

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 657
Economic Matters

(Delegate Crosby)

Commercial Law – Maryland Credit Services Business Act – Revisions

This bill establishes new duties and prohibitions for credit services businesses (including their employees and independent contractors) who sell (or attempt to sell) the services of a credit services business under the Maryland Credit Services Business Act (MCSBA). The bill also requires such businesses to redact specified personal information of a consumer in written communications and modifies the required contents of contracts between consumers and credit services businesses. Finally, the bill establishes a requirement that, generally, certain business entities (namely, a consumer credit reporting agency, creditor, debt collector, or debt buyer) *must* communicate with a credit services business concerning an account that is subject to a dispute if the entity in question has the necessary information to do so.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General (OAG), Consumer Protection Division, can handle the bill's requirements with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Prohibited Activities

The bill prohibits a credit services business, its employees, and independent contractors from (1) attempting to remove (or advising a consumer to remove) adverse information from the consumer's credit report that the business knows (or should reasonably know) is accurate; (2) calling or sending a communication to a consumer credit reporting agency, creditor, debt collector, or debt buyer – either without the prior written authorization from the consumer or impersonating the consumer; (3) sending a communication (directly or indirectly) to a person on behalf of a consumer without making specified disclosures; or (4) sending written communication on behalf of a consumer to a person other than the consumer without providing a copy of the communication to the consumer within five days after sending the initial communication.

Additional Duties

A credit services business, its employees, and independent contractors must:

- provide sufficient information to enable investigation of a dispute of an account in the first written communication with a credit reporting agency or data furnisher;
- perform the services agreed on within 180 days after the consumer signs a contract for services;
- provide an itemized monthly statement to the consumer showing each service performed, as specified; and
- identify when a communication originates from the credit services business when calling or sending a communication on behalf of a consumer to a consumer reporting agency, creditor, debt collector, or debt buyer.

In addition, a credit services business must redact the personal information of a consumer from any written communication to include only the (1) last four digits of the Social Security number (or state identification number); (2) last four digits of the financial account number, credit card number, or debit card number; and (3) month and year of the consumer's date of birth (unless otherwise required by law).

Required Communications

Generally, the bill requires a consumer credit reporting agency, creditor, debt collector, or debt buyer to communicate with a credit services business concerning an account that is

subject to a dispute if the entity knows (1) a consumer is represented by the credit services business in accordance with a power of attorney and (2) the name and address of the credit services business. However, under specified circumstances, the credit services business need not be contacted (*e.g.*, the credit services business fails to respond within a reasonable time period, the consumer expressly forbids the communication, *etc.*).

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, or providing advice or assistance to a consumer with regard to improving the consumer’s credit record, history, or rating or establishing a new credit file or record; or
- obtaining an extension of credit for a consumer, or providing advice or assistance to a consumer with regard to obtaining an extension of credit for a consumer.

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.

A credit services business, its employees, and independent contractors who sell (or attempt to sell) the services of a credit services business are, among other things, prohibited from charging or receiving any money or other valuable consideration prior to full and complete performance of the services that the business has agreed to perform on behalf of the consumer.

Advertisements

A person who advertises for credit services – regardless of whether or not the person is a credit services business – must clearly and conspicuously state in each advertisement the license number issued under MCSBA or, if not required to be licensed, the exemption provided by the Commissioner of Financial Regulation.

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 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.

A credit services business is exempt from providing to consumers statements containing specified information as otherwise required by MCSBA, but only when the business is engaged to obtain an extension of credit for a consumer (or provides advice or assistance to a consumer with regard to obtaining an extension of credit). However, such businesses must provide information to a consumer regarding the consumer's right to file a complaint and to proceed against a bond.

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.

Surety Bond Requirements

Credit services businesses are required to obtain a surety bond in the amount of \$12,000. Any person claiming against the surety bond for a violation of MCSBA may maintain an action against the credit services business and against the surety. The surety is liable only for actual damages and not for the punitive damages.

The aggregate liability of the surety to all persons damaged by a violation of MCSBA may not exceed the amount of the surety bond.

Complaints and Enforcement

Written complaints against credit services businesses may be filed with the Commissioner of Financial Regulation. 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 OAG 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.

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,

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.

Small Business Effect: Many of the bill's provisions relate to required disclosures that must be made by various entities operating under MCSBA. These provisions are generally not anticipated to have a meaningful impact on small businesses. However, the Maryland Department of Labor advises that, as the prohibition on sharing certain information with third parties could impact the ability of a loan broker to provide the necessary information to facilitate the origination of a loan, such businesses may be meaningfully affected by the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 255 (Senator Hershey) - Finance.

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

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Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510