

Chapter 106

(House Bill 804)

AN ACT concerning

Commissioner of Financial Regulation – Enhanced Consumer Protections and Enforcement Tools

FOR the purpose of prohibiting a regulated person from performing acts that are anticompetitive, unfair, deceptive, abusive, or injurious to the public interest; authorizing the Commissioner of Financial Regulation to issue orders requiring the correction of a violation of law subject to the jurisdiction of the Commissioner, including the restitution of money or property; providing for certain information sharing by the Commissioner involving entities engaging in activity subject to a provision of law, regulation, rule, or order over which the Commissioner has jurisdiction, including with other relevant governmental entities; and generally relating to enforcement authority of the Commissioner of Financial Regulation.

BY repealing and reenacting, with amendments,

Article – Financial Institutions

Section 2–113(d), 2–115(b), and 2–117(a) through (e) and (h)

Annotated Code of Maryland

(2020 Replacement Volume and 2021 Supplement)

BY adding to

Article – Financial Institutions

Section 2–113.1

Annotated Code of Maryland

(2020 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Financial Institutions

2–113.

(d) Except as provided in [§ 2–117] §§ 2–113.1 AND 2–117 of this subtitle, the provisions of §§ 2–114 through 2–117, inclusive, of this subtitle do not apply to:

(1) Any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of this State or the United States that maintains its principal office in this State;

(2) Any out-of-state bank, as defined in § 5–1001 of this article, having a branch that accepts deposits in this State;

(3) Any institution incorporated under federal law as a savings association or savings bank that does not maintain its principal office in this State but has a branch that accepts deposits in this State; or

(4) An affiliate of an institution described in item (1), (2), or (3) of this subsection over which the Commissioner has no jurisdiction.

2-113.1.

(A) A REGULATED PERSON, AS DEFINED IN § 2-117 OF THIS SUBTITLE, MAY NOT:

(1) ISSUE AN ADVERTISEMENT OR MAKE A REPRESENTATION THAT IS FALSE, MISLEADING, OR DECEPTIVE;

(2) IMPOSE, AS A CONDITION FOR A LOAN, A RESTRICTION ON OBTAINING CREDIT, PROPERTY, OR SERVICE FROM A COMPETITOR UNLESS THE RESTRICTION IS REASONABLY NECESSARY TO SECURE THE LOAN;

(3) IMPOSE, AS A CONDITION FOR A SERVICE, A RESTRICTION ON OBTAINING CREDIT, PROPERTY, OR SERVICE FROM A COMPETITOR; OR

(4) ENGAGE IN AN ACT OR A PRACTICE THAT IS ANTICOMPETITIVE, UNFAIR, DECEPTIVE, ABUSIVE, OR INJURIOUS TO THE PUBLIC INTEREST.

(B) THE COMMISSIONER MAY FURTHER DEFINE SPECIFIC ACTS OR PRACTICES THAT ARE ANTICOMPETITIVE, UNFAIR, DECEPTIVE, ABUSIVE, OR INJURIOUS TO THE PUBLIC INTEREST.

(C) NOTWITHSTANDING § 2-113(D) OF THIS SUBTITLE, A FINANCIAL INSTITUTION OR A SUBSIDIARY OR AN AFFILIATE OF A FINANCIAL INSTITUTION IS SUBJECT TO THIS SECTION WHENEVER THE FINANCIAL INSTITUTION OR SUBSIDIARY OR AFFILIATE ENGAGES IN ACTIVITY:

(1) FOR WHICH IT MAINTAINS OR IS REQUIRED TO MAINTAIN A LICENSE OR REGISTRATION ISSUED BY THE COMMISSIONER OR THE STATE COLLECTION AGENCY LICENSING BOARD; OR

(2) SUBJECT TO A PROVISION OF LAW, REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS JURISDICTION, OTHER THAN ACTIVITY SUBJECT TO ANY OF TITLES 3 THROUGH 9 OF THIS ARTICLE.

2-115.

