SB 1068

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1068 (Senator Rosapepe, *et al.*)
Finance Economic Matters

Financial Consumer Protection Act of 2018

This bill generally implements the recommendations in the interim report of the Maryland Financial Consumer Protection Commission (MFCPC). **The bill generally takes effect October 1, 2018; however, provisions related to more stringent regulation of consumer and secondary mortgage lending take effect January 1, 2019.**

Fiscal Summary

State Effect: General fund revenues increase, potentially significantly, beginning in FY 2019 due to higher maximum penalty provisions. General fund expenditures also increase in FY 2019 by about $156,700 for additional personnel. Beginning in FY 2020, general fund expenditures further increase, by at least an additional $1.0 million, for enforcement of consumer protection laws. **This bill establishes mandated appropriations beginning in FY 2020.**

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	-	-	-	-	-
GF Expenditure	$156,700	$1,196,400	$1,202,200	$1,209,100	$1,216,300
Net Effect	($156,700)	($1,196,400)	($1,202,200)	($1,209,100)	($1,216,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Specifically, the bill (1) expands the definition of "unfair and deceptive trade practices" under the Maryland Consumer Protection Act (MCPA) to include "abusive" practices; (2) establishes new protections for consumer borrowers; (3) increases the maximum civil penalties for violations of MCPA and several other financial licensing and regulatory laws; (4) allocates resources for enforcement of Maryland's consumer protection laws; (5) requires an individual be designated as Student Loan Ombudsman within the Office of the Commissioner of Financial Regulation (OCFR) and establishes duties for that position; and (6) prohibits consumer reporting agencies (CRAs) from charging for a placement, temporary lift, or removal of a security freeze.

Maryland Consumer Protection Act Expansion

The bill expands MCPA to include abusive trade practices and violations of the federal Military Lending Act (MLA) and the federal Servicemembers Civil Relief Act (SCRA).

Debt Collectors

The bill prohibits a person from engaging in unlicensed debt collection activity in violation of the Maryland Collection Agency Licensing Act, or from engaging in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act.

Civil Penalties

The bill increases the maximum civil penalties that may be imposed for several types of violations, as shown in **Exhibit 1**. In general, the bill harmonizes the penalties for initial and subsequent violations, such that the maximum penalty is set at $10,000 for an initial violation and $25,000 for "subsequent" violations.

Similarly, the bill increases the maximum penalty the State Collection Agency Licensing Board may impose against a licensed collection agency (including those not licensed even if they are required to be) for a violation of a lawful order by the board. Specifically, the maximum penalty imposed for *each* violation cited increases from $500 to $10,000, and the total amount that may be imposed increases from a maximum of $5,000 to $25,000.

Exhibit 1
Maximum Civil Penalties for Violations Modified by the Bill

	Current Penalty		Proposed Penalty	
	Initial Violation	Subsequent Violation	Initial Violation	Subsequent Violation
MCPA	$1,000	$5,000	$10,000	$25,000
OCFR General Enforcement	1,000	5,000	10,000	25,000
Mortgage Lenders	5,000	5,000*	10,000	25,000*
Mortgage Loan Originators	5,000	5,000*	10,000	25,000*
Check Cashers	1,000	5,000	10,000	25,000
Money Transmitters	1,000	5,000	10,000	25,000
Debt Management Services	1,000	1,000*	10,000	25,000*

*The maximum penalty is for each violation (rather than each subsequent violation) from which the violator failed to cease and desist or take affirmative action to correct.

MCPA: Maryland Consumer Protection Act OCFR: Office of the Commissioner of Financial Regulation

Source: Department of Legislative Services

Financial and Consumer Protection Laws – Enforcement

The bill requires the Governor to include a general fund appropriation in the State budget of at least $700,000 for the Office of the Attorney General (OAG) and at least $300,000 for OCFR, to be used for specified enforcement activities. In addition, the bill requires OAG and OCFR to use their authority under a specified section of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), whenever considered appropriate, to bring civil actions or other appropriate proceedings authorized under the Act.

