

SENATE BILL 694

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9lr2129
CF HB 777

By: **Senators Kramer, Feldman, Hayes, Hershey, Jennings, and Kelley**

Introduced and read first time: February 4, 2019

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2019

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law – Credit Card Processors – ~~Service~~ Merchant Processing**
3 **Agreements**

4 FOR the purpose of ~~requiring~~ prohibiting a credit card processor ~~to send a summary of a~~
5 ~~certain services agreement to certain businesses; requiring a business to~~
6 ~~acknowledge a certain services agreement by signing, dating, and returning a copy~~
7 ~~of the summary of the services agreement to a certain credit card processor before~~
8 ~~entering into a services agreement with the credit card processor~~ from assessing or
9 charging certain fees under certain circumstances; requiring the summary a
10 merchant processing agreement to include certain information; requiring a credit
11 card processor to provide a certain notice regarding a services agreement renewal
12 before a certain date; requiring the notice to disclose certain information that certain
13 information be provided in a certain manner in the merchant processing agreement;
14 authorizing the Commissioner of Financial Regulation to take certain actions;
15 ~~establishing certain civil penalties for a violation of this Act;~~ providing for the
16 application of this Act; defining certain terms; and generally relating to credit card
17 processors and ~~service~~ merchant processing agreements.

18 BY adding to

19 Article – Commercial Law

20 Section 12-1401 through ~~12-1405~~ 12-1404 to be under the new subtitle “Subtitle 14.

21 Credit Card Processors”

22 Annotated Code of Maryland

23 (2013 Replacement Volume and 2018 Supplement)

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

3 **Article – Commercial Law**

4 **SUBTITLE 14. CREDIT CARD PROCESSORS.**

5 **12-1401.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) (1) “CREDIT CARD PROCESSOR” MEANS A PERSON THAT PROCESSES
9 CREDIT CARD OR ELECTRONIC COMMERCE TRANSACTIONS ON BEHALF OF A
10 BUSINESS ENTITY FOR A FEE.

11 (2) “CREDIT CARD PROCESSOR” INCLUDES:

12 (I) A MERCHANT SERVICES PROVIDER;

13 (II) A FINANCIAL INSTITUTION;

14 (III) AN INDEPENDENT SALES ORGANIZATION; AND

15 (IV) ANY SUBSIDIARY OR AFFILIATE OF AN ENTITY LISTED IN
16 ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

17 (C) “~~SERVICES MERCHANT PROCESSING AGREEMENT~~” MEANS A CONTRACT
18 BETWEEN A CREDIT CARD PROCESSOR AND A BUSINESS ENTITY UNDER WHICH THE
19 BUSINESS ENTITY AGREES TO PAY THE CREDIT CARD PROCESSOR FOR PROCESSING
20 CREDIT CARD OR ELECTRONIC COMMERCE TRANSACTIONS ON BEHALF OF THE
21 BUSINESS ENTITY.

22 **12-1402.**

23 THIS SUBTITLE DOES NOT APPLY TO A ~~SERVICES MERCHANT PROCESSING~~
24 AGREEMENT BETWEEN A CREDIT CARD PROCESSOR AND A BUSINESS ENTITY ~~THAT:~~

25 (1) THAT MAY BE TERMINATED WITHOUT ASSESSMENT OF FEES,
26 FINES, PENALTIES, OR LIQUIDATED DAMAGES; OR

27 (2) IF AT THE TIME OF ENTRY INTO THE MERCHANT PROCESSING
28 AGREEMENT, THE BUSINESS ENTITY EMPLOYS 50 OR MORE EMPLOYEES OR
29 REASONABLY ESTIMATES THAT IT WILL GENERATE MORE THAN \$2,000,000 IN
30 CREDIT CARD OR ELECTRONIC COMMERCE TRANSACTIONS EACH YEAR.

1 12-1403.

