

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 68

(Chair, Finance Committee)(By Request - Departmental -
Labor, Licensing and Regulation)

Finance

Commercial Law - Credit Services Businesses - Information Statements

This departmental bill exempts a credit services business from providing to consumers statements containing specified information as otherwise required by the Maryland Credit Services Businesses Act (MCSBA) but only when the business is engaged to obtain an extension of credit for a consumer.

Fiscal Summary

State Effect: The bill does not have a material impact on State finances or operations.

Local Effect: The bill does not have a material impact on local government finances or operations.

Small Business Effect: The Department of Labor, Licensing, and Regulation has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

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.

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, a complete and detailed description of the services to be performed by the credit services business on behalf of a consumer, the total amount the consumer must pay for the service, 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.

Complaints and Enforcement

Written complaints against credit services businesses may be filed with the Office of the Commissioner of Financial Regulation (OCFR). 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: OCFR advises that a Court of Appeals decision, *CashCall, Inc., and J. Paul Reddam v. Maryland Commissioner of Financial Regulation*, 448 Md. 412 (2016), that upheld OCFR's interpretation that loan brokers (*i.e.*, entities facilitating the extension of credit) are covered under MCSBA has caused confusion regarding which requirements of MCSBA apply to loan brokers. OCFR notes that the focus of MCSBA is credit services businesses, so many of the statutory mandates (*e.g.*, agreement and disclosure terms) are not appropriate for transactions with loan brokers.

Nevertheless, loan brokers are required to provide consumers with disclosures and contracts as specified under MCSBA. The result, OCFR states, is confusion in the marketplace because consumers receive documentation from brokers even though the documentation does not apply to their transaction with the broker. OCFR advises that the bill is intended to clarify obligations for loan brokers under MCSBA by removing contractual obligations that are not relevant to that service. In addition, OCFR notes that the bill is meant to clarify standards for entities offering loan modification services under MCSBA; these entities are also covered by MCSBA's requirements as a result of another Court of Appeals decision, *Commissioner of Financial Regulation v. Brown, Brown & Brown*, 449 Md. 345 (2016).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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mm/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Commercial Law - Credit Services Businesses - Information Statements

BILL NUMBER: SB 68

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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The change will have minimal economic impact on Maryland small business. It will create clarity in the law for loan processors as to their obligations under the Credit Service Businesses Act because it will remove contractual obligations not aligned with that type of service. Since the existing disclosures were not drafted with loan brokerage in mind, they are not appropriate for use in those transactions and so loan brokers who are currently required to provide documents that are confusing to consumers, be able to eliminate the use of unnecessary and confusing (in the loan brokerage context) disclosures and documents.