Student Loan Ombudsman

The Student Loan Ombudsman (in consultation with OCFR) must:

- receive and review complaints from student loan borrowers;
- attempt to resolve complaints by collaborating with higher education institutions, student loan servicers, and others, as specified;
- compile and analyze complaint data (and, as specified, disclose that data);
- help student loan borrowers understand their rights and responsibilities;
- provide information to the public and others;

- disseminate information about the availability of the ombudsman to address student loan concerns;
- analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies on student loan borrowers;
- make recommendations regarding statutory and regulatory methods to resolve borrower problems and concerns; and
- make recommendations on necessary changes to State law to ensure the student loan servicing industry is fair, transparent, and equitable, including whether licensing or registration of student loan servicers should be required in Maryland.

Each student loan servicer in Maryland must designate an individual to represent the servicer in communications with the ombudsman and provide appropriate contact information for that designee to the ombudsman.

The ombudsman may refer any matter that is abusive, unfair, deceptive, or fraudulent to OAG for civil enforcement or criminal prosecution.

The bill requires the ombudsman, by October 1, 2019, to establish a student loan borrower education course that includes educational presentations and material about student education loans. The course must review specified information related to student loans. By January 1 of each year, the ombudsman must report findings and recommendations regarding student loan oversight to the General Assembly. Also, by January 1 of each year, the Commissioner must report on the implementation and overall effectiveness of the Student Loan Ombudsman position to the General Assembly.

Consumer Lending Provisions – Effective January 1, 2019

The bill implements several recommendations made in the MFCPC interim report that relate to consumer lending. Specifically, the bill establishes new requirements within the interest and usury sections of the Commercial Law Article for a "covered loan" that prohibit an unlicensed person from making such a loan. In addition, the bill increases from $6,000 to $25,000 the threshold below which a loan is subject to small lending requirements within the Maryland Consumer Loan Law (MCLL) and prohibits a person from lending $25,000 or less if the person is not licensed under (or exempt from) requirements under MCLL. The bill also establishes that specified violations result in a loan becoming *void* as well as unenforceable.

Interest and Usury Provisions: The bill expands the definition of "lender" to include a "licensee" who makes a loan subject to the Interest and Usury Subtitle. A "licensee" is a person that is required to be licensed to make loans subject to the Interest and Usury Subtitle, regardless of whether the person is actually licensed.

The bill defines a "loan" as a loan or advance of money or credit subject to the Interest and Usury Subtitle, regardless of whether the loan or advance of money or credit is or purports to be made under that subtitle. A "loan" does not include:

- a loan or advance of money or credit subject to MCLL (*i.e.*, Title 12, Subtitle 3 of the Commercial Law Article), unless a specified written election is made;
- a plan or loan for which a written election is made under Subtitle 3 (MCLL), Subtitle 4 (the Maryland Secondary Mortgage Loan Law), Subtitle 9 (revolving or "open end" credit plans), or Subtitle 10 (closed end credit plans); or
- an installment sale agreement as defined in Title 12, Subtitle 6 of the Commercial Law Article.

The bill establishes that several provisions of the Interest and Usury Subtitle do not apply to provisions expanding applicability of a "covered loan" made to any person.

Beginning on January 1, 2019, a lender may (at the lender's option) elect to make a loan to any borrower either under the Interest and Usury Subtitle of the Commercial Law Article or as otherwise authorized by applicable law. If the lender makes such an election, other specified provisions relating to consumer loans, secondary mortgage loans, retail credit, retail installment sales, revolving credit, and closed end credit do not apply to the loan.

If a lender does *not* make a written election under the Interest and Usury Subtitle or other specified subtitles of the Commercial Law Article, then the Interest and Usury Subtitle still applies if the loan is (1) for an amount over $25,000 or (2) for an amount of $25,000 or less *and* not subject to MCLL.

