

Part I

Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Lending Equity

The Task Force on Lending Equity within Financial Institutions Providing State Depository Services, created by Chapters 114 and 115 of 2004, was charged with (1) developing meaningful criteria for evaluating Minority Business Enterprises' (MBE) access to credit and capital from financial institutions providing depository services to the State; and (2) advising the State Treasurer on developing additional or supplemental criteria to be considered in the selection of depositories for State funds.

Senate Bill 171/House Bill 300 (both passed) emerged from the task force, requiring the Treasurer to give specified criteria 15 percent of the weight of the decision to select a financial institution as a depository for State funds. These criteria included demonstrated participation in certain activities with Small Business Enterprises and MBEs, as well as the absence of any violation of antidiscrimination statutes or regulations.

In order to further support MBEs in the State, *House Bill 1431 (passed)* authorizes the purchase of up to \$50 million in certificates of deposit (CDs) by the Department of Housing and Community Development (DHCD) to provide below-market interest rate loans to MBEs. The bill requires DHCD to establish procedures for obtaining up-to-date listings of State certified MBEs, notifying lending institutions when MBEs lose their certification, and processing loan applications from MBEs. If a loan recipient loses its MBE certification, its loan is reduced by the amount of the loan's remaining balance. The bill provides that the State is not liable to any bank for unpaid loan payments made under the linked deposit program, and a loan under the linked deposit program is not a debt of the State.

Certificates of Deposit

CDs are redeemable by the holder after a period of time set by the terms of the CD. If the CD is lost, it still may be redeemed by affidavit. However, paper records of redemptions are only required to be retained for a period of six years, pursuant to Internal Revenue Service

regulations. It was brought to the attention of the General Assembly that a CD previously redeemed by affidavit may subsequently be recovered, and attempts may be made to redeem the CD. With certain records destroyed after six years, no record exists of the previous redemption, and a financial institution may be forced to pay the CD for a second time. *Senate Bill 747 /House Bill 959 (both passed)* effectively establish a statute of limitations on the presentment of CDs for redemption. The bill provides that an action to enforce an obligation to pay a CD may only be instituted within six years of the later of specified events.

Branch Banking

In an effort to protect community banks, *Senate Bill 1093/House Bill 1735 (both passed)* prohibit the establishment of a bank branch on the premises of an affiliate of the bank if the affiliate engages in specified nonbanking activities. Accordingly, if a commercial nonbanking entity wishes to provide branch banking on its premises, the entity must contract with a financial institution that is not a corporate affiliate.

Licensee Examinations

A person wishing to provide loans in the State under the consumer credit statutes must first obtain a license from the Commissioner of Financial Regulation. The books and records of these licensees are subject to examination by the commissioner. *House Bill 247 (Ch. 84)* allows the commissioner to determine whether to examine the records of a licensee by production of records in Maryland or by examination of the records on-site.

Commercial Law

Credit Regulation

Loans Secured by Real Property

Maryland law prohibits lenders and credit grantors from requiring borrowers to purchase homeowners' insurance coverage in an amount that exceeds the replacement value of the improvements on the real property as a condition to obtaining or maintaining a loan secured by real property. However, some mortgage lenders and credit grantors require insurance in an amount that exceeds the actual costs to replace the improvements on the property. *House Bill 1288 (passed)* clarifies the amount of homeowners' insurance coverage that a lender or credit grantor may require by prohibiting a lender or credit grantor from requiring a borrower in an amount that exceeds the "replacement cost" of the "improvements" on the property. The bill defines the term "improvements" to mean buildings or structures erected on or affixed to real property that enhance its value, and the term "replacement cost" to mean the amount needed to repair damage to or rebuild improvements on real property to restore them to their pre-loss condition. The value of land is specifically excluded from the definition of "replacement cost."

Consumer Protection

Merchant Contact Information

Merchants that do business on the Internet commonly require a consumer to create a login identification and password for secure transactions and to use the ID and password to alter or cancel a subscription or contract for goods or services provided on a recurring basis. If the merchant does not include contact information on its web site, it can be difficult for a consumer to alter or cancel receipt of the goods or services without the intervention of the credit card company or other financial institution to which the goods or services are billed.

House Bill 1016 (passed) requires a merchant that sells goods or services on the Internet under a contract that requires periodic payments from a consumer's credit card account, debit card account, or other financial account to post on the merchant's web site a toll-free telephone number or postal address that can be used to cancel the contract. A violation of the bill is an unfair or deceptive trade practice and is subject to the enforcement and criminal and civil penalty provisions of the Act.

Consumer Privacy Protections

According to statistics compiled by the Insurance Information Institute, over 200 million people use wireless telephones in the United States. Privacy experts have expressed concern about the wide availability of the telephone records of wireless subscribers, which are offered for sale on numerous Internet web sites and disclosed to unauthorized persons by wireless telephone companies that have not implemented adequate security measures. To better protect the privacy of cellular and other telephone service subscribers, *House Bill 1301 (passed)* prohibits a person from (1) knowingly obtaining or attempting or conspiring to obtain a telephone record without the customer's authorization or by fraudulent, deceptive, or false means; (2) knowingly selling or attempting to sell a telephone record without the customer's authorization; or (3) receiving a telephone record knowing that the record has been obtained without the customer's authorization or by fraudulent, deceptive, or false means.

