

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 728

(Delegate Amprey)

Environment and Transportation

Judicial Proceedings

Residential Property - Service Agreements - Prohibitions

This bill prohibits, with specified exceptions, a service agreement (or any part of a service agreement) from (1) being effective for more than one year; (2) purporting to run with the land or bind subsequent *bona fide* purchasers; (3) purporting to create a lien, encumbrance, or security interest on the residential property of a party to the service agreement; or (4) allowing the service provider to assign or transfer the right to provide services under the service agreement to another person without notice or the consent of a party to the service agreement. A violation of these prohibitions by a service provider is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal provisions. Among other provisions, the bill also prohibits the submission for recording of such service agreements and establishes criminal penalties for a violation. The bill's prohibitions only apply to service agreements entered into on or after the bill's June 1, 2023, effective date. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions under MCPA (and the new criminal penalty established by the bill) 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 new and existing penalty provisions does not materially affect local government operations or resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

“Service agreement” means an agreement where a service provider agrees to provide an individual services for (1) the maintenance of residential property that the individual owns or (2) the purchase or sale of residential property. A service agreement includes any memorandum, notice, agreement, or similar document that is used by a service provider to cause a service agreement to be recorded.

“Service provider” means a person that provides services to an individual through a service agreement for (1) the maintenance of residential property that the individual owns or (2) the purchase or sale of residential property. Service provider includes any person acting as an agent or designee of a service provider.

Prohibition on Service Agreements

Any service agreement that violates the bill’s provisions is void and unenforceable; use of such a service agreement by a service provider is also an unfair, abusive, or deceptive trade practice and subject to the enforcement and penalty provisions within MCPA. However, an individual is not prevented from pursuing any other remedy provided by law.

The bill specifies numerous limitations on applicability, including that it does not apply to, among other things:

- a home warranty or similar product that covers the cost of maintenance of a major home system such as plumbing, electrical, or heating, ventilating, and air-conditioning;
- an insurance contract;
- an option or right of refusal to purchase residential property;
- a mortgage loan or a commitment to make or receive a mortgage loan;
- an agreement relating to the sale or rental of personal property; or
- water, sewer, electrical, telephone, cable, or other regulated utility providers.

Restrictions on Recording and Related Provisions

A service provider may not submit a service agreement that is in violation of prohibitions established under the bill to the clerk of a circuit court or a State or local agency for

recording. A violator is guilty of a misdemeanor and on conviction is subject to imprisonment of up to six months and/or a fine of up to \$1,000.

The clerk of a circuit court or a State or local agency may deny a request to record a service agreement if it is in violation of the bill's provisions. A recorded service agreement that is in violation of the bill may not provide actual or constructive notice of a lien arising from the service agreement to a subsequent *bona fide* purchaser of the residential property.

If a service agreement that is in violation of the bill is recorded, any person with an interest in the residential property that is subject to a lien arising from the service agreement may bring an action against the service provider in the appropriate circuit court to request a determination that the service agreement is void and unenforceable. If the service agreement is determined to be void and unenforceable under the bill, the person who brought the action may seek (1) compensatory damages and (2) reasonable attorney's fees and costs.

Current Law:

Maryland Consumer Protection Act

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, 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.

Small Business Effect: The bill's prohibition likely negatively impacts any small business who routinely uses service agreements that would be in violation of the bill's provisions.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 579 (Senator Hayes) - Judicial Proceedings.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of Labor; State's Attorneys' Association; Department of Legislative Services

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