New Provisions Regarding "Covered Loans": The bill defines a "covered loan" as a loan that is subject to specified provisions within the Interest and Usury Subtitle, made for personal, family, or household purposes. Specifically, it is (1) a loan that is secured by the pledge of collateral other than a savings account; (2) an unsecured loan with a maximum interest rate of 24%; or (3) a loan that is not secured by residential real property. A "covered loan" excludes the same types of loans and agreements that are excluded from the definition of "loan" under § 12-101, as noted above.

An "unlicensed person" is a person who is not licensed in Maryland to make a covered loan and is not exempt from licensing in Maryland.

The bill prohibits an unlicensed person from (1) making a covered loan; (2) making a covered loan if the rate of interest exceeds what is authorized under Maryland law, based on specified criteria; and (3) making a covered loan that violates the federal MLA.

Except in limited circumstances (*e.g.*, a clerical error that is corrected prior to the due date of the first payment), if the rate of interest on a covered loan exceeds the amount authorized by Maryland law, the loan is *void* as well as unenforceable. Accordingly, with respect to a loan that is void and unenforceable, a person may not:

- collect or attempt to collect (directly or indirectly) any amount from the borrower;
- enforce or attempt to enforce the contract against any property securing the loan; or
- sell, assign, or otherwise transfer the loan to another person.

A covered loan that violates MLA is void and unenforceable. A covered loan made by an unlicensed person is also void and unenforceable.

Maryland Consumer Loan Law: The bill alters definitions, alters the scope of MCLL, increases the threshold below which loans are subject to MCLL, and repeals provisions regarding prohibited lender actions under MCLL that are obsolete under the bill. Specifically, the bill increases the threshold for a loan subject to MCLL from $6,000 to $25,000. Thus, a lender may not make a loan subject to MCLL that exceeds $25,000.

Under the bill, Title 12, Subtitle 3 of the Commercial Law Article applies to a loan or advance of money of $25,000 or less for personal, family, or household purposes – *regardless* of whether the loan or advance is (or purports to be) another type of product. In addition, a person may not lend $25,000 or less if interest on a loan exceeds the amount authorized by Maryland law, the transaction violates MLA, or the person is not licensed (or exempt). The bill specifies that MCLL does not apply to (1) a plan or loan for which a written election has been made under other provisions of law relating to interest and usury, secondary mortgage loans, revolving credit, and closed end credit transactions; (2) a loan made by an individual who makes three or fewer loans per year and is not engaged in the business of making loans; or (3) a loan between an employer and an employee.

The bill increases the threshold under which a lender is prohibited from taking a security interest from (1) $2,000 to $4,000, if the security is real property and (2) $700 to $1,400, if the security is personal property.

Retail Installment Sales: The bill also increases the threshold whereby retail installment sales requirements apply to all tangible personal property from a cash price of $25,000 to a cash price of $100,000.

Election to Lend under Secondary Mortgage Lender Law: The bill alters the definition of "licensee" under the Maryland Secondary Mortgage Loan Law to include a person who is required to be licensed under the Maryland Mortgage Lender Law, regardless of whether the person is actually licensed.

In addition, as of January 1, 2019, the bill authorizes a lender to make an election to lend under the Secondary Mortgage Loan Law (Title 12, Subtitle 4 of the Commercial Law Article). If the lender makes such an election, other provisions of the Commercial Law Article relating to interest and usury, consumer loans, revolving credit, and closed end credit do not apply.

If a lender does not make a written election under the Secondary Mortgage Loan Law or other specified subtitles of the Commercial Law Article, then the loan becomes subject to either Subtitle 1 (Interest and Usury) or Subtitle 3 (MCLL), depending on the characteristics of the loan.

Consumer Reporting Agencies

The bill prohibits CRAs from charging for the placement, temporary lift, or removal of a security freeze.

