SENATE BILL 217

By: Chair, Finance Committee (By Request – Departmental – Labor)
Requested: October 4, 2021
Introduced and read first time: January 12, 2022
Assigned to: Finance
Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 21, 2022

CHAPTER ______

AN ACT concerning

Commissioner of Financial Regulation – Consumer Loans – Payments and Fees

FOR the purpose of prohibiting a person from taking certain actions related to the payment
of fees in cases of certain loans made to consumer borrowers; authorizing, under
certain circumstances, a person to require a borrower to pay a fee for the transaction
of a payment made by or on behalf of the borrower in cases of certain loans made to
consumer borrowers; requiring a person to accept certain types of payment made by
or on behalf of the borrower in cases of certain loans made to certain consumer
borrowers; and generally relating to payments made and fees paid under consumer
loans.

BY adding to
Article – Commercial Law
Section 12–108.1, 12–307.2, 12–405.1, 12–905.1, and 12–1005.1
Annotated Code of Maryland
(2013 Replacement Volume and 2021 Supplement)

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

Article – Commercial Law

12–108.1.
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(A) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person:

(1) May not require a borrower to pay a fee for the transaction of a payment made by or on behalf of the borrower in the form of:

   (i) Cash;

   (ii) Check; or

   (iii) Money order; and or

   (iv) An electronic funds transfer through the Automated Clearing House;

(2) Must offer to shall accept a payment made by or on behalf of a borrower free of charge in at least one commonly accepted form by check, money order, and an electronic funds transfer through the Automated Clearing House; and

(3) (i) May cease accepting payment by check or an electronic funds transfer through the Automated Clearing House after prior notice to the borrower if two payments made by check or electronic funds transfer through the Automated Clearing House by or on behalf of the borrower were dishonored in the immediately preceding 6–month period; and

   (ii) Shall accept subsequent payment by check or an electronic funds transfer through the Automated Clearing House if three regular payments are timely made by or on behalf of the borrower after the person ceased accepting payment by check or an electronic funds transfer through the Automated Clearing House under item (i) of this item.

(B) Subject to subsection (A) of this section, in the case of a loan to a consumer borrower made in accordance with this subtitle, a person may not require a borrower to pay, directly or indirectly, a fee for the transaction of a payment made by or on behalf of the borrower if unless:

(1) The agreement, note, or other evidence of the loan expressly authorizes the fee to be imposed; or
(2) (1) The amount of the fee is disclosed to the borrower at the time of the payment transaction;

(II) (2) The borrower agrees to pay the fee; and

(III) (3) The amount of the fee does not exceed the actual cost charged to the person by an unaffiliated third party for the processing of the payment transaction either:

(1) The actual cost charged to the person by an unaffiliated third party for the processing of the payment transaction; or

(II) The average cost of charges to the person by an unaffiliated third party for the processing of the payment transactions from similarly situated borrowers.

(C) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person may not attempt to induce the borrower to remit payment in a form for which a fee will be required to be paid by the borrower over other forms of payments that are free of charge unless payment in that form will prevent one or more of the following which would otherwise occur:

(1) The incurrence of one or more other fees or charges by the borrower, including charges for default or delinquency;

(2) The furnishing of derogatory information regarding the borrower's payment history to a consumer reporting agency;

(3) Judgment against the borrower in a civil action; or

(4) Repossession of or foreclosure upon collateral.

12–307.2.

(A) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person:

(1) May not require a borrower to pay a fee for the transaction of a payment made by or on behalf of the borrower in the form of:

(i) Cash;
(ii) Check; or

(iii) Money order; and or

(iv) An electronic funds transfer through the Automated Clearing House;

(2) Must offer to shall accept a payment made by or on behalf of a borrower free of charge in at least one commonly accepted form by check, money order, and an electronic funds transfer through the Automated Clearing House; and

(3) (1) May cease accepting payment by check or an electronic funds transfer through the Automated Clearing House after prior notice to the borrower if two payments made by check or electronic funds transfer through the Automated Clearing House by or on behalf of the borrower were dishonored in the immediately preceding 6-month period; and

(ii) Shall accept subsequent payment by check or an electronic funds transfer through the Automated Clearing House if three regular payments are timely made by or on behalf of the borrower after the person ceased accepting payment by check or an electronic funds transfer through the Automated Clearing House under item (i) of this item.

