

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 217

(Chair, Finance Committee)(By Request - Departmental -
Labor)

Finance

Economic Matters

Commissioner of Financial Regulation - Consumer Loans - Payments and Fees

This departmental bill generally prohibits consumer lenders from requiring a borrower to pay a fee for the transaction of a payment made by (or on behalf of) the borrower in the form of cash, check, money order, or an electronic funds transfer through the Automated Clearing House (ACH). A lender must accept these forms of payment, although the bill establishes exceptions for when payments from a consumer by check or electronic ACH transfer have been dishonored. A lender may only charge a fee for other forms of payment if (1) the amount of the fee is disclosed to the borrower at the time of the payment transaction; (2) the borrower agrees to pay the fee; and (3) the amount of the fee only covers the actual (or average) pass-through costs of a third-party payment service. The bill also prohibits lenders from inducing borrowers to use forms of payment in which a fee is charged. The Office of the Commissioner of Financial Regulation (OCFR) is authorized to adopt regulations to implement the bill. **The bill takes effect January 1, 2023.**

Fiscal Summary

State Effect: As the bill is largely clarifying in nature, OCFR can handle any enforcement with existing budgeted resources. Revenues are not materially affected.

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

Small Business Effect: The Maryland Department of Labor has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The prohibition against inducing a borrower to remit payment in a form for which a fee will be required does not apply to payments for which a fee will be charged if payment in that form will prevent one or more of the following:

- the incurrence of one or more other fees or charges by the borrower, including charges for default or delinquency;
- the furnishing of derogatory information regarding the borrower’s payment history to a consumer reporting agency;
- judgment against the borrower in a civil action; or
- repossession or foreclosure upon collateral.

The bill applies to multiple types of commercial and consumer loans addressed in Title 12 (Credit Regulations) of the Commercial Law Article, specifically:

- Subtitle 1: Interest and Usury;
- Subtitle 3: Consumer Loans – Credit Provisions;
- Subtitle 4: Secondary Mortgage Loans – Credit Provisions;
- Subtitle 9: Credit Grantor Revolving Credit Provisions; and
- Subtitle 10: Credit Grantor Closed End Credit Provisions.

Current Law/Background: State law generally does not address permissible forms of payment for the types of lending addressed by the bill. Current law on permissible fees is a mixture of common and statutory law, which can create a lack of clarity.

OCFR advises that this lack of clarity can result in inconsistent practices by lenders and a lack of disclosure for consumers. In some situations, some consumers may pay more than others for the same type of service. The bill is intended to codify OCFR’s understanding of applicable legal principles by delineating allowable fees and other requirements regarding imposition of payment fee methods with which lenders must comply. The bill is also intended to prevent lenders from “steering” or inducing borrowers to remit payments in a form for which a fee is charged. Finally, OCFR notes the bill may provide affected lenders with clarity as to the applicable rules regarding charging loan payment fees.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division);
Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2022
fnu2/mcr Third Reader - March 22, 2022
Revised - Amendment(s) - March 22, 2022

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL(S): Commissioner of Financial Regulation – Consumer Loans – Payments and Fees

BILL NUMBER(S): SB 217

PREPARED BY: Joe Cunningham, Director of Legislative Response & Special Projects

PART A. ECONOMIC IMPACT RATING

This agency estimates that these proposed bill(s):

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This proposal will impact consumer lenders of all sizes. Those businesses, to the extent that they do not already do so, will be required to explicitly provide disclosures regarding the fees that they charge consumers for making loan payments and only charge consumers fees that are permitted in their loan documents and disclosures. The requirements in this proposal could result in a reduction in revenue for businesses that currently charge consumers fees that are not identified in loan documents or that are in excess of the actual transaction cost for certain approved forms of payment.