Required Studies

Financial Technology (Fintech) Firms: The bill requires OCFR to conduct a study to assess whether the commissioner has enough statutory authority to regulate "Fintech" firms or technology-driven nonbank companies who compete with traditional methods in the delivery of financial services. OCFR must identify any gaps in the regulation of Fintech firms, including any specific types of companies that are not subject to regulation under State law. OCFR must report to the General Assembly by December 31, 2019, on its findings and recommendations for legislative proposals to regulate Fintech firms.

The bill also expands the duties of MFCPC by requiring it to study:

- cryptocurrencies, initial coin offerings, cryptocurrency exchanges, and other blockchain technologies;
- the Consumer Financial Protection Bureau (CFPB) arbitration rule and the Model Consumer and Employee Justice Enforcement Act;
- the possible exemption of retailers of manufactured homes from the definition of "mortgage originator" in federal law; and
- the U.S. Department of Labor rule and any U.S. Securities and Exchange Commission (SEC) actions in addressing conflicts of interest of broker-dealers offering investment advice by aligning the standard of care for broker-dealers with that of the fiduciary duty of investment advisors.

MFCPC must include specified recommendations in its 2018 report to the Governor and the General Assembly.

Current Law/Background:

Maryland Consumer Protection Act

MFCPC recommended expanding MCPA to prohibit engagement in any "unfair, deceptive, or *abusive* trade practice," to close a possible loophole, and strengthen the enforcement authority of OAG. According to the report, OAG often relies on enforcement of MCPA to protect Maryland's citizens from predatory business actions. MCPA prohibits a person from engaging in any unfair or deceptive trade practice. 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 prohibition under MCPA, however, does not include any specific prohibition against "abusive" trade practices. As a result, OAG may not be able to bring actions in State court against entities that engage in trade practices that, in isolation, may not be specifically defined as unfair or deceptive but may, nevertheless, be implemented in an abusive manner.

In addition, MFCPC recommended that OAG and OCFR apply the provisions of MCPA broadly, when appropriate, to reach unfair and deceptive conduct by members of the financial services industry that might otherwise go undeterred. For example, they may wish to evaluate whether brokers who hold themselves out in marketing materials as trusted sources of investment advice for retail consumers but then disavow any fiduciary duty of loyalty to their clients have engaged in unlawful conduct under MCPA or Maryland's Securities Act.

Expansion of the Maryland Consumer Protection Act to Include the Military Lending Act and the Servicemembers Civil Relief Act

MFCPC recommended expanding MCPA to include violations of MLA and SCRA to enable OAG to investigate and enforce all complaints by members of the armed forces about financial consumer protection violations. MLA protects active duty servicemembers who initiate financial transactions while they are on active duty. MLA prohibits lenders from charging an interest rate higher than 33% on most types of consumer loans, including fees and other types of finance charges, and provides other consumer protections. SCRA offers financial and civil protections to active duty members of the U.S. Armed Forces and

members of the National Guard to provide financial relief from existing debts and allow members to focus on their service. SCRA covers a variety of issues, including issues related to rental agreements, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, and automobile leases. SCRA reduces the rate of interest for debts incurred before entering active duty to 6%, allows servicemembers to terminate residential and automobile leases, and protects servicemembers from certain actions such as foreclosures and automobile repossessions. According to the U.S. Department of Defense December 2016 workforce report, 28,703 active duty military members are domiciled in Maryland.

Civil Penalties for Violations of the Maryland Consumer Protection Act and Other Financial Licensing and Regulatory Laws

MFCPC recommended increasing the maximum civil penalty for any initial violation of MCPA and other financial and regulatory laws relating to nondepository financial services providers from $1,000 to $10,000 and to $25,000 for subsequent violations. According to the report, increasing the maximum amount of the civil penalties will bring Maryland in line with other states and allow the State to achieve greater deterrence, particularly if the federal regulator becomes less aggressive in its enforcement efforts.

