

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 1032 (Delegate Gutierrez, *et al.*)
 Economic Matters

Consumer Debt Collection - Statute of Limitations (Maryland Zombie Debt Act)

This bill expands the prohibitions under the Maryland Consumer Debt Collection Act by prohibiting a collector from initiating contact with a debtor or a person related to the debtor unless the collector possesses verifiable information documenting (1) ownership of the debt; (2) the amount of the debt; and (3) the connection of the debtor, or the person related to the debtor, to the debt.

The bill further requires a collector who is collecting or attempting to collect a debt for which the statute of limitations has expired to inform a debtor in each communication that (1) the statute of limitations has expired; (2) the debtor may assert the expiration of the statute of limitations as a defense in a civil action involving collection of the debt; and (3) entering into an agreement with the collector or making a payment may revive the debt and prevent the debtor from asserting the expiration of the statute of limitations as a defense in a civil action involving collection of the debt.

Fiscal Summary

State Effect: Special fund expenditures increase by \$57,100 in FY 2015 for the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation (DLLR) to hire an additional examiner to handle additional complaints. Future year expenditures reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	57,100	72,300	75,700	79,300	83,000
Net Effect	(\$57,100)	(\$72,300)	(\$75,700)	(\$79,300)	(\$83,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill prohibits a court from entering a judgment by default against a debtor in a civil action involving collection of a debt if the period in which a civil action regarding the underlying debt must commence has expired.

Current Law: In collecting or attempting to collect an alleged debt, under the Maryland Consumer Debt Collection Act, a collector may not:

- use or threaten force or violence;
- threaten criminal prosecution, unless the transaction involved criminal action;
- disclose or threaten to disclose information which affects the debtor's reputation for credit worthiness with knowledge that the information is false;
- unlawfully contact a person's employer with respect to a delinquent indebtedness before obtaining a final judgment against the debtor;
- unlawfully disclose or threaten to disclose to a person other than the debtor, his or her spouse, or, if the debtor is a minor, his or her parent, information which affects the debtor's reputation with knowledge that the other person does not have a legitimate business need for the information;
- communicate with the debtor or a person related to him in a manner which can be reasonably expected to abuse or harass the debtor;
- use obscene or grossly abusive language in communicating with the debtor or a person related to him;
- claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or
- use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not.

A collector in violation of the Act is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury.

Background: The State Collection Agency Licensing Board, under the Office of the Commissioner of Financial Regulation, licenses and regulates debt collection agencies. The board licenses 1,671 collection agencies doing business in Maryland and enforces the Act. The board also mediates disputes between consumers and debt collection agencies. In fiscal 2013, the board received 615 complaints regarding consumer debt

collection agencies. The number of complaints ranged from 500 to 600 annually from 2007 through 2011, but climbed to more than 750 in 2012. The commissioner attributes that increase to the poor economy and the publicity received from two large fines levied against debt collection agencies.

State Expenditures: The Office of the Commissioner of Financial Regulation received 2,418 written complaints in fiscal 2013. The commissioner's seven financial examiners handled an average 345 complaints each. Assuming that the bill's provisions result in an approximately 50% increase in complaints received by the State Collection Agency Licensing Board, the commissioner may receive approximately 300 additional complaints. Thus, DLLR advises that it anticipates hiring one additional financial examiner as a result of the bill. The Department of Legislative Services concurs with this estimate.

Special fund expenditures increase by \$57,050 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring one financial examiner to handle additional complaints brought under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	\$52,245
Operating Expenses	<u>4,805</u>
Total FY 2015 State Expenditures	\$57,050

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Small Business Effect: DLLR estimates that 70% to 80% of licensed collection agencies are considered small businesses. The bill may negatively impact these licensees to the extent that it limits their ability to collect debts and exposes them to liability for violations. However, DLLR advises that the extent of impact is difficult to ascertain, as the largest collections agencies handle the majority of debt collection.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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ncs/kdm

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