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The Maryland Financial Consumer Protection Act of 2018 significantly increases state regulation

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Noting, among other things, “retrenchment” on the federal level, the Maryland Financial Consumer Protection Act of 2018 ([HB 1634](#)) was signed into law on May 15, 2018.

The Act’s provisions take effect October 1, 2018 and include the following:

- *Maryland Consumer Protection Act (MCPA)*: Adds “abusive” practices to the existing proscription against “unfair and deceptive trade practices” and adds violations of the federal Military Lending Act and the federal Servicemembers Civil Relief Act to the list of statutes that are considered to be per se violations of the UDAAP proscription. Increases the maximum civil penalties for violations of the MCPA by merchants to \$10,000 for a violation and \$25,000 for a repeat violation.
- *Increases in civil penalty amounts*. The law increases permissive civil penalty amounts for violations of laws, regulations, rules or orders over which the Commissioner of Financial Regulation has jurisdiction to a maximum of \$10,000 for a first violation and a maximum of \$25,000 for each subsequent violation. Similar amendments were made throughout the statutes governing activity within the jurisdiction of the Commissioner; in some instances (e.g., collection agency, mortgage lending, mortgage loan originators, money transmission, debt management services), the amendments increase the maximum civil penalties that may be imposed when a violator fails to cease and desist or take affirmation action to correct the violation required by an order.
- *Requires the Office of the Attorney General and the Commissioner of Financial Regulation, whenever considered appropriate, to use their authority under Section 1042 of the Dodd-Frank Act to bring civil actions or other appropriate proceedings and requires appropriation of at least \$1,000,000 in general funds (at least \$700,000 for the Attorney General, and at least \$300,000 for the Commissioner) for purposes of enforcing consumer protection laws.*
- *Changes relating to collection activity*. The law changes the definition in the Maryland Collection Agency Licensing Act of “licensed collection agency” from a person who is licensed to a person who is required to be licensed, regardless of whether the person is actually licensed, and also provides, under the Maryland Debt Collection Act that it is a prohibited activity for a collector to engage in unlicensed debt collection in violation of the Maryland Collection Agency Licensing Act or to engage in any conduct in violation of Sections 804 to 812 of the federal Fair Debt Collection Practices Act (“FDCPA”). (Sections 804 to 812 of the FDCPA: impose requirements and restrictions on debt collectors when communicating with any person other than the consumer for the purpose of acquiring location information about the consumer; impose requirements and restrictions on debt collectors when communicating with the consumer or with third parties in connection with the collection of any debt; prohibit debt collectors from engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt; prohibit a debt collector from using false, deceptive, or misleading representations or means in connection with the collection of any debt; prohibit a debt collector from using unfair or unconscionable means to collect or attempt to collect any debt; and prohibit the design, compilation and furnishing of any form knowing that such form would be used to create the false belief in a consumer that a person other

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than the creditor is participating in the collection or attempted collection of a debt allegedly owed to such creditor when in fact such person is not so participating. The cited FDCPA provisions also govern: the timing and content of required written notices to consumers and the required conduct of a debt collector when a consumer notifies the debt collector that it disputes any portion of the debt or requests information regarding the original creditor; application of single payments where a consumer owes multiple debts and a debt has been disputed; and venue for legal actions brought by debt collectors.)

- *Requires a Student Loan Ombudsman.* The Ombudsman, in consultation with the Commissioner of Financial Regulation, must:
 - receive and review complaints from student loan borrowers;
 - attempt to resolve complaints;
 - compile and analyze complaint data;
 - disseminate information about student education loans and servicing by helping student loan borrowers understand their rights and responsibilities, providing information to the public, state agencies, elected officials and others relating to borrower problems and concerns, and by providing information about the availability of the Ombudsman to borrowers and potential borrowers, state higher education institutions, and student loan servicers; and
 - establish a student loan borrower education course on or before October 1, 2019.

The Ombudsman is also tasked with:

- analyzing and monitoring federal, state, and local laws, regulations and policies on student loan borrowers and reporting its findings to the General Assembly;
- disclosing to the General Assembly the complaint data it compiles, noting trends in the data and identifying the names of student loan servicers engaging in any abusive, unfair, deceptive, or fraudulent practices; and
- making recommendations to the General Assembly regarding methods to resolve borrower issues/concerns and for any necessary changes to state law to ensure a fair, transparent, and equitable industry, including whether licensing or registration of student loan servicers should be required in Maryland.

The Commissioner is required to report annually on the implementation and effectiveness of the Ombudsman. The Ombudsman may refer any matter that is abusive, unfair, deceptive or fraudulent to the Office of the Attorney General for civil enforcement or criminal prosecution.

- *Requires “student loan servicers,” as defined, to designate an individual to represent the servicer in communications with the Ombudsman and provide contact information to the Ombudsman.*
- *Requires the Office of the Commissioner of Financial Regulation to study Fintech regulation.* The law requires the Office of the Commissioner of Financial Regulation to assess whether it possesses enough statutory authority to regulate “Fintech firms” or “technology-driven nonbank companies” who compete with companies engaged in the delivery of financial services using traditional methods, to identify gaps in the regulation of Fintech firms, including any specific types of companies that are not subject to regulation under Maryland law, and to report its findings and recommendations to the General Assembly by December 31, 2019.
- *Requires the Maryland Financial Consumer Protection Commission to conduct various studies and include recommendations in its 2018 report to the Governor.* The Commission’s studies are to include: cryptocurrencies, initial coin offerings, cryptocurrency exchanges and other blockchain technologies; the Model State Consumer and Employee Justice Enforcement Act and similar laws adopted in other states; the possible exemption of retailers of manufactured homes from the definition of mortgage originator in federal law; and the U.S. Department of Labor rule and any SEC actions addressing conflicts of interest of broker-dealers offering investment advice by aligning the standard of care for broker-dealers with that of the fiduciary duty of investment advisors.

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