Part I
Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Banks – Truncated Checking Accounts

Current law requires a banking institution that offers truncated checking accounts to its customers to also offer a checking account plan that provides for the return of canceled checks on a monthly basis. When a customer elects not to receive canceled checks on a regular basis, the banking institution must return, at the customer's request, any check or check facsimile the customer requires for tax audits or litigation, at no cost to the customer. In all other instances the banking institution must provide a minimum of two checks or check facsimiles per month at no cost to the customer.

Senate Bill 160*/*House Bill 117 ***(both passed)*** repeal the requirement that a banking institution that offers truncated checking accounts also must offer a checking account plan that provides for the return of canceled checks. The bills expand the purposes for which a customer may request the return of a check, at no cost to the customer, to include a check required in connection with campaign financing reporting requirements. If a banking institution returns check facsimiles instead of original checks to a customer for tax audits or litigation or in connection with campaign finance reporting requirements, the bills require the banking institution to provide, at no additional cost to the customer, check facsimiles of the front and back of the customer's checks that are at least the same size as the customer's original checks. Under the bills, a banking institution is required to return to a customer, at no cost to the customer, only a maximum of two checks per month if requested for a purpose other than for tax audits or litigation or in connection with campaign financing requirements. As under current law, a banking institution required to return a check to a customer may return a check facsimile instead of an original check.

Senate Bill 160*/*House Bill 117 also require a banking institution, on request of a customer with a truncated account under which the customer does not receive check facsimiles on a regular basis, to return to the customer on a regular basis, at the option of the banking institution, either the customer's original checks or check facsimiles of the front of the customer's original checks. On request of a customer with a truncated account under which the

banking institution returns check facsimiles on a regular basis, a banking institution is required to return to the customer on a regular basis, and at no additional cost to the customer, check facsimiles of the front of the customer's original checks that are at least the same size as the customer's original checks.

The bills take effect January 1, 2004.

Commercial Law

Credit Regulation

Debt Management Services

Responding to consumer complaints about debt adjustment practices, legislation was adopted to regulate this burgeoning industry. Since 1968, it has been illegal in Maryland for a person to enter into a contract with another person under which that person takes funds and disburses them to creditors according to an agreed schedule. There are several exceptions to liability under current law, the primary one being nonprofit organizations that provide debt counseling on a voluntary basis. These nonprofit organizations, some of which are served by for-profit entities, counsel consumers about how to handle existing debt and may enter into agreements to adjust, or manage, the debt with creditors.

***Senate Bill 339*/*House Bill 640* (both passed)** require providers of debt management services to be licensed by the Commissioner of Financial Regulation. The bills establish requirements for debt management services agreements between providers and consumers. The bills also establish surety bond requirements for licensees and enforcement powers for the commissioner. A special fund is established to pay for the costs of regulation.

With limited exceptions, the bills require a person to obtain a license from the commissioner before providing "debt management services." Under the bills, "debt management services" means (1) receiving funds from a consumer in order to distribute funds among the consumer's creditors to pay the consumer's debts; or (2) settling, adjusting, prorating, pooling, compromising, or liquidating a consumer's indebtedness.

To qualify for a license, an applicant must be a nonprofit organization under § 501(c) of the Internal Revenue Code. The applicant must also have a net worth of at least $50,000 plus an additional $10,000 for each location, up to a maximum of $500,000, as determined by the commissioner.

Senate Bill 339*/*House Bill 640 establish application procedures for licensure, including fingerprinting. The applicant must pay all applicable fees. Applicants and renewing licensees must post a surety bond. The commissioner must approve or deny an application for a license within 60 days after the date on which the complete application and surety bond are filed and the date on which the fees are paid.

A license may not be assigned, transferred, or pledged. Licenses expire on December 31 of each odd-numbered year unless renewed and last two years. An annual report must be filed with the commissioner by April 30. The commissioner may require an applicant or licensee to maintain general liability or fidelity insurance to be used for the benefit of a person injured because of a fraudulent or dishonest act by the licensee or applicant (once licensed).

The commissioner must establish a registration fee of up to $2,000 for a new or renewal two-year license and an investigation fee of up to $1,000. The commissioner must also establish a fee of up to $100 for each location at which the licensee provides debt management services, payable upon initial licensure and each renewal.