Fiduciary Duty

MFCPC recommended, consistent with federal preemption issues, extending the fiduciary duty in Maryland statute to all financial professionals who provide investment advice. Generally, a fiduciary is a person having a duty, created by an undertaking, to act primarily for another's benefit in matters connected with the undertaking. The fiduciary duty also requires one to subordinate one's personal interests to that of the person to whom the duty is owed. According to a recent study by the Consumer Federation of America and Americans for Financial Reform, major brokerage firms and insurance companies may mislead investors as trustworthy financial advisors but will deny this role and represent that they are merely salespeople when confronted by a court. Responding to these issues in April 2016, the U.S. Department of Labor finalized the fiduciary rule addressing conflicts of interest in the offering of retirement advice. Under the securities laws, SEC has long had the authority to raise the standards that apply to broker-dealers offering investment advice. In Dodd-Frank, Congress further authorized SEC through rulemaking (after first issuing a report) to align the standard of care for broker-dealers with that of the fiduciary duty of investment advisors. Though SEC conducted the required report, it has yet to address the standard of conduct of broker-dealers.

Although Maryland law provides some protections for consumers who rely on the advice of securities professionals, it does not explicitly extend fiduciary duty to broker-dealers or their agents. In contrast, under the Code of Maryland Regulations (02.02.05.03), an

investment advisor is a fiduciary and has a duty to act primarily for the benefit of its clients. In addition, under Chapters 837 and 838 of 2017, a person who engages in the business of effecting transactions in securities for the account of others, for the person's own account, or who acts as a broker-dealer or agent, may not engage in dishonest or unethical practices in the securities or investment advisory business. MFCPC recommends that extending fiduciary duties to all financial professionals who provide investment advice, however, better aligns the duties of all financial advisors, ensuring that they all give advice in the best interests of investors. Such a fiduciary duty further protects investors from possible predatory practices and provides recourse to investors who may be ill-advised by a financial professional.

Consumer Reporting Agency Security Freezes

A "security freeze" is defined as a restriction placed on a consumer's consumer report at the request of the consumer that prohibits a CRA from releasing the report (or any information derived from the report) without the authorization of the consumer.

A CRA may charge a reasonable fee (of up to $5) for each placement, temporary lift, or removal of a security freeze. A CRA may not charge a fee for a security freeze to a consumer who has obtained a report of alleged identity fraud or for a minor younger than age 16 for whom a consumer report already exists. In addition, a CRA may not charge a fee for a placement of a security freeze if the consumer has not previously requested one.

State law also allows a protected consumer's representative to request a security freeze for an individual who is younger than age 16 at the time of request or for an incapacitated person or a protected person for whom a guardian or conservator has been appointed. The Department of Human Services is authorized by State law to request a security freeze for a child placed in foster care.

Equifax Data Breach

Equifax, one of the United States' main CRAs, experienced a significant data breach in spring 2017. According to the Federal Trade Commission (FTC), 143 million American consumers' sensitive personal information was exposed in the data breach. FTC reports that "hackers accessed people's names, Social Security numbers, birth dates, addresses and, in some instances, driver's license numbers. They also stole credit card numbers for about 209,000 people and dispute documents with personal identifying information for about 182,000."

Given the catastrophic nature of the Equifax breach, more consumers are investigating the requirements and costs of placing, lifting, and removing credit security freezes. States have the authority to determine the cost for the placement, lifting, or removal of a security freeze. In some states, consumers incur no cost for the placement, lifting, or removal of a security

freeze. In most other states, the cost ranges from $3 to $10 for each placement, lift, or removal at each CRA.

