**
12 **THE AMOUNT AUTHORIZED UNDER STATE LAW.**

13 12-303.

14 (a) A lender may not make a loan under this subtitle unless the loan is in an
15 original amount or value which does not exceed ~~[\$6,000]~~ **\$12,000**.

16 (b) (1) The purpose of this subsection is to prevent evasion of the provisions of
17 this subtitle by means of a purchase or assignment of wages.

18 (2) For the purposes of this subtitle:

19 (i) The payment of ~~[\$6,000]~~ **\$12,000** or less in money, credit, goods,
20 or things in action as consideration for any sale, assignment, or order for the payment of
21 wages, whether earned or to be earned, is considered a loan of money secured by the sale,
22 assignment, or order for payment of wages; and

23 (ii) The amount by which the wages exceed the consideration paid
24 for them is considered interest or charges on the loan from the date of the payment to the
25 date the wages are payable.

26 (3) The transaction described in this subsection is governed by and subject
27 to the provisions of this subtitle.

28 (c) This subtitle applies but is not limited to a lender who:

29 (1) As security for a loan, use, or forbearance of money, goods, or things in
30 action or for any loan, use, or sale of credit, whether or not the transaction is or purports to
31 be made under this subtitle, makes a pretended purchase of property from any person and
32 permits the owner or pledgor to retain possession of the property; or

1 (2) By any device or pretense of charging for his services or otherwise,
2 seeks to obtain any interest, charges, discount, or like consideration.

3 (D) THIS SUBTITLE APPLIES TO A LOAN OR AN ADVANCE OF MONEY OF
4 \$12,000 OR LESS MADE FOR PERSONAL, FAMILY, HOUSEHOLD, OR AGRICULTURAL
5 PURPOSES:

6 (1) REGARDLESS OF WHETHER THE TRANSACTION IS OR PURPORTS
7 TO BE MADE UNDER THIS SUBTITLE;

8 (2) REGARDLESS OF WHETHER THE TRANSACTION IS OR PURPORTS
9 TO BE AN INSTALLMENT LOAN;

10 (3) REGARDLESS OF THE DURATION OF THE REPAYMENT PERIOD;

11 (4) REGARDLESS OF WHETHER THE TRANSACTION IS OR PURPORTS
12 TO BE NONRECOURSE OR CONTINGENT; AND

13 (5) REGARDLESS OF WHETHER THE TRANSACTION PURPORTS TO BE
14 THE PURCHASE OF WAGES, PENSIONS, GOVERNMENTAL BENEFITS, OR OTHER
15 SIMILAR FUTURE PAYMENT STREAMS.

16 [(d)] (E) (1) A lender who lends or contracts to lend an amount which exceeds
17 [\$6,000] \$12,000 may not directly or indirectly contract for, charge, or receive any interest,
18 fee, or other charge in excess of that which [he] THE LENDER would be permitted to charge
19 if [he] THE LENDER were not authorized to make loans under this subtitle.

20 (2) The provisions of this subsection apply to any debt in excess of [\$6,000]
21 \$12,000 which is directly or contingently owed or contracted to be so owed by any person
22 jointly or severally:

23 (i) Whether as a borrower, an endorser, guarantor, or surety for a
24 borrower, or otherwise; and

25 (ii) Whether the debt is part of a single transaction or the aggregate
26 of more than one transaction.

27 12-311.

28 (c) (1) A lender may not take any security interest in:

29 (i) Real property for any loan under [\$2,000] \$4,000 in value or
30 amount; or

1 (ii) Personal property for any loan under [\$700] **\$1,400** in value or
2 amount.

3 (2) Any lien taken in violation of this subsection is void.

4 (3) This subsection does not apply to or affect a lien on an interest in real
5 property which results from a judgment obtained by the lender based on a loan otherwise
6 secured or unsecured.

7 12-314.

8 (a) A person may not lend [\$6,000] **\$12,000** or less if [the]:

9 (1) **THE** person directly or indirectly contracts for, charges, or receives a
10 greater rate of interest, charge, discount, or other consideration than that authorized by
11 the laws of this State;

12 (2) **THE TRANSACTION VIOLATES THE FEDERAL MILITARY LENDING**
13 **ACT; OR**

14 (3) **THE PERSON IS NOT LICENSED UNDER OR EXEMPT FROM THE**
15 **LICENSING REQUIREMENTS UNDER THE MARYLAND CONSUMER LOAN LAW –**
16 **LICENSING PROVISIONS.**

17 (b) (1) (I) A loan made in the amount of [\$6,000] **\$12,000** or less,
18 **REGARDLESS OF** whether [or not] the loan is or purports to be made under this subtitle,
19 is **VOID AND** unenforceable if [a]:

20 1. **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
21 **PARAGRAPH, A PERSON CONTRACTS FOR A LOAN THAT HAS A** rate of interest, charge,
22 discount, or other consideration greater than that authorized [by the laws of this State is
23 contracted for by any person unless the excess rate contracted for is the result of a] **UNDER**
24 **STATE LAW;**

25 2. **THE LOAN VIOLATES THE FEDERAL MILITARY**
26 **LENDING ACT; OR**

27 3. **A PERSON WHO IS NOT LICENSED UNDER OR EXEMPT**
28 **FROM THE LICENSING REQUIREMENTS UNDER TITLE 11, SUBTITLE 2 OF THE**
29 **FINANCIAL INSTITUTIONS ARTICLE MADE THE LOAN.**

30 (II) **A LOAN IS NOT VOID AND UNENFORCEABLE IF:**

1 **(A)** A license under this subtitle shall be applied for and issued in accordance with,
2 and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the
3 Maryland Consumer Loan Law – Licensing Provisions.

4 **(B) A PERSON WHO MAKES INSTALLMENT LOANS OR ENGAGES IN CREDIT**
5 **SERVICES BUSINESS ACTIVITIES REQUIRING LICENSING UNDER § 11-302(B) OF THIS**
6 **SUBTITLE:**

7 **(1) SHALL BE LICENSED UNDER THIS SUBTITLE; AND**

8 **(2) IS SUBJECT TO THE LICENSING, INVESTIGATORY, ENFORCEMENT,**
9 **AND PENALTY PROVISIONS OF:**

10 **(I) THIS SUBTITLE;**

11 **(II) SUBTITLE 2 OF THIS TITLE; AND**

12 **(III) THE APPLICABLE PROVISIONS OF:**

13 1. **TITLE 12, SUBTITLES 1, 9, AND 10 OF THIS ARTICLE;**

14 **AND**

15 2. **TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW**
16 **ARTICLE.**

17 **(C) THE LICENSING, INVESTIGATORY, ENFORCEMENT, AND PENALTY**
18 **PROVISIONS OF SUBTITLE 2 OF THIS TITLE SHALL BE INTERPRETED, CONSTRUED,**
19 **AND APPLIED TO A PERSON REQUIRING LICENSING UNDER § 11-302(B) OF THIS**
20 **SUBTITLE AS IF:**

21 **(1) THE PERSON WERE APPLYING FOR A LICENSE TO MAKE LOANS**
22 **SUBJECT TO THE MARYLAND CONSUMER LOAN LAW; OR**

23 **(2) THE PERSON'S BUSINESS ACTIVITIES CONSISTED OF MAKING**
24 **LOANS SUBJECT TO THE MARYLAND CONSUMER LOAN LAW.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2018.