A licensee must execute a debt management agreement with a consumer before collecting any fees for debt management services from the consumer. The licensee must provide to the consumer a list of (1) those services that are provided free of charge to consumers with a debt management services agreement, but for a charge to other consumers; and (2) those other services that the licensee provides along with the relevant charges. Licensees must also furnish a consumer with a written accounting of any fees.

A licensee may charge a consultation fee of up to $50 and a monthly maintenance fee of up to $8 for each creditor listed in the agreement, up to $40 per month. A licensee may only charge the fees authorized under the bills for debt management services. In addition to any right of rescission, ***Senate Bill 339***/***House Bill 640*** grant a consumer the right to modify or rescind the agreement if notified by the licensee that a listed creditor has declined to participate. Charging of unauthorized fees, except as a result of an accidental and bona fide error, renders the agreement void.

The commissioner may investigate the businesses of licensees and nonlicensees for violations of the bills. Persons investigated are required to pay the commissioner's investigation costs if a violation is found.

Senate Bill 339/***House Bill 640*** specify activities for which the commissioner may deny licensure to an applicant, reprimand a licensee, or suspend or revoke a license and the criteria which the commissioner must consider in making such a decision. The commissioner may also issue cease and desist orders or orders to take affirmative corrective action. A violator who fails to comply with a cease and desist order could be liable for a civil penalty of up to $1,000 for each violation. The commissioner may file a petition in circuit court seeking enforcement of an order. ***Senate Bill 339***/***House Bill 640*** also authorize a private right of civil action to seek damages for a violation of this bill, with court costs and reasonable attorneys' fees. A knowing and willful violation of ***Senate Bill 339***/***House Bill 640*** is a felony. Violators are subject to a fine of up to $1,000 for the first violation and $5,000 for each subsequent violation, five years' imprisonment, or both.

Revolving Credit Plan Agreements

If authorized by the agreement governing a revolving credit plan (*e.g.*, a credit card, personal line of credit, open-ended home equity loan, or overdraft protection), a credit grantor

may amend the terms of the agreement, including the interest rate or finance charge, the method of computing the outstanding balance, the amounts of other charges, and the applicable repayment schedule. ***Senate Bill 179***/***House Bill 331*** ***(both passed)*** alter the provisions that govern these amendments by repealing (1) the requirement that a credit grantor give notice to a borrower if the amendment alters the manner of the computation of interest, finance charges, or other fees and charges; (2) the requirement that a credit grantor send a second notice to a borrower if the amendment increases the interest, finance charges, or other fees and charges; and (3) the requirement that the Commissioner of Financial Regulation approve the form of the notice to the borrower. ***Senate Bill 179***/***House Bill 331*** also repeal the provision that excludes extensions of credit secured by real property from the notice requirements applicable to amendments of credit agreements. The bills apply to amendments made on or after October 1, 2003. Identical bills, Senate Bill 482 and House Bill 438, passed during the 2002 session but were vetoed.

Consumer Protection – Application of the Consumer Protection Act

Recently, three Maryland trial courts held that the Maryland Consumer Protection Act applies to hospitals that have been alleged to have breached the applicable standard of care in the provision of physician or nursing services. ***Senate Bill 283***/***House Bill 294*** ***(both passed)*** prohibit a person from bringing a private civil action under the Consumer Protection Act for injuries sustained as a result of the professional services provided by a "health care provider." The term "health care provider" includes a hospital and certain related institutions and is the same term used in the statute limiting noneconomic damages in medical malpractice actions. The professional services of a medical or dental practitioner are already exempt from the scope of the Consumer Protection Act.

Commercial Law – Generally

Senate Bill 286/***House Bill 374*** ***(both passed)*** make several technical corrections to revised Title 9 of the Maryland Uniform Commercial Code (Md. UCC), which took effect July 1, 2001. The corrections were proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), which developed the Uniform Commercial Code (UCC) and other model acts. As NCCUSL reviewed comments on the revised Title 9 of the UCC, dealing with secured transactions, it noted that a number of provisions would benefit from minor technical changes. Most of the changes in ***Senate Bill 286***/***House Bill 374*** fall into this category.

