

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 417

(Delegate Cardin)

Economic Matters

Business Regulation - Collection Agency - Definition

This bill alters the definition of “collection agency” to make certain provisions of law relating to the licensing of collection agencies applicable to a person who engages in passive debt collection. The bill defines “passive debt collection” as (1) for investment purposes, acquiring a consumer claim at the time of acquisition and (2) directly or indirectly collecting the debt, including through civil litigation.

Fiscal Summary

State Effect: None. The bill clarifies current law.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A person must have a license from the State Collection Agency Licensing Board whenever the person does business as a collection agency, generally defined as engaging, either directly or indirectly, in the business of (1) collecting a consumer claim; (2) collecting a consumer claim acquired when the claim was in default; (3) collecting a consumer claim using a name or other artifice that indicates that another party is attempting to collect a consumer claim; (4) using a system of forms that indicates that a person other than the owner is asserting a consumer claim; and (5) employing services to solicit a collection system to be used for collection of a consumer claim. A “consumer claim” is defined as a claim for money owed or said to be owned by a resident

of the State that arises from a transaction in which a private party sought credit, money, property, or services.

The following entities are excluded from the license requirement (1) a regular employee of a creditor while the employee is acting under the general direction and control of the creditor to collect a consumer claim that the creditor owns and (2) a regular employee of a licensed collection agency while the employee is acting within the scope of employment.

An applicant for a license must submit an application under oath and pay a fee set by the board, capped at \$900 for a two-year term. (The current fee is set at \$700 by regulation.) An applicant is also required to execute a \$5,000 surety bond for the benefit of any member of the public who has a loss or other damage as the result of a violation of the Maryland Collection Agency Licensing Act or the Maryland Consumer Debt Collection Act. The board may deny a license if an applicant fraudulently uses or attempts to obtain a license or if the applicant or an associate has had a license revoked. Licenses are generally valid for a period of two years.

A person may not do business as a collection agency without a State license. A person who violates this law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 or imprisonment for up to six months or both.

In *Finch v. LVNV Funding LLC*, No. 704 (September Term, 2012), the Maryland Court of Special Appeals concluded that a collection agency's failure to obtain a license renders any judgment entered in favor of an unlicensed collection agency void.

Background: Chapter 472 of 2007 required debt buyer, or "debt purchaser," transactions to be subject to State Collection Agency Licensing regulations. According to the Maryland State Collection Agency Licensing Board, which issued an advisory opinion on the subject in 2010, a debt purchaser that collects consumer claims through civil litigation is included in Chapter 472. The activity also falls under the federal Fair Debt Collection Practices Act.

The Department of Labor, Licensing, and Regulation advises that the State Collection Agency Licensing Board currently regulates 1,671 collection agencies. The department estimates that the bill maintains the licensure requirement for 125 debt purchasers subject to State regulation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Department of Labor, Licensing, and Regulation; Court of Special Appeals of Maryland; Department of Legislative Services

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