

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 104

(Chair, Appropriations Committee)(By Request -
 Departmental - Budget and Management)

Appropriations

Central Collection Unit - Collection of Debt - Liens

This departmental bill authorizes the Central Collection Unit (CCU) of the Department of Budget and Management (DBM) to file a notice of lien with the clerk of the circuit court for the county where the property of a debtor is located. DBM must establish by regulation the classes or categories of debt for which CCU may file a notice of lien. The amount, including interest, collection fee, or penalty charge, due to CCU from a debtor at the time the notice of lien is filed is a lien on the property of the debtor and has the same effect as a judgment lien. The bill also includes procedures for a debtor to contest a debt prior to a notice of lien being filed.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: General fund and special fund revenues increase significantly beginning in FY 2018, potentially by millions of dollars, as a result of CCU filing a notice of lien on a debtor’s property instead of pursuing a money judgment in the District Court or circuit courts. Special fund expenditures from the Central Collection Fund decrease by \$240,000 annually as a result of no longer needing to serve a debtor before filing a notice of lien. General fund expenditures by the Judiciary increase to the extent that additional positions are needed to process a substantially higher volume of notice of liens.

| (in dollars) | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF/SF Rev. | - | - | - | - | - |
| GF Expenditure | - | - | - | - | - |
| SF Expenditure | (\$240,000) | (\$240,000) | (\$240,000) | (\$240,000) | (\$240,000) |
| Net Effect | - | - | - | - | - |

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

Local Effect: Minimal decrease in local revenues as a result of CCU opting to file notice of liens instead of lawsuits in the circuit courts. Local expenditures for the circuit courts are not likely affected.

Small Business Effect: DBM has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment as discussed below.

Analysis

Bill Summary: At least 30 days prior to filing a notice of lien, CCU must notify the debtor in writing that it intends to file a notice of lien, and the bill specifies the notification requirements. Within 30 days of being notified from CCU that it intends to file a notice of lien, a debtor may request in writing that CCU investigate a debt, and, upon receiving the written request, CCU must investigate any disputed debt with the State agency that referred the debt and make a written determination within 15 calendar days of the request. If CCU determines that a debt is in error, it must correct any pertinent error or discontinue filing a notice of lien. CCU's written determination must advise the debtor of the right to appeal an adverse decision to the Office of Administrative Hearings (OAH) within 30 calendar days of the determination. If a timely appeal to OAH is filed, CCU may not file a notice of lien until after a final decision is issued by OAH.

Current Law: Generally, CCU is responsible for collecting any delinquent accounts or debts owed to the State. However, unless with the approval of the Secretary of Budget and Management, CCU is not responsible for and may not collect:

- taxes;
- child support payments;
- unemployment insurance contributions or overpayments;
- fines;
- court costs;
- bond forfeitures;
- monies owed due to default on loans made by the Department of Commerce or the Department of Housing and Community Development (DHCD); or
- specified insurance payments.

Of these listed, CCU collects unemployment insurance overpayments, fines, court costs, and monies owed due to default on loans made by DHCD.

An official or unit of the State government, except for public higher education institutions in specified cases, must refer to CCU each debt for which CCU has collection

responsibility, and the unit may not settle the debt. CCU is authorized to use any actions available to it under State law to collect debts or claims. CCU is authorized to charge an administrative fee of up to 20% of the outstanding principal and interest on the debt referred to it for collection; the current fee is 17%. Debt payments are credited to the agency that refers the debt. The administrative fees are credited to the Central Collection Fund to pay for CCU's operating expenses, except that any balance in excess of 15% of the unit's actual operating expenses reverts to the general fund.

CCU uses a variety of methods and resources to facilitate the collection of delinquent accounts, including automated and manual efforts, as well as a private collection agency. Automated collection efforts include the use of the State's Tax Refund Intercept Program, which captures debtor tax refunds, and other automated intercept programs. The Comptroller must withhold any tax refund due to a debtor who has been certified by CCU and pay to CCU the amount of the debt owed from the amount of the refund due to the debtor. If the amount of the refund is greater than the amount owed to CCU, the Comptroller must pay CCU the amount of the debt owed from the amount of the refund and pay the excess amount to the debtor.

