

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 238  
Finance

(Senator Kramer)

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Consumer Protection - Banking Institutions - Unauthorized Debit  
Transactions (Consumer Bank Deposits Protection Act)

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This bill prohibits a consumer from being held liable for an unauthorized debit transaction if the consumer notifies the banking institution within 90 days after receipt of the periodic statement that shows the unauthorized debit transaction. A consumer *may* be held liable for such a transaction occurring after that period if (1) the consumer did not provide notice to the banking institution and (2) the banking institution shows that it could have stopped additional unauthorized debit transactions had it been notified before the 90-day period ended. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

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Fiscal Summary

**State Effect:** The bill's imposition of existing penalty provisions does not have a material effect on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources. Likewise, the Office of the Commissioner of Financial Regulation (OCFR) can likely handle the required notifications with existing resources.

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

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** A banking institution must extend the 90-day period established by the bill for extenuating circumstances (*e.g.*, hospitalization, extended travel). In addition, the bill prohibits a consumer from being held liable for an unauthorized debit transaction that occurs during a state of emergency declared by the Governor.

A banking institution is prohibited from imposing greater liability on a consumer for an unauthorized debit transaction than is established by the bill.

If a banking institution discovers (or is notified) that an unauthorized debit transaction has occurred, the banking institution must report it within five days after the discovery or notification to both OCFR and the consumer.

The bill also requires a periodic statement mailed to a consumer to conspicuously display (on the exterior of the envelope) a specified statement describing the actions a consumer must take upon discovery of an unauthorized debit transaction. Additionally, a periodic statement transmitted by email (or other electronic means) must provide the same required statement in the first paragraph of the transmittal.

**Current Law:** 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:** To the extent that the bill requires small banking institutions in the State to implement new procedures and notification processes, the bill may result in such banking institutions incurring additional costs and expenses.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

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

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