
2018 Legislative Session Review

**Presentation to the
Maryland Financial Consumer Protection
Commission**

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

June 5, 2018

Commission Charge

- Assess impact of potential changes to federal financial industry laws and regulations, budgets, and policies, including changes to:
 - the Dodd-Frank Wall Street Reform and Consumer Protection Act
 - the Consumer Financial Protection Bureau
 - the Securities and Exchange Commission
 - the Commodity Futures Trading Commission
 - the Pension Benefit Guaranty Corporation
 - the Department of Labor
 - the Federal Reserve Board
- Provide recommendations for federal and State actions that will protect residents of the State in financial transactions and when receiving financial services

Report Recommendations

- Interim report included several recommendations for federal, State, and local action
- Recommendations divided into four categories:
 - Maryland's Congressional Delegation actions
 - Vigorous enforcement by and funding of the Office of the Attorney General (OAG) and the Office of the Commissioner of Financial Regulation (OCFR)
 - State legislative actions to backfill where federal protections stepped back
 - State legislative actions to address recent developments

Recommendations – Congressional Delegation Actions

- Continue opposing most of the efforts to roll back Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) provisions and other financial consumer protections
- Continue supporting (1) independent Consumer Financial Protection Bureau (CFPB) and (2) full funding of U.S. Securities and Exchange Commission (SEC) and U.S. Commodity Futures Trading Commission (CFTC)
- Regularly weigh in on behalf of Marylanders by all available means

Recommendations – OAG and OCFR

- Enhance enforcement and investigative resources
 - \$1.2 million to the agencies for up to an additional 10 employee positions
- Continue use of Dodd-Frank 1042 authorities
- Expand violations of the Maryland Consumer Protection Act (MCPA) to include “abusive” practices
- Expand violations of MCPA to include violations of the Military Lending Act (MLA) and Servicemembers Civil Relief Act (SCRA)
- Increase civil penalties for violations of State consumer protection laws and financial licensing and regulatory laws
 - \$1,000 to \$10,000 for initial violations
 - \$25,000 for subsequent violations

Recommendations – State Actions Related to Federal Changes

- Extend fiduciary duty in Maryland statute to all financial professionals who provide investment advice
- Adopt Model State Consumer and Employee Justice Enforcement Act: Titles I – VIII (related to use of forced arbitration clauses)
- Amend “mortgage loan originator” definition in State law to include retailers of manufactured homes
- Fill possible gaps and eliminate loopholes in Maryland’s current payday lending statute
 - Review remedies under the unsecured consumer law (\$6,000 loans or less) for usurious violations by exempt licensees or lenders and unlicensed nonexempt lenders
 - Increase amount considered small loan and considered retail installment loan
 - Specify in the consumer law that contracts would be expressly void for certain violations

Recommendations – State Actions Related to Recent Developments

- Create student loan ombudsman and require licensing of student loan servicers
- Ensure that Fintech firms are covered by Maryland consumer laws and regulatory protections
- Consider updating current State law to regulate issues regarding cryptocurrencies
- Require companies that deal in cryptocurrencies to comply with regulations for money transmitters
- Update State law regarding consumer reporting agencies
 - Prohibit consumer reporting agencies from charging for a security freeze
 - Strengthen procedures for correcting inaccurate information contained within a consumer report
 - Require data breach notifications

2018 Legislation

- Financial Consumer Protection Act of 2018 (Chapter 731 of 2018 (House Bill 1634) and Chapter 732 of 2018 (Senate Bill 1068)) implemented certain recommendations of the commission
- Related bills also implemented recommendations of commission
 - Chapter 480 of 2018 (House Bill 848) expanded regulation of consumer reporting agencies (CRAs) under the Maryland Credit Reporting Agencies Act (MCRAA)
 - Chapter 790 of 2018 (House Bill 1297) of 2018 established new protections for consumer borrowers
 - Chapter 677 of 2018 (Senate Bill 202)/Chapter 767 (House Bill 710) of 2018 prohibited a CRA from charging a fee for a security freeze

Financial Consumer Protection Act of 2018 (Chapter 731 and 732)

- Established new protections for consumer borrowers*
- Expanded definition of “unfair and deceptive trade practices” under MCPA to include “abusive” practices and violations of violations of MLA and SCRA
- Increased and made civil penalties for violations of MCPA and several other financial licensing and regulatory laws uniform
- Prohibited a person from engaging in specified debt collection activity without a license
 - Activity in violation of the Maryland Collection Agency Licensing Act
 - Conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act
- Prohibited CRAs from charging a fee for a security freeze*

** Indicates change only included in Senate version of bill*

Financial Consumer Protection Act of 2018 (cont.)

