

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 873

(Senator Klausmeier)

Finance

Commercial Law - Maryland Credit Repair Businesses Act

This bill establishes a new subtitle governing the regulation and licensure of credit repair businesses and, accordingly, repeals provisions relating to “credit repair businesses” from the Maryland Credit Services Business Act (MCSBA). The bill generally subjects credit repair businesses to the same requirements as credit services businesses – but alters licensing and surety bond requirements as well as compliance and enforcement standards.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues to the extent that existing licensees obtain a new license in order to operate as credit repair businesses. However, the bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill’s requirements 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: A “credit repair business” is 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; or
- providing advice or assistance with regard to any of the above.

The bill authorizes a credit repair business (and its employees and independent contractors) to accept payment prior to full and complete performance of the services if the consumer agrees to pay for the services during the term of a subscription agreement that allows periodic payments for ongoing performance of services. A subscription agreement may not exceed 180 days and may be canceled at any time by the consumer.

A credit repair business is required to maintain a copy of an information statement signed by a consumer prior to the execution of a contract or agreement for a period of three years (compared to two years for credit services businesses).

Licensing and Surety Bond

The Commissioner of Financial Regulation determines the initial and annual renewal license fees, which may be a maximum of \$1,000 and \$500, respectively. The application must contain specified information, and the licensee must notify the commissioner within 90 days if any of the required information changes.

The bill also requires a credit repair business to obtain a surety bond in an amount equal to 100 times the standard fee charged by the business. The bond must be at least \$50,000 but no more than \$75,000.

Compliance and Enforcement

The bill increases the monetary award amount due to a consumer if a credit repair business willfully fails to comply with any requirement under the bill with respect to a consumer. Under the bill, the business is liable for a monetary award equal to four times, rather than three times, the total amount collected from the consumer (in addition to other damages).

The bill also increases the amount of time during which an action to enforce a liability may be brought to within four years, rather than two years. Likewise, the bill increases the amount of time during which an action to enforce liability may be brought in the case of misrepresentation by the defendant to four years from two years.

Current Law:

Maryland Credit Services Businesses Act, Generally

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.

Advertisements

A person who advertises for credit services – regardless of whether or not the person is a credit services business – must clearly and conspicuously state in each advertisement the license number issued under MCSBA or, if not required to be licensed, the exemption provided by the Commissioner of Financial Regulation.

Information Statement

Before either the execution of a contract or an agreement between a consumer and a credit services business *or* the receipt of money or other valuable consideration, the credit services business must provide the consumer with a written statement containing the information required under § 14-1905 of the Commercial Law Article.

The required information statement must contain specified information regarding the consumer’s rights under State and federal laws and the consumer’s right to file a complaint with the Commissioner of Financial Regulation.

The credit services business must maintain a copy of the information statement signed by the consumer for a period of two years from the date of the consumer's acknowledgement.

Violations

Any breach by a credit services business of a contract under MCSBA (or of any obligation arising under it) constitutes a violation of MCSBA. Any contract for services from a credit services business that does not comply with MCSBA's requirements is void and unenforceable. Likewise, any waiver by a consumer of any of MCSBA's provisions is void and unenforceable. Any attempt by a credit services business to have a consumer waive his or her rights under MCSBA constitutes a violation.

Surety Bond Requirements

Credit services businesses are required to obtain a surety bond in the amount of \$12,000. Any person claiming against the surety bond for a violation of MCSBA may maintain an action against the credit services business and against the surety. The surety is liable only for actual damages and not for the punitive damages.

The aggregate liability of the surety to all persons damaged by a violation of MCSBA may not exceed the amount of the surety bond.

Complaints and Enforcement

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 MCSBA, 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 MCSBA 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 MCSBA 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 MCSBA 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 the Maryland Consumer Protection Act (MCPA).

In general, any person who violates any provision of MCSBA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$5,000 and/or imprisonment for up to three years – 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 MCSBA or MCPA.

Unfair, Abusive, or Deceptive Trade Practices

An unfair, abusive, 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, abusive, 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 \$10,000 for each violation and up to \$25,000 for each repetition of the same 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: In 2017, the latest information readily available, the Commissioner of Financial Regulation advised that it licensed 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 repair businesses that qualify as small businesses are permitted to charge consumers sooner than is allowed under MCSBA. Thus, such businesses benefit under the bill. Allowing periodic payments may also increase the overall volume of consumers seeking credit repair 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.

Small businesses are also potentially affected by the licensing requirements of the bill. Although there are a relatively small number of credit services businesses in the State (as noted above), it is not known how many of these businesses perform credit repair services as defined by the bill. Therefore, current licensees may need to obtain a new license and surrender the old one, or obtain two licenses in order to operate both as a credit services business *and* a credit repair business. This may result in increased administrative costs for those small businesses.

Additional Comments: Most licensing, investigation, and examination fees for nondepository financial institutions – including credit services businesses – are deposited into the Nondepository Special Fund, rather than the general fund. The bill does not specify that credit repair business licensing fees be deposited into the Nondepository Special Fund; therefore, this analysis assumes that any revenues received under the bill are credited to the general fund.

Additional Information

Prior Introductions: HB 1513 of 2018 received a hearing in the House Economic Matters Committee and was referred to interim study.

Cross File: HB 746 (Delegate Fennell) - Economic Matters.

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

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