

# Part I

## Financial Institutions, Commercial Law, and Corporations

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### Financial Institutions

Except for a bank, trust company, or savings bank authorized to do business in Maryland, a person may not use any name, title, or other words that represent that the person is authorized to do the business of banking in the State. *Senate Bill 433/House Bill 789 (both passed)* clarify that the exception for banks, trust companies, and savings banks applies to savings and loan associations.

The bills also prohibit a person, except with the bank's consent, from using the name, trade name, trademark, service mark, logo, or tagline of a bank or any term or design that is similar to that used by a bank in marketing material provided to, or in a solicitation of, another person in a manner that may cause a reasonable person to be confused, mistaken, or deceived that the marketing material or solicitation (1) originated from the bank; (2) originated from someone affiliated, connected, or associated with the bank; (3) is approved or sponsored by the bank; or (4) is the responsibility of the bank. In addition to any other remedy available under other law, a bank affected by a violation may bring a civil action to recover (1) actual damages; (2) either all profits attributable to the violation or \$1,000 for each violation; and (3) court costs and reasonable attorney's fees.

### Commercial Law

#### Consumer Protection

#### Consumer Privacy Protections

The General Assembly considered several bills intended to protect consumer privacy during the 2007 session.

*Security Freezes: Senate Bill 52/House Bill 117 (both passed)* allow a consumer to "freeze" or restrict access to the consumer's consumer report, commonly known as a credit report. The bills authorize a consumer to elect to place a security freeze on the consumer's

consumer report by written request sent by certified mail, electronic mail, or over the Internet under specified circumstances. Beginning January 1, 2010, the bills require a consumer reporting agency to accept a request made by telephone. While a freeze is in place, a consumer's report and any information in or derived from it may not be released without the consumer's express prior authorization.

When a consumer elects to place a security freeze, a consumer reporting agency must require a consumer to provide proper identifying information. The consumer reporting agency must place the freeze within five business days after receiving a consumer's request. If the request is made by telephone, the consumer reporting agency may require the consumer to return confirmation of the request by mail. A consumer reporting agency is required to send written confirmation of the placement of the freeze to the consumer, provide the consumer with a unique personal identification number or password to be used when authorizing the release of the report, and provide the consumer with a written statement of the procedures for requesting the removal of the freeze or temporary lifting of it.

If a consumer wants to temporarily lift a security freeze to allow access to the consumer's credit report while a freeze is in place or remove a security freeze, the consumer must follow specified procedures to notify the consumer reporting agency. The consumer reporting agency must comply with the request within three business days after receipt. After January 31, 2009, the consumer reporting agency must comply with a request for a temporary lift within 15 minutes after receiving the request.

While in general a consumer reporting agency may remove or temporarily lift a security freeze only on the consumer's request, *Senate Bill 52/House Bill 117* authorize a consumer reporting agency to remove a freeze if the placement of the freeze was based on a material misrepresentation of fact by the consumer or if the consumer fails to return required documentation after requesting a freeze by telephone. If a consumer reporting agency intends to remove a freeze, the agency must notify the consumer in writing at least five business days before removing the freeze.

A consumer reporting agency may charge a fee of up to \$5 for placement, temporary lift, or removal of a security freeze. A fee may not be charged for placement, lift, or removal of a freeze if the consumer presents, at the time of the request, a police report alleging that the consumer is a victim of identity theft or an identity theft passport.

If a consumer reporting agency violates a freeze by releasing, without authorization, a consumer report or any information derived from the report, the consumer reporting agency must notify the affected consumer in writing about the specific information released and provide contact information of the recipient of the consumer report within five business days after discovering or being notified of the release.

***Security Breaches:*** Other consumer privacy measures, *Senate Bill 194/House Bill 208 (both passed)* require a business to protect an individual's personal information and notify a consumer if the consumer's personal information was acquired as a result of a security system breach.

*Senate Bill 194/House Bill 208* define “personal information” as an individual’s first name or first initial and last name in combination with an individual’s unencrypted, unredacted, or otherwise unprotected Social Security number, driver’s license number, financial account number in combination with any required security or access code or password, or Individual Taxpayer Identification Number. Personal information does not include publicly available information lawfully made available to the general public or information that is disseminated or listed in accordance with the federal Health Insurance Portability and Accountability Act.

The bills require a business, when destroying customer records containing a customer’s personal information, to take reasonable steps to protect against unauthorized access or use of the personal information. The bills also require a business that owns or licenses personal information of a Maryland resident to implement and maintain reasonable and appropriate security procedures and practices to protect personal information from unauthorized access, use, modification, or disclosure. A business that contracts with a nonaffiliated third party as a service provider must require by contract, by January 1, 2009, that the third party implement and maintain reasonable security procedures and practices that are appropriate to the nature of personal disclosed information and reasonably designed to help protect the information from unauthorized access, use, modification, disclosure, or destruction.

A business that owns or licenses computerized data that include personal information of a Maryland resident must conduct a reasonable and prompt investigation of any breach of the security of a system to determine the likelihood that personal information of the individual has been or will be misused as a result of the breach. If after the investigation the business determines that misuse of the individual’s personal information has occurred or is reasonably likely to occur as a result of the breach, *Senate Bill 194/House Bill 208* require the business to notify an individual about the breach.