The bill defines a "telephone record" to mean information retained by a telephone company that relates to the telephone number dialed, the incoming number of a call made to a customer, or other data related to calls typically contained on a customer's bill. *House Bill 1301* establishes exemptions for a telephone company that accesses or allows access to a customer's telephone record for certain purposes, including for billing or collection from the customer or to prevent fraud or abusive practices.

In addition to providing specified criminal penalties, a violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act and is subject to the enforcement and criminal and civil penalty provisions of the Act.

The General Assembly considered several other bills intended to protect consumer privacy during the 2006 session. These bills would have allowed a consumer to "freeze" or restrict access to the consumer's credit report, prohibited unauthorized access to a consumer's

computer to obtain personal information and data about the consumer, and required a business to notify a consumer if the consumer's personal information had been acquired through a breach of the security of a system.

The General Assembly considered several other bills intended to protect consumer privacy. *Senate Bill 66, Senate Bill 487, and House Bill 1100 (all failed)* would have allowed a consumer to "freeze" or restrict access to the consumer's consumer report, commonly known as a credit report. *Senate Bill 180, Senate Bill 433, and House Bill 594 (all failed)* would have prohibited unauthorized access to a consumer's computer to obtain personal information and other data about the consumer. *Senate Bill 134, Senate Bill 486, House Bill 630, and House Bill 873 (all failed)* would have required a business to notify a consumer if the consumer's personal information was acquired through a security system breach.

Commercial Law – Generally

Uniform Commercial Code – Secured Transactions

Title 9 of the Maryland Uniform Commercial Code governs transactions that create a security interest in personal property or fixtures. To perfect a security interest under Title 9, a person must file a financing statement with the State Department of Assessments and Taxation. A continuation statement must be timely filed to continue the effectiveness of the original financing statement.

During the 2001 session, Maryland adopted a revised Title 9 under which the expiration date of a financing statement was changed from 12 years after the date it is filed to 5 years after the filing date, or 30 years if filed in connection with a public-finance or manufactured-home transaction. Under the revision, a continuation statement may be filed only within 6 months before the expiration of the 5-year or 30-year period applicable to the financing statement. To protect security interests that were perfected under the prior version of Title 9, the law was amended in 2003 to provide that a financing statement filed under the prior version remains in effect until the earlier of (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it was filed; or (2) June 30, 2006. However, since Maryland had a 12-year perfection period under its prior version of Title 9, the validity of some security interests filed under that version was left in doubt.

Senate Bill 354/House Bill 512 (both passed) are intended to resolve this issue by allowing a continuation statement to be filed within six months before the date the original financing statement ceases to be effective. To confirm the effectiveness of a continuation statement filed between January 1, 2006, and June 30, 2006, the bills are made applicable to all continuation statements filed before July 1, 2006. The bills are emergency measures that take effect when signed by the Governor.

Corporations and Associations

Filing Fees

Business Entities Generally

Chapter 203 of 2003 increased the fee that business entities are required to pay with their annual reports filed with the State Department of Assessments and Taxation (SDAT). For Maryland and foreign corporations and specified financial institutions, the fee increased from \$100 to \$300. For real estate investment trusts, the annual filing fee increased from \$25 to \$300. The Act also applied the \$300 fee to the annual filing of a limited liability company (LLC), limited liability partnership (LLP), and limited partnership (LP).

Several bills altering the filing fees for various business entities were introduced in the 2006 session. However, since limited information was available regarding the impact of the fee changes on the general fund, the majority of these bills failed. *Senate Bill 151/House Bill 1242 (both failed)* would have reduced, from \$300 to \$100, annual report filing fees paid by Maryland or foreign corporations, savings and loan associations, banking institutions, credit unions, LLCs, LLPs, LPs, and business trusts.

House Bill 626 (failed) would have based the filing fees for annual reports filed by Maryland business entities on employment levels. For Maryland corporations, savings and loan associations, banking institutions, credit unions, LLCs, LLPs, and LPs with 0 - 20 employees, the fee would have been \$100. For the same types of business entities with 21 - 49 employees, the fee would have been \$200. For entities with 50 or more employees, the fee would have remained \$300.

House Bill 1084 (failed) would have based the filing fees for annual reports filed by Maryland corporations on the assets of the corporation. For corporations with assets valued at less than \$10,000, the fee would have been \$100. For corporations with assets valued at \$10,000 or more, the fee would have been \$500.

Family Farms

House Bill 1083 (passed) establishes a separate filing fee of \$100 for the annual report of a family farm. The bill also requires an individual to file a charter amendment stating that an entity is no longer a family farm, as defined under the bill, within one year after selling all the property that makes up the family farm.

Federal Charters

Senate Joint 8/House Joint 3 (both passed) urge Maryland's Congressional Delegation and all members of Congress to support H.R. 3476 and S. 1512 which would grant a federal charter to the Korean War Veterans Association, Inc. The joint resolution also states that the General Assembly (1) expresses its gratitude to Korean War Veterans; (2) honors the memory of those who made the ultimate sacrifice in the Korean War; and (3) supports U.S. defense

personnel still assigned to South Korea. H.R. 3476 and S. 1512 were introduced in the U.S. House of Representatives and the U.S. Senate, respectively, on July 27, 2005. The federal legislation would grant a federal charter to the Korean War Veterans Association, Inc., a nonprofit organization organized under the laws of the State of New York.