

SB582 – CONSUMER PROTECTION – UNSOLICITED LOANS FAVORABLE WITH AMENDMENTS

Mariner Finance request Favorable with Amendments on SB582 – *Consumer Protection – Unsolicited Loans*. Mariner Finance is a Maryland licensed and regulated consumer lending company, headquartered in Baltimore County that employs 569 Maryland residents. Senate Bill 582 negatively impacts unsecured live check by direct mail product which was not the intended target of the legislation as introduced and amended by the Senate Finance Committee, in that its live checks are unsecured personal loans not backed by collateral like a car or a home.

Maryland Laws and Licensing Regime Currently Provide Consumer Protections and Industry Guardrails that Address the Intent of SB582.

Maryland laws and the State’s extensive licensing regime already provide ample consumer protection and industry guardrails with respect to “live checks” by mail programs, as set forth below:

- Maryland’s credit laws generally require lenders to be licensed if they wish to charge interest in excess of 6% per year.
- Lenders doing business in Maryland may be licensed under one or more of the following licenses (among others): (i) Installment Loan license; (ii) Consumer Loan license; (iii) Mortgage Lender license; and (iv) Sales Finance Company license.
- Licensed lenders are subject to interest rate and fee caps, advertising and disclosure requirements, and servicing and collections oversight.
- The Office of Financial Regulation (OFR) has examination and supervisory authority over licensed entities. The OFR is authorized to conduct routine and special investigations to address violations of Maryland credit laws under its enforcement authority.
 - These protections are further bolstered by the Maryland Consumer Protection Act (which prohibits unfair and deceptive acts or practices) and the full panoply of federal consumer financial laws and regulations (TILA, ECOA, FCRA, SCRA, etc.)
 - Bad actors targeting Maryland consumers with sharp tactics should be addressed with investigations and enforcement under existing legal authority. An overbroad legislative solution would unduly harm licensed lenders that are already playing by Maryland’s rules and unnecessarily potentially restrict the availability of regulated credit to Maryland consumers.

The Federal Government Regulates Loans by Mail.

The federal government regulates loans by mail through various agencies. The Consumer Financial Protection Bureau supervises banks, lenders, and other entities to ensure compliance with consumer protection laws, including those related to loans. Loans by mail, also known as “live checks” or “convenience checks”, are regulated installment loan products where recipients are selected using a direct mail prescreen selection process to receive a firm offer of credit, as provided for by the Fair Credit Reporting Act (FCRA). 15 U.S.C. § 1681b(c)(1)(B)(i).

Mariner Finance’s “Live Checks” Product Were Not the Intended Target of SB582.

Prescreened firm offers of credit are a marketing tool commonly used by financial services businesses, including credit card companies and banks. Many customers appreciate this product, as there is a high degree of convenience with no sales pressure. Customers can choose whether or not to accept the offer and deposit the check at their leisure during the 30-day period in which the check is valid.

Selection criteria are based off available consumer reporting agency data and do not include any prohibited basis under the Equal Credit Opportunity Act (ECOA) or its implementing regulation, Regulation B.

Live checks are accompanied by attached loan agreements and disclosures that comply with federal and state disclosure requirements, including the Truth in Lending Act, and clearly and conspicuously disclose the fact that the check is a loan and the associated interest rate and terms. Such lawful and regulated live checks have a 15-day loan cancellation period that is disclosed with each live check in which the consumer can cancel the loan for any reason at no additional cost (interest, fee, or otherwise) by simply returning the principal to Mariner.

Unlike unsolicited HELOC convenience checks, ***Mariner loans by mail are unsecured installment loans and customers do not pledge any collateral for these loans.***

The Board of Governors of the Federal Reserve reviewed the use of live checks in 1997 and found that any appropriate analysis would balance the need for consumer protection to combat fraud and other concerns associated with unsolicited live checks against unnecessary restrictions to consumer access to credit. Based on its analysis, the Board did not favor an outright prohibition on live checks. *Statement by Alice M. Rivlin, Vice Chair, Board of Governors of the Federal Reserve System, before the Subcommittee on Domestic and International Monetary Policy of the Committee on Banking and Financial Services, U.S. House of Representatives, September 16, 1997.*

There are few consumer complaints about live checks or instances of fraud. “As can be easily confirmed on CFPB’s own website, there have been fewer than 100 out of over a million complaints – that’s 0.008% – to CFPB in the last five years. In contrast, there are over 20,000 complaints about federal student loans.” *AFSA Responds to American Banker Story*, Letter to American Banker Editor, January 3, 2019.

Mariner follows industry best practices for responsible lending, including with respect to its loan by mail product such as:

- Robust policies and procedures to ensure customer verification and fraud protection.
- Welcome calls to loan by mail customers to, among other things, verify the customer’s identity.
- Fraud investigation and remediation measures to protect consumers if there is reason to believe they did not understand the product due to not having an adequate comprehension ability (e.g., due to mental capacity, language comprehension, etc.) or there is evidence of fraud/ID theft.
- Consumers that are concerned with receiving prescreened firm offers of credit or other similar unsolicited loan offers have the right under the FCRA to opt out of offers via <https://www.optoutprescreen.com/> or a toll-free number, and this right is prominently noted in the live check marketing materials.

The amendment attached hereto will remove Mariner Finance from SB582 as introduced and amended by the Senate Finance Committee.

**AMENDMENTS TO SENATE BILL 582
(Third Reading File Bill)**

BY:

AMENDMENT NO. 1:

On page 2, line 1, after "APPLY" strike beginning with "TO" through "INDIVIDUAL." in line 3 and insert "**TO:**

- (1) A PERSON THAT SENDS A CONVENIENCE CHECK TO AN INDIVIDUAL FOR THE SOLE PURPOSE OF ACCESSING AN EXISTING CREDIT LINE OF THE INDIVIDUAL;**
- AND**
- (2) A PRESCREENED FIRM OFFER OF UNSECURED DEBT."**

AMENDMENT NO 2:

On page 2, line 7, after "EXTEND", insert "**SECURED**"; in line 9, after "EXTENSION OF", insert "**SECURED**".