Manual collection efforts include CCU collection agents working directly with the debtor or with the referring agency where the debt originated. Agents pursue voluntary payments (such as payment plan agreements) via phone and written correspondence, and they forward selected accounts to the CCU Legal Measures Unit for proactive nonvoluntary collection actions, such as wage garnishments and property liens. CCU must obtain a money judgment from the circuit courts or District Court against debtors as a prerequisite to filing a wage garnishment or property lien.

Garnishing Wages

A judgment creditor may garnish up to 25% of the disposable wages of a judgment debtor employed by the State, a county, municipal corporation, political subdivision, or private business for the enforcement of a private legal obligation. Disposable earnings are those remaining after legally required deductions are taken, including State and federal taxes, Social Security, unemployment insurance, and medical insurance. Under the Commercial Law Article, the following are exempt from attachment:

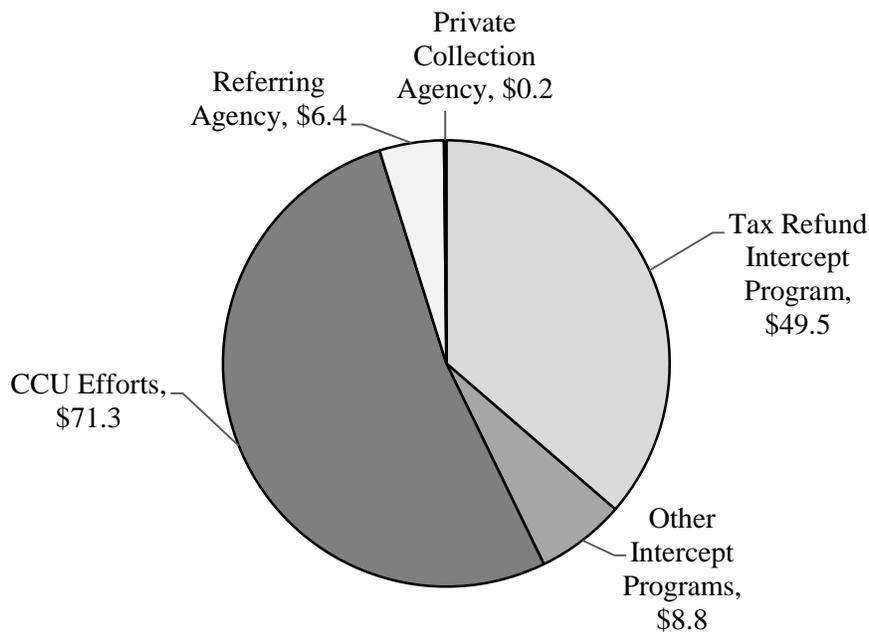
- any medical insurance payment deducted from an employee's paycheck;
- except as specified for certain counties, the greater of:
 - the product of \$145 multiplied by the number of weeks in which the wages due were earned; or
 - 75% of the disposable wages due; or
- in Caroline, Kent, Queen Anne's, and Worcester counties, for each workweek, the greater of:

- 75% of the disposable wages due; or
- 30 times the federal minimum hourly wages under the Fair Labor Standards Act in effect at the time the wages are due.

Attachment of a judgment debtor’s disposable wages is a lien that continues until the judgment, interests, and costs, as specified in the attachment, are satisfied. As long as the attachment remains a lien, the employer/garnishee must withhold all applicable wages payable to the judgment debtor and remit that amount to the judgment creditor within 15 days of the last pay period of each month.

Background: CCU currently has \$2.4 billion in outstanding receivables owed to the State. Typical debts are Motor Vehicle Administration fines, student tuition and fees, restitution for damage to State property, reimbursement for institutional care, local health department fees, workers’ compensation premiums, Home Improvement Commission awards, and State grant overpayments. **Exhibit 1** shows CCU’s debt collection methods by source for fiscal 2016. In fiscal 2016, CCU collected \$136.2 million in outstanding debts, of which 52% was from manual efforts of working with the debtor to pursue voluntary payments.

