

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 409
Finance

(Senator Kramer)

Economic Matters

**Financial Institutions - Commissioner of Financial Regulation - Nondepository
Special Fund**

This bill authorizes the Nondepository Special Fund to be used to cover the direct (and indirect) costs of fulfilling the statutory and regulatory duties of the Office of the Commissioner of Financial Regulation (OCFR) and the State Collection Agency Licensing Board related to the entirety of Title 12 of the Commercial Law Article (rather than just specified portions). As a result, the bill authorizes OCFR to investigate complaints of violations by credit card processors under Title 12, Subtitle 14 of the Commercial Law Article. The bill also makes conforming changes. **The bill takes effect July 1, 2020.**

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: None.

Analysis

Current Law/Background: Chapter 296 of 2019 prohibits a credit card processor from assessing or charging a fee, fine, or penalty of more than \$500 if a business entity cancels a “merchant processing agreement” *before* the expiration of the initial term. Additionally, a credit card processor may not assess a fee, fine, or penalty if a business entity terminates the merchant processing agreement *after* the expiration of the initial term (unless the parties enter into a separate renewal agreement). Chapter 296 requires a merchant processing agreement to disclose specified information. OCFR is authorized to investigate any

complaints received as a result of the Act and to use any of the investigative and enforcement powers granted under Title 2, Subtitle 1 of the Financial Institutions Article.

OCFR advises that, because Chapter 296 did not authorize the Nondepository Special Fund to be used to implement and enforce the Act, OCFR's enforcement abilities are limited. The bill allows OCFR to enforce Chapter 296 using the Nondepository Special Fund, which funds most of OCFR's operations.

Commissioner of Financial Regulation – Enforcement Powers

The Commissioner of Financial Regulation has the power to vigorously investigate financial transactions to determine whether a person has violated a law, regulation, rule, or order over which the commissioner has jurisdiction. For the purposes of an investigation or proceeding, the commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, and require the production of documents and other evidence. If a person refuses to obey a subpoena from the commissioner, the commissioner may apply to the appropriate circuit court to issue an order requiring the person to appear before the commissioner and produce any requested evidence. If the court issues such an order, failure to obey it subjects the person to contempt of court.

When the commissioner determines, after notice and a hearing, as specified, that a person has engaged in a violation of a law, regulation, rule, or order, the commissioner may issue a cease and desist order, suspend or revoke the license of the violator, or issue a penalty order against the person for up to \$10,000 for a first violation and up to \$25,000 for each subsequent violation.

The commissioner may also bring an action in a circuit court to either prevent an unlawful action or to remedy the outcome of an unlawful action. The commissioner may bring an action to obtain a temporary restraining order, a temporary or permanent injunction, a declaratory judgment, an order preventing access to the violator's assets, an order of rescission or restitution, or any other relief that is determined just by the court.

Additional Comments: Title 12 of the Commercial Law Article encompasses a range of financial regulation requirements and activities, many (but not all) of which are already enforced by OCFR under current law with resources from the Nondepository Special Fund. However, the bill is not expected to materially affect OCFR's regulatory activity for portions of Title 12 not currently covered under current law.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 774 (Delegate Howard, *et al.*) - Economic Matters.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2020
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