

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 804
Economic Matters

(Delegates Queen and Hill)

Finance

Commissioner of Financial Regulation - Enhanced Consumer Protections and
Enforcement Tools

This bill prohibits a “regulated person” (generally, a nonbank financial institution) from (1) issuing an advertisement or making a representation that is false, misleading, or deceptive; (2) imposing, 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) imposing, as a condition for a service, a restriction on obtaining credit, property, or service from a competitor; or (4) engaging in an act or a practice that is anticompetitive, unfair, deceptive, abusive, or injurious to the public interest. The Commissioner of Financial Regulation may further define specific acts (or practices) that are anticompetitive, unfair, deceptive, abusive, or injurious to the public interest. The bill also makes several technical changes to the Office of the Commissioner of Financial Regulation’s (OCFR) enforcement powers and confidentiality requirements. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: OCFR can handle any changes to enforcement with existing budgeted resources. Special fund revenues are likely not materially affected.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill redefines a “licensed person” as a “regulated person” and specifies that a regulated person includes a person required to be *registered* (in addition to licensed) under the Financial Institutions Article, whether or not the person maintains a

registration (or a license). A regulated person also includes (1) a person required to be licensed by (or registered with) OCFR under applicable provisions of the Commercial Law Article, whether or not the person maintains a license or registration and (2) a person otherwise engaging in activity subject to a provision of law, regulation, rule, or order over which OCFR has jurisdiction.

A financial institution (or a subsidiary or an affiliate of a financial institution) is subject to the bill's requirements whenever the entity engages in activity (1) for which it maintains (or is required to maintain) a license or registration issued by OCFR 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 specified activities governed by separate provisions of State law). Likewise, the bill establishes any such entities are also subject to provisions of State law that specify when OCFR may disclose information obtained or generated in the course of exercising the agency's authority.

When OCFR determines (after notice and a hearing, if applicable) that a person has engaged in an act or practice constituting a violation of a law, regulation, rule, or order over which OCFR has jurisdiction, OCFR may (in the commissioner's discretion and in addition to taking any other action authorized by law) 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.

Current Law: Banking institutions regulated by OCFR are generally subject to the same consumer protection provisions that the bill applies to nonbank financial institutions.

Commissioner of Financial Regulation – Investigative and Enforcement Powers

OCFR 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, and/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.

Disclosure of Information

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 exercise of the commissioner's authority to examine licensed persons. OCFR may disclose such information, however, in limited circumstances (*e.g.*, when testifying as a witness in a criminal proceeding, providing information to specified state and federal agencies, *etc.*).

Information Sharing Agreements

OCFR may enter into information sharing agreements with any federal or other state's regulatory agency having authority over licensed persons, as well as with any federal or state law enforcement agency, as long as the agreements prohibit the agencies from disclosing any shared information without the prior written consent from the commissioner regarding disclosure of the particular information. The commissioner may also exchange information about licensed persons, including information obtained or generated during an examination, with any federal or other state's regulatory agency having authority over the licensed persons as well as with any federal or state law enforcement agency. Information shared by the commissioner under such circumstances may not be disclosed by an agency under federal or other states' laws governing the disclosure of public information or by subpoena, discovery, or admission into evidence in private civil litigation or administrative process, without the prior written consent of the commissioner

Additional Information

Prior Introductions: None.

Designated Cross File: SB 252 (Senator Kelley) - Finance.

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

Fiscal Note History: First Reader - February 11, 2022
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