(B) Subject to subsection (A) of this section, in the case of a loan to a consumer borrower made in accordance with this subtitle, a person may not require a borrower to pay, directly or indirectly, a fee for the transaction of a payment made by or on behalf of the borrower unless:

(1) The agreement, note, or other evidence of the loan expressly authorizes the fee to be imposed; or

(2) The amount of the fee is disclosed to the borrower at the time of the payment transaction;

(2) (i) (1) The borrower agrees to pay the fee; and

(iii) (3) The amount of the fee does not exceed the actual cost charged to the person by an unaffiliated third party for the processing of the payment transaction either:
(I) The actual cost charged to the person by an unaffiliated third party for the processing of the payment; or

(II) The average cost of charges to the person by an unaffiliated third party for the processing of the payment transactions from similarly situated borrowers.

(C) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person may not attempt to induce the borrower to remit payment in a form for which a fee will be required to be paid by the borrower over other forms of payment that are free of charge unless payment in that form will prevent one or more of the following which would otherwise occur:

(1) The incurrence of one or more other fees or charges by the borrower, including charges for default or delinquency;

(2) The furnishing of derogatory information regarding the borrower’s payment history to a consumer reporting agency;

(3) Judgment against the borrower in a civil action; or

(4) Repossession of or foreclosure upon collateral.

12-405.1.

(A) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person:

(1) May not require a borrower to pay a fee for the transaction of a payment made by or on behalf of the borrower in the form of:

(I) Cash;

(II) Check; or

(III) Money order; and or

(IV) An electronic funds transfer through the Automated Clearing House;
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(2) Must offer to shall accept a payment made by or on behalf of a borrower free of charge in at least one commonly accepted form by check, money order, and an electronic funds transfer through the Automated Clearing House; and

(3) (1) May cease accepting payment by check or an electronic funds transfer through the Automated Clearing House after prior notice to the borrower if two payments made by check or electronic funds transfer through the Automated Clearing House by or on behalf of the borrower were dishonored in the immediately preceding 6–month period; and

(II) Shall accept subsequent payment by check or an electronic funds transfer through the Automated Clearing House if three regular payments are timely made by or on behalf of the borrower after the person ceased accepting payment by check or an electronic funds transfer through the Automated Clearing House under item (I) of this item.

(B) Subject to subsection (A) of this section, in the case of a loan to a consumer borrower made in accordance with this subtitle, a person may not require a borrower to pay, directly or indirectly, a fee for the transaction of a payment made by or on behalf of the borrower unless:

(1) The agreement, note, or other evidence of the loan expressly authorizes the fee to be imposed; or

(2) The amount of the fee is disclosed to the borrower at the time of the payment transaction;

(II) (1) The borrower agrees to pay the fee; and

(III) (2) The amount of the fee does not exceed the actual cost charged to the person by an unaffiliated third party for the processing of the payment transaction either:

(I) The actual cost charged to the person by an unaffiliated third party for the processing of the payment transaction; or

(II) The average cost of charges to the person by an unaffiliated third party for the processing of the payment transactions from similarly situated borrowers.
(C) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person may not attempt to induce the borrower to remit payment in a form for which a fee will be required to be paid by the borrower over other forms of payment that are free of charge unless payment in that form will prevent one or more of the following which would otherwise occur:

(1) The incurrence of one or more other fees or charges by the borrower, including charges for default or delinquency;

(2) The furnishing of derogatory information regarding the borrower’s payment history to a consumer reporting agency;

(3) Judgment against the borrower in a civil action; or

(4) Repossession of or foreclosure upon collateral.

12–905.1.