A banking organization, financial organization, or business association that holds presumed abandoned property must send a notice by first-class mail to the depositor, at the depositor's last known address, that the property will be considered abandoned if there is no response within 30 days after the notification. ***House Bill 201*** ***(passed)*** extends the notice requirement to other holders of abandoned property. Specifically, the bill requires any holder of presumed abandoned property, between 30 and 120 days before filing the required report to the Comptroller on the owner and nature of the abandoned property, to send written notice to the apparent owner of the presumed abandoned property, at the apparent owner's last known address, informing the owner that the holder is in possession of the property and that the property

will be considered abandoned unless the owner responds to the holder within 30 days after the notification. Under legislation enacted in 2002 (Chapter 440), the dormancy period by which property is presumed abandoned was appreciated to three years effective for fiscal 2004.

Corporations and Associations

Corporations

Investment Companies

For a corporation registered as an investment company under the federal Investment Company Act of 1940, ***House Bill 473*** ***(passed)*** limits liability to the class or series of stock for which the liability is incurred if (1) the corporate charter creates one or more classes or series of stock; and (2) separate and distinct records are maintained for the series or class and its assets are held and accounted for separately. If those conditions are met, the debts, liabilities, and obligations of a particular class or series of stock are enforceable only against the assets associated with that class or series and not against the assets of the corporation generally or of any other class or series of stock. ***House Bill 473*** also provides that stockholder approval and articles of transfer or share exchange are not required for a transfer of assets by a corporation registered as an open-end investment company under the Investment Company Act of 1940.

Directors and Stockholders

Senate Bill 495/***House Bill 549*** ***(both passed)*** make several changes to the laws governing director and stockholder meetings, notices, and consents. The bills allow meetings of directors and stockholders to be held by means of remote communication and establish the circumstances under which stockholders and proxy holders not physically present at a meeting of stockholders may participate in and vote at the meeting. The bills also authorize the use of electronic transmission to give notice of director and stockholder meetings and to consent to actions taken by directors or stockholders. Finally, ***Senate Bill 495***/***House Bill 549*** allow a corporation to give notice to a stockholder by giving a single notice, in writing or by electronic transmission, to all stockholders who share an address.

Miscellaneous Provisions

A corporation must file articles supplementary with the State Department of Assessments and Taxation (SDAT) if the corporation's board of directors classifies or reclassifies any unissued stock of the corporation. ***House Bill 471*** ***(passed)*** establishes that stock, issued by a corporation before the time articles supplementary with respect to the stock become effective, ceases to be voidable at the time the articles supplementary become effective. The bill also clarifies the status of a right or liability accrued by reason of the issuance of stock before articles supplementary with respect to the stock are effective; authorizes the board of a corporation to delegate to a committee of the board or a corporate officer the power to fix the amount and other terms of a distribution; and alters notice requirements for a merger of a subsidiary corporation into its parent.

Taxation

House Bill 753 ***(passed)*** made a number of significant changes to State corporate income taxation. For a more detailed discussion of ***House Bill 753***, see the subpart "Income Tax" under Part B – Taxes of this *90 Day Report*.

Business Entities Generally

Budget Reconciliation and Financing Act

House Bill 935 ***(passed)***, the Budget Reconciliation and Financing Act, increases the fee that a business entity is required to pay with its annual report filed with the State Department of Assessments and Taxation. For a corporation and specified financial institutions, the fee increases from $100 to $300. For a real estate investment trust, the annual filing fee increases from $25 to $300. The bill applies the $300 fee to the annual filing of a limited liability company, limited liability partnership, or limited partnership. The bill also increases fees for various other documents filed or recorded with SDAT. Because of these fee changes, general fund revenues are estimated to increase by $59.4 million annually beginning in fiscal 2004. Special fund revenues will increase by approximately $403,000 from an increase in expedited processing fees. For a more detailed discussion of ***House Bill 935***, see the subpart "Operating Budget" under Part A – Budget and State Aid of this *90 Day Report*.

Vessel Excise Tax

House Bill 438 ***(passed)*** extends personal liability for the vessel excise tax, interest, and penalties to certain officers of a corporation, members of a limited liability company (LLC), general partners of a limited liability partnership (LLP), and individuals who manage the business and affairs of a LLC or LLP. The bill provides that a member or individual may not be considered to be managing the business and affairs of a LLC or LLP solely because the member or individual is engaged in specified activities. For a more detailed discussion of ***House Bill 438***, see the subpart "Natural Resources" under Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.