Notification of a breach may be given in writing or over the telephone. Notification is also authorized by electronic mail or substitute notice if specified conditions are met. The notice must include (1) to the extent possible, a description of the categories of information that may have been acquired; (2) contact information for the business making the notification; (3) contact information for the major consumer reporting agencies; and (4) contact information for the Federal Trade Commission and the Office of the Attorney General, with a statement that an individual can obtain information on how to avoid identity theft from these sources. If a business is required to give notice of a breach to 1,000 or more individuals, the business must also notify nationwide consumer reporting agencies of the timing, distribution, and content of the notices.

All businesses in the State are subject to the provisions of the bills. However, a business that complies with the requirements for notification procedures, the protection or security of personal information, or the destruction of personal information under the rules, regulations, procedures, or guidelines established by the primary or functional regulator of the business is deemed in compliance with the bills. Likewise, businesses or their affiliates that comply with specified federal acts and regulations governing the protection of personal information are also deemed in compliance with the bills.

A violation of *Senate Bill 194/House Bill 208* is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

**Identify Theft:** With identity theft commonly regarded as one of the fastest growing crimes in the United States, a task force to study problems associated with identity theft in Maryland was established in 2005. The task force was to study privacy laws in other states and at the federal level and issues relating to the restriction of information provided to consumer reports. A report was due by December 31, 2006, and the task force was to terminate on January 31, 2007. Because the task force was not fully appointed until August 2006, the task force met only once and submitted a report to the Governor and the General Assembly recommending the continuation of the task force for an additional year. *Senate Bill 70/House Bill 26 (Chs. 9 and 10)* extend the termination date of the task force to January 31, 2008, and require the task force to report its findings and recommendations by December 31, 2007.

### **Motor Vehicle Products and Warranties**

The General Assembly considered several bills regarding warranties for motor vehicles and related products during the 2007 session.

**Vehicle Manufacturer Warranty Adjustment Programs:** *Senate Bill 640/House Bill 747 (both passed)* require a manufacturer of motor vehicles sold in the State to establish procedures under which each Maryland consumer who owns or leases a motor vehicle to which a manufacturer's adjustment program applies is (1) notified of the program; (2) provided, on request, with a copy of any service bulletin or other document issued by the manufacturer about a program or about a condition that may substantially affect vehicle durability, reliability, or performance; and (3) sent written notice of the program's terms and conditions within 90 days after the establishment of a new program.

The bills define an "adjustment program" as a program or policy (1) that extends a warranty beyond its stated limit; or (2) under which a motor vehicle manufacturer undertakes or offers to pay or reimburse a consumer for all or part of the cost of repairing a condition that may substantially affect the durability, reliability, or performance of a motor vehicle.

*Senate Bill 640/House Bill 747* require a manufacturer to provide information on each warranty adjustment program to its dealers in a format that facilitates disclosure to the consumer. A manufacturer must implement procedures to ensure reimbursement of each eligible consumer who incurs expenses for the repair of a covered condition before becoming aware of the program. A violation of the bills is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

**Vehicle Protection Products:** *Senate Bill 502/House Bill 449 (both passed)* provide for the regulation of "vehicle protection products." The seller and warrantor of a "vehicle protection product," and the warrantor's administrator, must comply with the bills in order to sell or offer these products for sale in the State. A warrantor of a vehicle protection product must register with the Consumer Protection Division within the Office of the Attorney General and comply with other requirements specified in the bills.

A vehicle protection product means a vehicle protection device, system, or service that (1) is sold with a written warranty; (2) is installed or applied to a vehicle; and (3) is designed to prevent loss or damage to a vehicle from a specific cause. A “warrantor” is a person that is contractually obligated to pay specified incidental costs to the warranty holder under the terms of the vehicle protection product agreement if the product fails to perform as provided in the warranty.

The seller or warrantor must provide the purchaser with a written copy of the vehicle protection product warranty or a receipt or other written evidence of the purchase at the time of the sale. The warranty may provide for reimbursement of a consumer’s “incidental costs” in a specified fixed amount or according to a formula itemizing specific incidental costs incurred by the warranty holder.

A warrantor is liable to the warranty holder for any wrongful breach of the warranty. The warrantor is also under a duty to comply with the bill’s requirements and to compensate the warranty holder for all reasonable expenses incurred as a result of a wrongful breach.

Violation of *Senate Bill 502/House Bill 449* is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

***Commercial Vehicle Warranty Enforcement:*** In order to determine if there is a need to establish a commercial vehicle warranty enforcement program in Maryland and the elements the program should include, *House Bill 889 (passed)* requires the Consumer Protection Division of the Office of the Attorney General, in conjunction with the Motor Vehicle Administration and other interested units of State government, to study issues related to the topic. The Consumer Protection Division is required to report its findings and any recommendations for regulatory or statutory changes to the General Assembly on or before January 1, 2008.

## **Corporations and Associations**

### **Professional Corporations**

The Maryland Professional Service Corporation Act authorizes members of certain professions to organize their practice as a professional corporation. This business form allows licensed individuals to obtain the benefits of limited liability and other advantages that only are available to corporations under federal tax law. Ownership of stock in a professional corporation is limited to individuals who hold licenses in the profession.

*Senate Bill 483/House Bill 386 (Chs. 31 and 32)* add physical therapists to the list of individuals providing a professional service who may form a professional corporation to provide those services

**Business Trusts**

Maryland law requires the charter documents of a corporation and a real estate investment trust (REIT), including articles of amendment, restatement, consolidation, merger, share exchange, and transfer to be signed and acknowledged, witnessed or attested, and verified under oath by specified officers, directors, trustees, or agents of the corporation or REIT. *House Bill 1165 (passed)* makes the requirements for the execution of charter documents by a business trust the same as the requirements for a corporation or REIT.