

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 771

(The President)(By Request - Office of the Attorney
General)

Judicial Proceedings

Judiciary

**Courts and Judicial Proceedings - Consumer Debt Collection Actions -
Restrictions**

This bill establishes several procedural requirements for “consumer debt collection actions.” The bill’s provisions may not be construed to alter any licensing requirement under federal or Maryland law applicable to debt buyers or collectors.

The bill applies prospectively to debt collection actions filed on or after the bill’s October 1, 2016 effective date.

Fiscal Summary

State Effect: The bill is procedural in nature and does not materially affect State finances.

Local Effect: The bill is procedural in nature and does not materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill defines a “consumer debt collection action” as any judicial action or arbitration proceeding in which a claim is asserted to collect a consumer debt. However, an action brought by a landlord or a person acting on behalf of a landlord to recover unpaid rent and related costs and fees under § 8-401 of the Real Property Article is not considered a consumer debt collection action under the bill.

The bill defines “debt buyer” as a person that purchases or otherwise acquires consumer debt from a subsequent owner of the debt. “Debt buyer” does not include the following:

- a check services company that acquires the right to collect on a paper or an electronic check instrument, including an automated clearinghouse item that has been returned unpaid to a merchant;
- a business entity that acquires consumer debt as a direct result of a merger or acquisition, under specified circumstances;
- a bank, credit union, or savings and loan association that acquires consumer debt as a result of a merger with another bank, credit union, or savings and loan association;
- a licensed mortgage servicer, except when the mortgage servicer or a collector acting on the mortgage servicer’s behalf collects or attempts to collect a certain deficiency balance or deficiency judgment;
- a sales finance company or other person that acquires consumer debt arising from a retail installment sale agreement, under specified circumstances;
- a bank, credit union, or savings and loan association that, in the ordinary course of business, acquires a portfolio of consumer debt, not including debt that has been charged off, from another bank, credit union, or savings and loan association; or
- an attorney, licensed debt collection agency, property manager, or other person that collects or attempts to collect consumer debt in an action under § 8-401 of the Real Property Article, provided that the attorney, licensed debt collection agency, property manager, or person is acting on the behalf of an original creditor who is a residential rental property owner.

The bill prohibits a creditor or a collector from initiating a consumer debt collection action after the expiration of the statute of limitations applicable to the consumer debt collection action. Notwithstanding any other provision of law, on the expiration of the statute of limitations applicable to the consumer debt collection action, any subsequent payment toward, written or oral affirmation of, or any other activity on the debt may not revive or extend the limitations period.

A debt buyer or a collector acting on behalf of a debt buyer may not initiate a consumer debt collection action unless the debt buyer or collector possesses specified documents pertaining to proof of the existence of the debt or account, proof of terms and conditions of the debt, proof of the plaintiff’s ownership of the consumer debt, identification and

nature of the debt or account, future services contract information, account charge-off information, information for debts and accounts not charged off, and collection agency licensing information for the plaintiff. The documents specified in the bill are the same as those required under Maryland Rule 3-306 for judgments of affidavits.

Unless the action is resolved by judgment or affidavit, in a consumer debt collection action brought by a debt buyer or a collector acting on behalf of a debt buyer, including a small claim action in the District Court, a court may not enter a judgment in favor of a debt buyer or a collector unless the debt buyer or collector introduces into evidence the documents referenced above in accordance with specified rules of evidence. This requirement applies in addition to any other requirement of law or rule.

Current Law: Maryland Rule 3-306 authorizes a plaintiff in an action for money damages in the District Court to file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint must be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed. If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit must include or be accompanied by an Assigned Consumer Debt Checklist and specified items pertaining to proof of the existence of the debt or account, proof of terms and conditions of the debt, proof of the plaintiff's ownership of the consumer debt, identification and nature of the debt or account, future services contract information, account charge-off information, information for debts and accounts not charged off, and collection agency licensing information for the plaintiff.

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 within the Department of Labor, Licensing, and Regulation, licenses and regulates debt collection agencies. In fiscal 2015, the commissioner received 375 written complaints regarding collection agencies; the commissioner received a total of 1,579 complaints during this time.

Small Business Effect: Small businesses that operate as debt buyers or debt collectors may see reduced revenues to the extent that they experience delays in collecting on consumer debts, as it may take longer to acquire the information required by the bill. They may be unable to initiate collection on some debts due to the inability to produce the information required by the bill. They may also experience revenue reductions to the extent that more court judgments are not entered in favor of debt buyers or debt collectors due to the bill's prohibition and requirements.

Additional Information

Prior Introductions: None.

Cross File: HB 1491 (The Speaker, *et al.*) (By Request - Office of the Attorney General) - Judiciary.

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

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