2 (A) ~~(1) A CREDIT CARD PROCESSOR SHALL SEND TO EACH BUSINESS~~
3 ~~WITH WHOM IT HAS, OR INTENDS TO HAVE, A SERVICES AGREEMENT A SUMMARY OF~~
4 ~~THE SERVICES AGREEMENT.~~

5 ~~(2) BEFORE ENTERING INTO A SERVICES AGREEMENT WITH A CREDIT~~
6 ~~CARD PROCESSOR, THE BUSINESS SHALL ACKNOWLEDGE THE SERVICES~~
7 ~~AGREEMENT BY SIGNING, DATING, AND RETURNING A COPY OF THE SUMMARY OF~~
8 ~~THE SERVICES AGREEMENT TO THE CREDIT CARD PROCESSOR~~ IF A BUSINESS
9 ENTITY CANCELS A MERCHANT PROCESSING AGREEMENT BEFORE THE EXPIRATION
10 OF THE INITIAL TERM AGREED ON BY THE CREDIT CARD PROCESSOR AND THE
11 BUSINESS ENTITY, THE CREDIT CARD PROCESSOR MAY NOT ASSESS OR CHARGE A
12 FEE, FINE, OR PENALTY THAT EXCEEDS \$500.

13 (B) ~~THE SUMMARY REQUIRED UNDER SUBSECTION (A) OF THIS SECTION~~
14 ~~SHALL INCLUDE:~~

15 ~~(1) THE INTEREST RATE AUTHORIZED UNDER THE SERVICES~~
16 ~~AGREEMENT;~~

17 ~~(2) THE AMOUNT AND PURPOSE OF EACH FEE, FINE, OR PENALTY~~
18 ~~THAT THE CREDIT CARD PROCESSOR MAY CHARGE OR ASSESS UNDER THE SERVICES~~
19 ~~AGREEMENT;~~

20 ~~(3) THE EXPIRATION DATE OF THE SERVICES AGREEMENT;~~

21 ~~(4) THE SERVICES AGREEMENT RENEWAL DATE; AND~~

22 ~~(5) THE NAME, TELEPHONE NUMBER, MAILING ADDRESS, AND~~
23 ~~E-MAIL ADDRESS OF AN AUTHORIZED REPRESENTATIVE OF THE CREDIT CARD~~
24 ~~PROCESSOR~~ IF A BUSINESS ENTITY TERMINATES THE MERCHANT PROCESSING
25 AGREEMENT AFTER THE EXPIRATION OF THE INITIAL TERM AGREED ON BY A CREDIT
26 CARD PROCESSOR AND A BUSINESS ENTITY, THE CREDIT CARD PROCESSOR MAY NOT
27 ASSESS A FEE, FINE, OR PENALTY, UNLESS A CREDIT CARD PROCESSOR AND A
28 BUSINESS ENTITY HAVE ENTERED INTO A SEPARATE RENEWAL MERCHANT
29 PROCESSING AGREEMENT.

30 (C) ~~(1) AT LEAST 90 DAYS BEFORE A BUSINESS ENTITY MUST CANCEL A~~
31 ~~SERVICES AGREEMENT TO PREVENT AUTOMATIC RENEWAL OF THE AGREEMENT, A~~
32 ~~CREDIT CARD PROCESSOR SHALL PROVIDE WRITTEN NOTICE TO THE BUSINESS~~
33 ~~ENTITY THAT THE SERVICES AGREEMENT WILL AUTOMATICALLY RENEW.~~

~~(2) THE REQUIRED NOTICE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL DISCLOSE:~~

~~(I) THAT THE SERVICES AGREEMENT WILL AUTOMATICALLY RENEW UNLESS THE BUSINESS ENTITY CANCELS THE AGREEMENT;~~

~~(II) THE DATE BY WHICH THE BUSINESS ENTITY MUST CANCEL THE SERVICES AGREEMENT TO PREVENT THE AGREEMENT FROM RENEWING;~~

