

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 364
Economic Matters

(Delegate Moe, *et al.*)

Credit Regulation - Consumer Loans - Collection of Attorney's Fees

This bill alters the calculation of attorney's fees that a lender may collect from a borrower on a consumer loan when a lender refers a defaulting borrower's account to an outside attorney for collection. Under the bill, attorney's fees for loans of more than \$2,000 must be: (1) reasonable; and (2) actually incurred in collecting the loan and not retained by the lender or an assignee of the loan. Attorney's fees for loans of \$2,000 or less must be: (1) reasonable; and (2) actually incurred in collecting the loan and not retained by the lender or an assignee of the loan, subject to determination by the court in the event a suit is filed.

Fiscal Summary

State Effect: Altering the method in which attorney's fees are determined will not materially affect the operations or finances of the Judiciary.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: On a consumer loan with an original principal balance of more than \$2,000, when a lender refers a defaulting borrower's account to an outside attorney for collection, if the note, contract, or other evidence of the loan permits, the lender may charge and collect from the borrower court costs and attorney's fees of up to 15% of the amount due and payable under the terms of the loan.

On a consumer loan with an original principal balance of \$2,000 or less, when a lender refers a defaulting borrower's account to an outside attorney for collection, if the note, contract, or other evidence of the loan permits, the lender may recover from the borrower court costs and attorneys fees of up to 15% of the amount due and payable under the terms of the loan, to be set by the court in the event a suit is filed.

Background: Under the Maryland Rules, the factors used to determine the reasonableness of an attorney's fee include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill needed to perform the service properly; (2) the likelihood, if apparent to the client, that accepting the employment would preclude the attorney from accepting other work; (3) the fee customarily charged in the locality for similar services; (4) the amount involved and the result obtained; (5) the time limitations imposed by the client or the circumstances of the case; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the attorney or attorneys performing the work; and (8) whether the fee is fixed or contingent.

The Court of Appeals has also addressed statutory provisions allowing attorney's fees. In *Admiral Mortgage, Inc. v. Cooper*, 357 Md. 533 (2000), the court stated that the amount of attorney's fees was a question for the judge, rather than the jury, to decide. In *Friolo v. Frankel*, 373 Md. 501 (2003), the court adopted a lodestar approach to awarding attorney's fees under Maryland's wage and hour law and payment law, which permit a court to award attorney's fees. Under a lodestar approach, a court awarding fees may make adjustments to the weight given each factor to ensure the fee's reasonableness. The adjustments are largely case-specific.

Additional Information

Prior Introductions: None.

Cross File: SB 239 (Senator Astle) – Finance.

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

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