

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 635
Economic Matters

(Delegate Sydnor)

Judicial Proceedings

Courts and Judicial Proceedings - Consumer Contracts

This bill prohibits a merchant from including provisions in a consumer contract that shorten the period within which a consumer may file a civil action against a merchant. As a result, the general three-year statute of limitations applies to a consumer contract.

Any provision of a consumer contract that does not comply with the bill is void and unenforceable. The bill only applies prospectively.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: For purposes of the bill, the definitions of (1) consumer and (2) merchant are the same as the definitions of those terms in MCPA. The bill defines a “consumer contract” as a contract for consumer credit, debts, goods, services, or realty.

Current Law:

MCPA Definitions

Under MCPA, a “consumer” means an actual or prospective purchaser, lessee, or recipient of consumer goods, services, realty, or credit. “Consumer credit, debts, goods, realty and services” means, respectively, credit, debts, or obligations, goods, real property, or services that are primarily for household, family or agricultural purposes. “Merchant” is a person who either directly or indirectly offers or makes available to consumers any consumer goods, services, realty, or credit.

Statute of Limitations

Pursuant to § 5-101 of the Courts and Judicial Proceedings Article, a civil action must be filed within three years from the date it accrues, unless otherwise specified by State law. State law authorizes a longer statute of limitations for filing civil actions for specialties, including a promissory note or other instrument under seal; a bond, except a public officer’s bond; a judgment; a recognizance; and a contract under seal.

Maryland Consumer Protection Act

An unfair 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 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 \$1,000 for the first violation and up to \$5,000 for each subsequent 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: Small businesses that enter into consumer contracts as defined by the bill may be affected to the extent that the businesses include provisions that modify the

general three-year statute of limitations that would be prohibited by the bill. Under the bill, those small businesses are prohibited from shortening the period within which consumers may file a civil action against the small business. As a result, small businesses may choose not to enter into some consumer contracts, or to enter some of them less frequently, which might reduce the profitability of those businesses.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 837 (Senator Smith, *et al.*) - Judicial Proceedings is not identical.

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

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