(A) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person:

(1) May not require a borrower to pay a fee for the transaction of a payment made by or on behalf of the borrower in the form of:

   (I) Cash;

   (II) Check; or

   (III) Money order; and or

   (IV) An electronic funds transfer through the Automated Clearing House;

(2) Must offer to shall accept a payment made by or on behalf of a borrower free of charge in at least one commonly accepted form by check, money order, and an electronic funds transfer through the Automated Clearing House; and

(3) (1) May cease accepting payment by check or an electronic funds transfer through the Automated Clearing House after prior notice to the borrower if two payments made by check or
ELECTRONIC FUNDS TRANSFER THROUGH THE AUTOMATED CLEARING HOUSE BY
OR ON BEHALF OF THE BORROWER WERE DISHONORED IN THE IMMEDIATELY
PRECEDING 6–MONTH PERIOD; AND

(II) SHALL ACCEPT SUBSEQUENT PAYMENT BY CHECK OR AN
ELECTRONIC FUNDS TRANSFER THROUGH THE AUTOMATED CLEARING HOUSE IF
THREE REGULAR PAYMENTS ARE TIMELY MADE BY OR ON BEHALF OF THE
BORROWER AFTER THE PERSON CEASED ACCEPTING PAYMENT BY CHECK OR AN
ELECTRONIC FUNDS TRANSFER THROUGH THE AUTOMATED CLEARING HOUSE
UNDER ITEM (I) OF THIS ITEM.

(B) SUBJECT TO SUBSECTION (A) OF THIS SECTION, IN THE CASE OF A LOAN
TO A CONSUMER BORROWER MADE IN ACCORDANCE WITH THIS SUBTITLE, A PERSON
MAY NOT REQUIRE A BORROWER TO PAY, DIRECTLY OR INDIRECTLY, A FEE FOR THE
TRANSACTION OF A PAYMENT MADE BY OR ON BEHALF OF THE BORROWER UNLESS:

(1) THE AGREEMENT, NOTE, OR OTHER EVIDENCE OF THE LOAN
EXPRESSLY AUTHORIZES THE FEE TO BE IMPOSED; OR

(2) (I) THE AMOUNT OF THE FEE IS DISCLOSED TO THE
BORROWER AT THE TIME OF THE PAYMENT TRANSACTION;

(II) THE BORROWER AGREES TO PAY THE FEE; AND

(III) (3) THE AMOUNT OF THE FEE DOES NOT EXCEED THE
ACTUAL COST CHARGED TO THE PERSON BY AN UNAFFILIATED THIRD PARTY FOR
THE PROCESSING OF THE PAYMENT TRANSACTION EITHER:

(I) THE ACTUAL COST CHARGED TO THE PERSON BY AN
UNAFFILIATED THIRD PARTY FOR THE PROCESSING OF THE PAYMENT
TRANSACTION; OR

(II) THE AVERAGE COST OF CHARGES TO THE PERSON BY AN
UNAFFILIATED THIRD PARTY FOR THE PROCESSING OF THE PAYMENT
TRANSACTIONS FROM SIMILARLY SITUATED BORROWERS.

(C) IN THE CASE OF A LOAN TO A CONSUMER BORROWER MADE IN
ACCORDANCE WITH THIS SUBTITLE, A PERSON MAY NOT ATTEMPT TO INDUCE THE
BORROWER TO REMIT PAYMENT IN A FORM FOR WHICH A FEE WILL BE REQUIRED TO
BE PAID BY THE BORROWER OVER OTHER FORMS OF PAYMENT THAT ARE FREE OF
CHARGE UNLESS PAYMENT IN THAT FORM WILL PREVENT ONE OR MORE OF THE
FOLLOWING WHICH WOULD OTHERWISE OCCUR:
(1) The incurrence of one or more other fees or charges by the borrower, including charges for default or delinquency;

(2) The furnishing of derogatory information regarding the borrower’s payment history to a consumer reporting agency;

(3) Judgment against the borrower in a civil action; or

(4) Repossession of or foreclosure upon collateral.

12–1005.1.