~~(III) PROCEDURES FOR CANCELING THE SERVICES AGREEMENT;~~
AND

~~(IV) THAT THE SERVICES AGREEMENT HAS CHANGED, IF APPLICABLE~~ SUBJECT TO SUBSECTION (D) OF THIS SECTION, A MERCHANT PROCESSING AGREEMENT SHALL DISCLOSE CLEARLY AND CONSPICUOUSLY IN BOLD, 12 POINT FONT THE FOLLOWING INFORMATION:

(1) THE AMOUNT OF ANY EARLY TERMINATION FEE, FINE, PENALTY, OR LIQUIDATED DAMAGES THAT MAY BE ASSESSED BY THE CREDIT CARD PROCESSOR FOR TERMINATION OF A MERCHANT PROCESSING AGREEMENT BEFORE THE EXPIRATION OF THE INITIAL TERM;

(2) THE EXPIRATION DATE OF THE MERCHANT PROCESSING AGREEMENT;

(3) THE RENEWAL DATE OF THE MERCHANT PROCESSING AGREEMENT; AND

(4) THE CUSTOMER SERVICE CONTACT INFORMATION OF THE CREDIT CARD PROCESSOR, INCLUDING TELEPHONE NUMBER, MAILING ADDRESS, AND E-MAIL ADDRESS.

(D) THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION SHALL BE:

(1) PROVIDED ON THE SIGNATURE PAGE OF A MERCHANT SERVICES AGREEMENT; AND

(2) INITIALED SEPARATELY BY THE BUSINESS ENTITY.

(E) THE CREDIT CARD PROCESSOR SHALL PROVIDE A COPY OF THE MERCHANT PROCESSING AGREEMENT IN ELECTRONIC OR PAPER FORM TO THE BUSINESS ENTITY AT THE TIME THE BUSINESS ENTITY SIGNS THE MERCHANT PROCESSING AGREEMENT.

1 12-1404.

2 IF A COMPLAINT ABOUT A VIOLATION OF § 12-1403 OF THIS SUBTITLE IS
 3 FILED WITH THE COMMISSIONER OF FINANCIAL REGULATION, THE COMMISSIONER
 4 MAY INVESTIGATE THE COMPLAINT AND USE ANY OF THE INVESTIGATIVE AND
 5 ENFORCEMENT POWERS PROVIDED UNDER TITLE 2, SUBTITLE 1 OF THE FINANCIAL
 6 INSTITUTIONS ARTICLE.

7 ~~12-1405.~~

8 ~~(A) A PERSON THAT VIOLATES § 12-1403 OF THIS SUBTITLE IS SUBJECT TO~~
 9 ~~A FINE NOT EXCEEDING \$100 FOR EACH VIOLATION.~~

10 ~~(B) A PERSON THAT HAS BEEN FOUND TO HAVE VIOLATED THIS SUBTITLE~~
 11 ~~AND THAT SUBSEQUENTLY REPEATS THE SAME VIOLATION IS SUBJECT TO A FINE OF~~
 12 ~~NOT MORE THAN \$500 FOR EACH SUBSEQUENT VIOLATION.~~

13 ~~(C) THE FINES PROVIDED FOR IN SUBSECTIONS (A) AND (B) OF THIS~~
 14 ~~SECTION ARE CIVIL PENALTIES AND ARE RECOVERABLE BY THE COMMISSIONER OF~~
 15 ~~FINANCIAL REGULATION IN A CIVIL ACTION OR AN ADMINISTRATIVE CEASE AND~~
 16 ~~DESIST ACTION UNDER § 2-115 OF THE FINANCIAL INSTITUTIONS ARTICLE.~~

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
 18 apply only prospectively and may not be applied or interpreted to have any effect on or
 19 application to any merchant processing agreement entered into or renewed before the
 20 effective date of this Act.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 22 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.