(b) When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule, or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000 for a first violation; and
 - (ii) \$25,000 for each subsequent violation; [or]
- (4) **ISSUE AN ORDER AGAINST THE PERSON REQUIRING THE PERSON TO TAKE AFFIRMATIVE ACTION TO CORRECT THE VIOLATION, INCLUDING MAKING RESTITUTION TO ANY PERSON AGGRIEVED BY THE VIOLATION; OR**
- (5) Take any combination of the actions specified in this subsection.

2-117.

(a) In this section, ["licensed] **"REGULATED person"** means:

- (1) A person required to be licensed **OR REGISTERED** under this article, whether or not the person maintains a license **OR REGISTRATION**; [and]
- (2) A collection agency required to be licensed under the Business Regulation Article, whether or not the collection agency maintains a license;
- (3) **A PERSON REQUIRED TO BE LICENSED BY OR REGISTERED WITH THE COMMISSIONER UNDER APPLICABLE PROVISIONS OF THE COMMERCIAL LAW ARTICLE, WHETHER OR NOT THE PERSON MAINTAINS A LICENSE OR REGISTRATION; OR**
- (4) **A PERSON OTHERWISE ENGAGING IN ACTIVITY SUBJECT TO A PROVISION OF LAW, REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS JURISDICTION.**

(b) This section does not apply to:

(1) Information relating to publicly adjudicated disciplinary or enforcement actions against a [licensed] **REGULATED** person; or

(2) Information or material provided to [the Nationwide Mortgage Licensing System and Registry under Title 11, Subtitle 5 or 6 of this article] **NMLS**.

(c) Except as otherwise provided in this article, a person, including the Commissioner and an employee of and the attorney for the Commissioner's office, may not disclose any information obtained or generated in the course of exercising the Commissioner's authority to examine [licensed] **REGULATED** persons.

(d) The Commissioner and an employee of and the attorney for the Commissioner's office may disclose the information described in subsection (c) of this section:

(1) If performing a public duty to report on or take special action relating to a [licensed] **REGULATED** person;

(2) If testifying as a witness in a criminal proceeding;

(3) If informing a director, officer, member, partner, employee, or agent of a [licensed] **REGULATED** person of the results of an examination;

(4) If providing information to any state or federal agency having supervisory authority over the [licensed] **REGULATED** person; and

(5) If entering information into evidence under seal in a public enforcement hearing.

(e) Subject to subsections (f), (g), and (l) of this section, and notwithstanding any other provision of State **OR FEDERAL** law, the Commissioner may:

(1) Enter into information sharing agreements with any federal or state regulatory agency having authority over [licensed] **REGULATED** persons or with any federal or state law enforcement agency, including the Office of Foreign Assets Control, and any successor to these agencies, and any agency of a foreign country with primary responsibility for regulating [licensed] **REGULATED** persons, [provided that] **IF** the agreements prohibit the agencies from disclosing any shared information about a [licensed] **REGULATED** person without the prior written consent from the Commissioner regarding disclosure of the particular information; and

(2) Exchange information about a [licensed] **REGULATED** person, including information obtained or generated during an examination, with any federal or other state's regulatory agency having authority over the [licensed] **REGULATED** person

or with any federal or state law enforcement agency, including the Office of Foreign Assets Control, and any successor to these agencies, and any agency of a foreign country with primary responsibility for regulating [licensed] **REGULATED** persons.

(h) Notwithstanding § 2–113(d) of this subtitle, [an affiliate as defined in § 2–113(a) of this subtitle] **A FINANCIAL INSTITUTION OR A SUBSIDIARY OR AN AFFILIATE OF A FINANCIAL INSTITUTION** is subject to this section [if that affiliate maintains or is required to maintain a license issued by the Commissioner or the State Collection Agency Licensing Board] **WHENEVER THE FINANCIAL INSTITUTION OR SUBSIDIARY OR AFFILIATE ENGAGES IN ACTIVITY:**

(1) FOR WHICH IT MAINTAINS OR IS REQUIRED TO MAINTAIN A LICENSE OR REGISTRATION ISSUED BY THE COMMISSIONER OR THE STATE COLLECTION AGENCY LICENSING BOARD; OR

(2) SUBJECT TO A PROVISION OF LAW, REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS JURISDICTION, OTHER THAN ACTIVITY SUBJECT TO ANY OF TITLES 3 THROUGH 9 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

Approved by the Governor, April 12, 2022.