Exhibit 1
CCU Debt Collections by Source
Fiscal 2016
(\$ in Millions)



Source: Central Collection Unit; Department of Legislative Services

The Office of Legislative Audits, in a [2015 report](#) on the Office of the Secretary and other units within DBM, found that CCU did not adequately pursue potential wage garnishments from certain debtors for whom eligible wages were identified. CCU generally only considers pursuing wage garnishments on accounts with debts greater than \$750 and for which wages are currently available to attach. The Office of Legislative Audits examined 10 such accounts, and found that CCU was in the process of establishing a wage garnishment on only 1 of the 10 accounts. Thus, the audit report recommended DBM to take appropriate actions to pursue potential wage garnishments from debtors in a timely manner and document all collection efforts.

Fewer than 50% of the lawsuits filed annually result in a money judgment, which is typically due to being unable to successfully serve debtors. In a typical quarter, more than 50,000 debtors are wage earners with total balances of approximately \$180 million owed to the State. CCU files approximately 7,000 new lawsuits annually, and it also has approximately 10,000 lawsuits that have been filed for which the debtor has not been successfully served. Approximately 4,900 wage garnishments are issued annually, totaling \$17.8 million of debt. CCU advises that the current wage garnishment process takes one to three years to obtain a lien on wages, but by filing a notice of lien as under the bill, the process could be completed in three months.

State Revenues: CCU must establish in regulation the classes or categories of debts, including any minimum debt amount, for which CCU may file a notice of lien. Thus, as it is unknown what debts will be subject to a lien, a reliable estimate of the increase in special fund and general fund revenues from increased collections cannot be made. However, CCU plans to place a lien on property, including wages, for any debtor with wage earnings after unsuccessful attempts of reaching a voluntary repayment agreement. Since CCU plans to send a notice of its intent to file a notice of lien on approximately 50,000 wage-earning debtors with a total outstanding balance of approximately \$180 million, special fund and general fund revenues increase significantly beginning in fiscal 2018. The actual increase depends on the disposable wages of debtors subject to being garnished.

To the extent that collections increase, special fund revenues to the Central Collection Fund increase as a result of the 17% assessment that CCU charges for the accounts it must investigate and recover. General fund revenues may further increase to the extent that reversions from the Central Collection Fund increase due to higher fee collections.

State Expenditures: Beginning in fiscal 2018, special fund expenditures from the Central Collection Fund decrease by approximately \$240,000 annually as a result of no longer needing to use a process server to garnish a debtor's wages or to establish a lien.

Office of Administrative Hearings

A debtor has the right to appeal an adverse decision to OAH within 30 calendar days of the determination. It is unknown how many disputed liens may be contested and resolved through OAH, but CCU and OAH advise that debtors infrequently contest their debts. Although any increase in contested case hearings cannot be reliably estimated, OAH believes that it has sufficient resources to absorb additional hearings.

The Judiciary

The Judiciary anticipates that new positions may be required in the circuit court clerk's offices as a result of CCU filing notices of liens. The number of positions and whether the positions are permanent or contractual depends on what debts are subject to a lien, which must be established in regulation, and the extent to which CCU chooses to pursue this method. However, the circuit courts' additional workload from filing notices of lien is partially offset to the extent that CCU is no longer pursuing lawsuits in the circuit courts.

Small Business Effect: CCU currently uses one small business, which CCU pays approximately \$240,000 annually, to serve debtors after a lawsuit is filed in court. Under the bill, CCU must provide written notice to a debtor 30 days prior to filing a notice of lien with the circuit court, so CCU no longer needs to file a lawsuit and serve debtors before establishing a lien on property. Thus, payments to one small business decrease by approximately \$240,000 annually.

Additional Comments: Under Maryland Rules, property includes wages, so the bill gives CCU the ability to garnish wages through filing a notice of lien with the circuit court.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Budget and Management; Office of Administrative Hearings; Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2017
mm/mcr Revised - Clarification - January 31, 2017

Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Central Collection Unit – Collection of Debs - Liens

BILL NUMBER: HB 104

PREPARED BY: Barbara J. Wilkins, Director, Government Relations,
Department of Budget and Management

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will reduce payments to CCU's process servers by \$240,000 annually.