Forced Arbitration Clauses

According to the National Consumer Law Center, "forced arbitration" clauses are fine-print terms included in contracts of adhesion that require the consumer or employee to give up their constitutional right to assert claims against the merchant or employer in court as a condition of obtaining or keeping their job or using the consumer good or service. The clauses appear in a variety of types of contracts, including credit agreements, cell phone contracts, nonunion employment agreements, and auto loans. Although advocates represent that arbitration clauses provide consumers with direct access to a private forum, in practice, many consumers are unable to use arbitration to resolve complaints for three reasons: (1) many clauses require consumers to pursue claims individually, without the benefit of a class or group; (2) arbitration can be extraordinarily expensive because of mandatory fees and requirements to use arbitration in another geographic location; and (3) businesses have greater familiarity with the process and may use that familiarity to prolong the duration of arbitration.

In 2015, the *New York Times* conducted an investigation about forced arbitration clauses and class actions because no government agency tracks class actions. According to the article, of 1,179 class actions between 2010 and 2014 that companies sought to push into arbitration, judges ruled in the companies' favor in four out of every five cases. Further, the *New York Times* found that between 2010 and 2014, only 505 consumers went to arbitration over a dispute of $2,500 or less. Overall, the investigation concluded that consumers were not likely to go to arbitration if they were not able to participate in a class action or the amount of alleged damages was nominal.

Acknowledging the harm of forced arbitration clauses that prohibit class action suits, CFPB issued the Arbitrations Agreements Rule, which allowed consumers to bring class actions challenging abuses in the financial services sector. On November 1, 2017, however, President Trump signed a joint resolution passed by Congress disapproving the Arbitration Agreements Rule under the Congressional Review Act. On November 22, 2017, CFPB published a notice removing the Arbitration Agreements Rule from the Code of Federal Regulations.

To address the harms that have resulted from the use of forced arbitration clauses, MFCPC recommended the State adopt the Model State Consumer and Employee Justice Enforcement Act: Titles I-VIII. The Act includes eight separate titles that protect against different harms related to forced arbitration of consumer and employment disputes: (1) Delegation of State Public Enforcement Authority; (2) Conditions on Persons Doing Business with the State; (3) Clear Notice and Single Document Rule; (4) Unconscionable

Terms in Standard Form Contracts; (5) Prohibition of Forced Arbitration Clauses under State Law; (6) Data Disclosure Requirements for Arbitration Providers; (7) Appellate Jurisdiction; and (8) Preventing Respondents from Improperly Delaying the Arbitration Proceeding. It was written to provide solutions that may not be preempted by the Federal Arbitration Act.

Consumer and Payday Loans

Interest and Usury: Loans made under the Interest and Usury Subtitle generally cap interest rates at 24%. However, in contrast to MCLL (which caps interest at 33%), the Interest and Usury Subtitle calculates interest rates differently. For example, fees charged at inception of a loan in calculating the interest are not included, more fees are permitted, and there are less stringent penalties and protective provisions for consumers.

Maryland Consumer Loan Law: MCLL applies to small, unsecured loans of $6,000 or less. Loans made under MCLL generally cap interest at 33% with a balance of $2,000 or less and 24% with a balance of more than $2,000.

In January 2018, MFCPC released an interim report recommending changes to Maryland consumer and payday lending laws. According to the report, Maryland has been at the forefront of payday lending consumer protection laws. Generally, traditional payday loans that do not exceed $6,000 have a maximum annual percentage rate (APR) of 33%. Lending practices continue to evolve, however, and in some instances, financial institutions have found ways to avert the law to charge interest rates that exceed the intended 33% APR for small loans. For example, many lenders are now structuring payday loans not as loans but rather as unsecured, open-end credit plans. Such changes in loan classification and structure may have been structured by lenders to circumvent caps on interest rates and fees.

The General Assembly passed legislation in 2017 to close possible loopholes in payday lending. Chapters 723 and 724 of 2017 limit the interest and fees on unsecured, open-end credit plans to 33% APR. However, MFCPC recommended filling possible gaps and eliminating loopholes in Maryland's current payday lending statute, particularly related to online lending and advance deposit products.

Specifically, MFCPC recommended (1) increasing the amount considered as a small loan and considered as a retail installment loan, particularly as these amounts have not been increased in State law since 1975 and 1977, respectively, and (2) specifying in the consumer law that contracts would be expressly void for specified violations.

