

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 158  
Economic Matters

(Delegate B. Robinson, *et al.*)

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Consumer Protection - Consumer Debt Collection - Prohibited Acts

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This bill prohibits a person that is attempting to collect a consumer debt from communicating with a debtor, or a person related to the debtor, for at least 24 hours from the end of any grace period allowed by the debtor's creditor for payment of the debt.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

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Fiscal Summary

**State Effect:** The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. Likewise, the State Collection Agency Licensing Board can handle any additional workload with existing resources.

**Local Effect:** The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** Potential minimal.

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Analysis

**Current Law:** Under the Maryland Consumer Debt Collection Act (MCDCA), a person collecting or attempting to collect an alleged debt arising out of a consumer transaction may not:

- use or threaten force or violence;
- threaten criminal prosecution, unless the transaction involved a criminal violation;
- disclose or threaten to disclose information that affects the debtor's reputation for creditworthiness under specified circumstances;
- except as otherwise permitted, contact a person's employer about a debt before obtaining a final judgment;
- except as otherwise permitted, disclose or threaten to disclose information to a person other than the debtor's spouse, or parent if the debtor is a minor, that affects the debtor's reputation if the debt collector knows the person does not have a legitimate business need for the information;
- communicate with the debtor or a person related to the debtor with the frequency, at unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;
- use obscene or grossly abusive language;
- claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or
- use a communication that simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, government agency, or lawyer when it is not.

A person who violates MCDCA is liable for damages proximately caused by the violation, including damages for emotional distress or mental anguish. A violation of MDCDA is an unfair or deceptive trade practice under MCPA.

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that

may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

**Background:** For decades, residents of Maryland have relied on MCDCA for protection against some creditors and third-party collection agencies that resort to abusive or harassing debt collection practices. The consumer protections in MCDCA apply to any person collecting or attempting to collect a consumer debt, including creditors and third-party collection agencies. Third-party debt collection agencies are licensed by the State Collection Agency Licensing Board within the Department of Labor, Licensing, and Regulation (DLLR). The board regulates debt collection agencies; issues, suspends, and revokes licenses; reprimands licensees; and receives and investigates written complaints from consumers. The board may hold hearings on licensees' alleged violations of MCDCA and mediate disputes between licensees and consumers. DLLR advises the board receives a few inquiries a year relating to the grace period.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 15, 2011  
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