- Established mandatory funding for financial consumer protection enforcement activities
 - At least \$700,000 for OAG
 - At least \$300,000 for OCFR
- Required OAG and OCFR to use their authority under Section 1042 of Dodd-Frank, whenever considered appropriate, to bring civil actions or other appropriate proceedings authorized under Dodd-Frank
- Established a Student Loan Ombudsman within OCFR
 - Must receive and process complaints about student education loan servicing
 - Must disseminate information about student education loans and servicing
 - May refer any matter that is abusive, unfair, deceptive, or fraudulent to OAG for civil enforcement or criminal prosecution
 - Must report findings and recommendations each year
 - Must establish student loan education course

Financial Consumer Protection Act of 2018 (cont.)

- Required multiple studies to examine issues that were taken out of legislation as introduced
- Commissioner of Financial Regulation must conduct a study to assess whether the commissioner has enough statutory authority to regulate “Fintech” firms or technology driven nonbank companies and report by December 31, 2019
- Commission must study:
 - Cryptocurrencies, initial coin offerings, cryptocurrency exchanges, and other blockchain technologies
 - CFPB arbitration rule and the Model Consumer and Employee Justice Enforcement Act
 - Possible exemption of retailers of manufactured homes from definition of “mortgage originator” in federal law
 - U.S. Department of Labor rule and actions of SEC in addressing conflicts of interest in broker-dealers offering investment advice

Chapter 480 of 2018 – Regulation of CRAs

- Codified existing regulatory requirement that CRAs must register with OCFR
- Established process for receiving and investigating complaints about CRAs
- Imposed surety bond requirement on CRAs
- Increased maximum civil monetary penalty to \$1,000 for first violation of MCRAA and \$2,500 for each subsequent violation of MCRAA
- Authorized imposition of civil penalty instead of or in addition to any other action that may be taken

Chapter 480 of 2018 and Chapters 677 and 767 of 2018 – Security Freezes

- Required CRAs to develop secure connections to process electronic requests for placing, lifting, or removing security freeze
- Expanded definition of “protected consumer” to include:
 - Elderly (age 85 or older)
 - Specified members of the military
 - Incarcerated persons
- Prohibited CRAs from charging a fee for placement, removal, or temporary lift of a security freeze

Chapter 790 of 2018

- Established new requirements within interest and usury sections of the Commercial Law Article for “covered loan” that prohibit unlicensed person from making such a loan
- Increased from \$6,000 to \$25,000 the threshold below which loan is subject to small lending requirements within the Maryland Consumer Loan Law (MCLL)
- Prohibited person from lending \$25,000 or less if person not licensed under (or exempt from) requirements under MCLL
- Increased threshold for retail installment sales law to apply from cash price of \$25,000 to cash price of \$100,000
- Established that specified violations result in loan becoming void as well as unenforceable

Conclusion

- Productive legislative session
- In final report of commission, must include recommendations regarding:
 - Cryptocurrencies, initial coin offerings, cryptocurrency exchanges, and other blockchain technologies
 - CFPB arbitration rule and the Model Consumer and Employee Justice Enforcement Act
 - Possible exemption of retailers of manufactured homes from definition of “mortgage originator” in federal law
 - U.S. Department of Labor rule and actions of SEC in addressing conflicts of interest in broker-dealers offering investment advice

Conclusion (cont.)

- Other areas of study:
 - Regulation of student loan servicers
 - Significant financial burden of consumer data breaches on credit unions and other financial institutions
- Commissioner of Financial Regulation study:
 - Regulation of “fintech” firms or technology driven nonbank companies that compete with traditional methods in the delivery of financial services