Student Loans

In its interim report, to address the growing concerns of student loan borrowers in Maryland, MFCPC recommended that (1) the General Assembly adopt a student loan bill of rights; (2) the State designate a student loan ombudsman; and (3) the State consider licensing student loan servicers.

The MFCPC report stated that Connecticut, Illinois, and Washington each have adopted a student loan bill of rights in the last few years. The consensus among advocates is that a student loan bill of rights should be designed to prevent borrowers from being misled or ignored by the companies that service their loans.

MFCPC suggested that OCFR designate a student loan ombudsman to receive, review, and attempt to resolve any complaints from student loan borrowers and to assist student loan borrowers in understanding their rights and responsibilities under the terms of student education loans. It was recommended that the ombudsman collect and analyze data regarding complaints received and report annually to the Governor and General Assembly.

To enhance the effectiveness of the student loan bill of rights, MFCPC also recommended that the State consider licensing student loan servicers. Student loan servicers collect and receive any principal, interest, or other money owed under a student education loan, and they perform other administrative services that relate to a student education loan. MFCPC recommended that licensing requirements include recordkeeping and examination requirements, as well as specific provisions regarding servicing student loans, such as properly processing payments. Licensure of the student loan servicers is intended to allow OCFR to know each servicer doing business in the State and to take enforcement actions against the servicers. The State may use other jurisdictions that have begun regulating student loan servicers as a model, such as the District of Columbia.

Likewise, the Maryland Financial Education and Capability Commission (MFECC) in its 2017 annual report made a series of recommendations, including creating a student loan bill of rights with a student loan ombudsman in OCFR to monitor complaints and serve as an advocate for those impacted by student loan fraud or predatory practices. MFECC monitors public and private initiatives to improve the financial education and capabilities of Marylanders and recommends how State agencies can coordinate financial education and capability efforts. To support this recommendation, the report indicates that student loan borrowing complaints increased 153% in Maryland, from 2015 to 2016, and that over 800 complaints have been filed against their student loan servicers.

Manufactured Housing Retailing

As passed by the U.S. Senate Banking Committee in December 2017, S.2155 exempts retailers of manufactured homes from the definition of "mortgage originator," thus also exempting those retailers from rules that limit conflict of interest and prohibit steering homebuyers into exploitative or predatory loans. MFCPC recommended amending the definition of "mortgage loan originator" in State law, to specify that a "mortgage loan originator" includes a retailer of a manufactured home. Clarifying the definition is intended to make sure that Maryland buyers of manufactured homes are protected in their homebuying transaction if S.2155 becomes federal law.

Use of Dodd-Frank Authority

Section 1042 of Dodd-Frank authorizes state attorneys general and regulators to bring civil actions for violations of Dodd-Frank's prohibition of unfair, deceptive, or abusive acts or practices, including actions against financial institutions that are not state chartered, such as national banks or federal savings associations. A state attorney general or regulator has to notify CFPB before filing a suit, and CFPB has a right to intervene.

Maryland's Attorney General has already filed suits together with CFPB under Section 1042 Dodd-Frank authorities and, in December 2017, joined a letter of support for CFPB signed by 15 state attorneys general which noted that "State attorneys general have express statutory authority to enforce federal consumer protection laws, as well as the consumer protection laws of our respective States."

MFCPC recommended that OAG and OCFR continue to use their authority under Section 1042 of Dodd-Frank to bring enforcement actions or other appropriate proceedings to enforce provisions of Dodd-Frank, particularly when federal regulators are not enforcing consumer protections.

