

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 459

(Senator Feldman, *et al.*)

Finance

Judiciary

Bail Bond - Installment Contract - Form and Confessed Judgment Prohibition

This bill requires an agreement to accept payment for the premium charged for a bail bond in installments to be in a form approved by the Maryland Insurance Commissioner and prohibits a bail bondsman from including a confessed judgment clause that waives a consumer's right to assert a legal defense to an action in such an agreement. The bill also prohibits a confessed judgment clause that waives a consumer's right to assert a legal defense to an action from being included in a bail bond agreement. Under the bill, this activity is considered an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local finances, as discussed below.

Small Business Effect: Meaningful impact on small business bail bondsmen who have to use costlier legal methods to recoup debts.

Analysis

Current Law: A confessed judgment clause typically waives a person's rights to defend against a legal action. In general, a confessed judgment clause authorizes a designated person to go to court to "confess judgment" against the debtor. It has the same effect as if the debtor appeared in court and testified to owing the debt. However, a lender with a

confessed judgment does not need to produce witnesses or evidence of the debt beyond an affidavit.

Under Maryland Rule 2-611, a complaint seeking a confessed judgment must be accompanied by the original or a copy of the written instrument authorizing the confession of judgment for a liquidated amount and an affidavit in a form specified under the rule. The affidavit includes attestations that the instrument does not evidence or arise from specified types of transactions (including a consumer loan or a consumer transaction, as specified) for which confessed judgement clauses are prohibited. The court must direct the clerk to enter the judgment if the court determines that the complaint complies with these requirements and demonstrates a factual and legal basis for entitlement to a confessed judgment. Promptly after entering a judgment, the clerk must issue a notice informing the defendant (the debtor) of entry of the judgment and of the latest time at which the defendant may file a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the original pleadings must be served on the defendant. If this is not the case, then the rule provides for alternate notice. The defendant may move to open, modify, or vacate the judgment within specified time limits, and the motion must state the legal and factual basis for defense to the claim.

If the court finds that there is substantial and sufficient basis for an actual controversy as to the merits of the action, the court must order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive pleading.

Unless the court orders otherwise, property must not be sold in execution of a judgment by confession and wages or other debt must not be remitted by a garnishee to the judgment creditor until the expiration of the time for filing a motion and the disposition of any motion so filed.

Unfair Methods of Competition, Unfair and Deceptive Acts or Practices, and License Violations: A person may not engage in the State in a trade practice that is defined in Title 27 of the Insurance Article as, or determined under Title 27 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

If the Insurance Commissioner finds that a person in the State has engaged or is engaging in an act or practice that is defined in or prohibited under Title 27, the commissioner must order the person to cease and desist from the act or practice. Violation of a cease and desist order is deemed to be and is punishable as a violation of the Insurance Article. An issued cease and desist order or an order of court that enforces it does not relieve any person affected by the order from any other liability, penalty, or forfeiture under law.

The Insurance Commissioner is authorized to suspend, revoke, or refuse to renew or reinstate the license of a bail bondsman who violates the provisions regarding the

arrangement of installment payments. Instead of, or in addition to, suspending or revoking the license, the license holder is subject to a penalty of a minimum of \$100 to a maximum of \$500 for each violation, and the license holder is also subject to an order of restitution.

Confessed Judgments in Consumer Loans and Consumer Transactions: With respect to a consumer loan for an amount up to \$6,000, § 12-311 of the Commercial Law Article prohibits a lender from taking as a security for a loan any confession of judgment or power of attorney to him or to a third person to confess judgment or appear for the borrower in a judicial proceeding. The Maryland Consumer Protection Act (Title 13, Subtitle 3 of the Commercial Law Article) specifically prohibits a contract related to a consumer transaction from containing a confessed judgment that waives the consumer's right to assert a legal defense to an action and considers this an unfair and deceptive trade practice.

State Expenditures: The Maryland Insurance Administration advises that it can implement the bill's requirements, including the development of an installment agreement form, with existing budgeted resources.

The Judiciary advises that it cannot determine the fiscal impact of the bill because it does not have any data from which to project the additional court time that may result from adjudication of cases under the bill. However, according to the Maryland Judiciary's *Annual Statistical Abstract – FY 2015*, 291,219 civil cases were filed in the District Court during fiscal 2015. Thus, this analysis assumes that the bill does not materially affect District Court caseloads.

Local Expenditures: An estimated 267,261 civil (general) cases were filed in the State's circuit courts during fiscal 2015. Thus, the bill does not materially affect circuit court caseloads.

Small Business Effect: Small business bail bondsmen who are able to obtain a confessed judgment from debtors for payments owed have to resort to potentially costlier legal methods to obtain judgments for these debts. The bill may also impact the content of contracts between bail bondsman and their customers.

Additional Information

Prior Introductions: None.

Cross File: Although HB 1494 (Delegate C. Wilson, *et al.* – Judiciary) is designated as a cross file, it is not identical.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2017
md/kdm Third Reader - April 4, 2017
Revised - Amendment(s) - April 4, 2017

Analysis by: Amy A. Devadas

Direct Inquiries to:

(410) 946-5510

(301) 970-5510