(A) In the case of a loan to a consumer borrower made in accordance with this subtitle, a person:

(1) May not require a borrower to pay a fee for the transaction of a payment made by or on behalf of the borrower in the form of:

   (I) Cash;

   (II) Check; or

   (III) Money order; and or

   (IV) An electronic funds transfer through the Automated Clearing House;

(2) Must offer to shall accept a payment made by or on behalf of a borrower free of charge in at least one commonly accepted form by check, money order, and an electronic funds transfer through the Automated Clearing House; and

(3) (I) May cease accepting payment by check or an electronic funds transfer through the Automated Clearing House after prior notice to the borrower if two payments made by check or electronic funds transfer through the Automated Clearing House by or on behalf of the borrower were dishonored in the immediately preceding 6–month period; and

   (II) Shall accept subsequent payment by check or an electronic funds transfer through the Automated Clearing House if three regular payments are timely made by or on behalf of the borrower after the person ceased accepting payment by check or an
ELECTRONIC FUNDS TRANSFER THROUGH THE AUTOMATED CLEARING HOUSE UNDER ITEM (I) OF THIS ITEM.

(B) SUBJECT TO SUBSECTION (A) OF THIS SECTION, IN THE CASE OF A LOAN TO A CONSUMER BORROWER MADE IN ACCORDANCE WITH THIS SUBTITLE, A PERSON MAY NOT REQUIRE A BORROWER TO PAY, DIRECTLY OR INDIRECTLY, A FEE FOR THE TRANSACTION OF A PAYMENT MADE BY OR ON BEHALF OF THE BORROWER UNLESS:

(1) THE AGREEMENT, NOTE, OR OTHER EVIDENCE OF THE LOAN EXPRESSLY AUTHORIZES THE FEE TO BE IMPOSED; OR

(2) (I) THE AMOUNT OF THE FEE IS DISCLOSED TO THE BORROWER AT THE TIME OF THE PAYMENT TRANSACTION;

(II) THE BORROWER AGREES TO PAY THE FEE; AND

(III) (3) THE AMOUNT OF THE FEE DOES NOT EXCEED THE ACTUAL COST CHARGED TO THE PERSON BY AN UNAFFILIATED THIRD PARTY FOR THE PROCESSING OF THE PAYMENT TRANSACTION EITHER:

(I) THE ACTUAL COST CHARGED TO THE PERSON BY AN UNAFFILIATED THIRD PARTY FOR THE PROCESSING OF THE PAYMENT TRANSACTION; OR

(II) THE AVERAGE COST OF CHARGES TO THE PERSON BY AN UNAFFILIATED THIRD PARTY FOR THE PROCESSING OF THE PAYMENT TRANSACTIONS FROM SIMILARLY SITUATED BORROWERS.

(C) IN THE CASE OF A LOAN TO A CONSUMER BORROWER MADE IN ACCORDANCE WITH THIS SUBTITLE, A PERSON MAY NOT ATTEMPT TO INDUCE THE BORROWER TO REMIT PAYMENT IN A FORM FOR WHICH A FEE WILL BE REQUIRED TO BE PAID BY THE BORROWER OVER OTHER FORMS OF PAYMENT THAT ARE FREE OF CHARGE UNLESS PAYMENT IN THAT FORM WILL PREVENT ONE OR MORE OF THE FOLLOWING WHICH WOULD OTHERWISE OCCUR:

(1) THE INCURRENCE OF ONE OR MORE OTHER FEES OR CHARGES BY THE BORROWER, INCLUDING CHARGES FOR DEFAULT OR DELINQUENCY;

(2) THE FURNISHING OF DEROGATORY INFORMATION REGARDING THE BORROWER’S PAYMENT HISTORY TO A CONSUMER REPORTING AGENCY;

(3) JUDGMENT AGAINST THE BORROWER IN A CIVIL ACTION; OR
(4) **REPOSSESSION OF OR FORECLOSURE UPON COLLATERAL.**

SECTION 2. AND BE IT FURTHER ENACTED, That the Commissioner of Financial Regulation may adopt regulations to implement the provisions of this Act.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect **July 1, 2022 January 1, 2023.**

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.