State Revenues: The bill increases the *maximum* civil penalty that may be imposed for several provisions of law related to consumer protection, which *may* result in additional general fund revenues. Notably, the maximum civil penalty for violations of MCPA is increased to $10,000 for initial violations and $25,000 for each subsequent violation. The Consumer Protection Division of OAG advises that revenues paid into the general fund vary greatly from year to year. In the past three years, OAG estimates sending about $5 million in civil penalties to the general fund. However, that amount includes about $4 million in one year, with the remainder split between the other two years. Based on this information, the Department of Legislative Services advises that, while increasing maximum MCPA civil penalties may result in a significant increase in general fund revenues, any increase cannot be reliably estimated due to the unpredictable nature of legal

actions under MCPA. Moreover, any increase depends on the extent to which the higher maximum penalty is actually imposed.

Other Provisions Affecting Revenues

Several other provisions of the bill also potentially affect revenues (*e.g.*, the potential increase in the number of lenders making loans requiring licensure under MCLL and expansion of MCPA to include abusive trade practices and violations of MLA and SCRA). However, these provisions are not expected to have a significant impact on revenues and, in any event, cannot be reliably estimated.

State Expenditures: The bill establishes two mandated appropriations, beginning in fiscal 2020, for greater enforcement of consumer protection laws. In total, the bill requires the Governor to appropriate at least $1.0 million in general funds to OAG and OCFR, with OAG receiving $700,000 and OCFR receiving $300,000.

Office of the Commissioner of Financial Regulation – Enforcement Personnel

OCFR advises that, to strengthen its enforcement operations, it anticipates hiring additional personnel with the mandated appropriation. Thus, general fund expenditures increase by $266,043 in fiscal 2020 for personnel-related costs. The residual mandated funding (about $33,900) is assumed to be used for related enforcement activities. This estimate reflects the cost of hiring two additional examiners. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$187,106
Operating Expenses	78,937
FY 2020 OCFR Mandated Personnel Expenditures	**$266,043**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, resulting in less residual mandated funding over time.

Office of the Attorney General – Enforcement Personnel

OAG advises that it intends to use the mandated funding for additional staff as well. In total, the Consumer Protection Division anticipates hiring seven new employees with the mandated appropriation. Based on OAG's request for personnel, general fund expenditures increase by $600,041 in fiscal 2020. The residual mandated funding (about $100,000) is assumed to be used for related enforcement activities. This estimate reflects the cost of hiring four assistant Attorneys General, two investigators, and one management associate.

It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	7
Salaries and Fringe Benefits	$561,436
Operating Expenses	38,605
FY 2020 OAG Mandated Personnel Expenditures	**$600,041**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, resulting in less residual mandated funding over time.

Student Loan Ombudsman

OCFR advises that the ombudsman duties specified by the bill warrant additional personnel. The ombudsman is responsible for establishing a student loan borrower education course, conducting specified consumer outreach, handling consumer complaints and resolutions, compiling and analyzing complaint data, providing information to State agencies and officials, analyzing and monitoring relevant laws and regulations, and making recommendations in an annual report. Based on complaint data from the federal CFPB, OCFR anticipates hiring two additional staff to implement these provisions of the bill.

General fund expenditures increase by $156,705 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date for these provisions. This estimate reflects the cost of hiring one Student Loan Ombudsman and one nondepository examiner to perform the functions noted above. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$140,234
Operating Expenses	16,471
FY 2019 Ombudsman and Related Expenditures	**$156,705**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Small Business Effect: The bill's provisions regarding consumer lending are most likely to affect small businesses. Because the bill increases the threshold for small consumer loans covered by MCLL, more small businesses may become subject to MCLL's licensing requirements. The bill could result in higher required amounts of bond coverage for consumer lenders, installment lenders, and credit services businesses.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 1634 (Delegate Frick *et al.*- Economic Matters) is not identical.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Higher Education Commission; University System of Maryland; Department of Labor, Licensing, and Regulation; *The New York Times*; United States Code; Maryland Financial Education and Capability Commission; Consumer Financial Protection Bureau; National Consumer Law Center; U.S. Department of Labor; Consumer Federation of America; Americans for Financial Reform; Department of Legislative Services

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