

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 1191 (Delegate Niemann, *et al.*)
 Economic Matters

Commercial Law - Consumer Protection - Credit Counseling and Legal Assistance Fund

This bill establishes the Credit Counseling and Legal Assistance Fund. The bill requires the State Court Administrator to collect a filing fee of \$30 from a collection agency attempting to collect on a claim for unpaid consumer debt and pay the fee into the fund.

The Office of the Attorney General’s (OAG) Division of Consumer Protection must administer the fund and adopt regulations to enforce the bill’s provisions.

Fiscal Summary

State Effect: General Fund expenditures increase by at least \$110,000 in FY 2013, including \$79,600 for OAG to establish and administer the fund and develop regulations and \$30,400 for the Administrative Office of the Courts to reprogram cash registers to include the new fee. Out-years reflect annualization. No impact on general fund revenues. Special fund revenues increase significantly to reflect the potentially large number of debt collection agencies attempting to collect on a claim for unpaid consumer debt. Special fund expenditures would increase correspondingly to account for the distribution of funds to nonprofit entities for consumer credit and debt counseling and legal assistance.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	-	-	-	-	-
GF Expenditure	\$110,000	\$101,300	\$107,900	\$112,900	\$118,100
SF Expenditure	-	-	-	-	-
Net Effect	(\$110,000)	(\$101,300)	(\$107,900)	(\$112,900)	(\$118,100)

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

Local Effect: The bill may have an operational impact upon circuit court clerks required to collect the new fee. However, the bill's requirements likely can be handled with existing resources. No impact on local revenues.

Small Business Effect: Minimal. Small businesses filing cases to collect on unpaid consumer debt in either the District Court or circuit courts will pay increased filing costs.

Analysis

Bill Summary: The fund is a special, nonlapsing fund. The fund consists of money distributed to the fund as collected from the State Court Administrator, any investment earnings of the fund, and any other money from any other source accepted for the fund's benefit.

The purpose of the fund is to receive and distribute funds to qualified nonprofit entities that provide counseling services and legal assistance to consumers related to consumer credit and debt collection. Funds may only be used for this purpose. Money expended from the fund for nonprofit entities that provide counseling services and legal assistance to consumers is supplemental to and is not intended to take the place of funding that otherwise would be appropriated to these entities.

Current Law/Background:

State Collection Agency Licensing Board

The State Collection Agency Licensing Board, under the Office of the Commissioner of Financial Regulation, licenses and regulates debt collection agencies. The board licenses more than 1,500 collection agencies doing business in Maryland and enforces the Maryland Consumer Debt Collection Act. The board also mediates disputes between consumers and debt collection agencies. The board has received almost 600 complaints regarding consumer debt collection agencies annually from 2007 to 2011.

In a comprehensive July 2010 report, the Federal Trade Commission (FTC) found that certain "debt collection litigation and arbitration practices appear to raise substantial consumer protection concerns." FTC reported that 65% to 85% of consumers who are sued for unpaid debts do not defend themselves in debt collection lawsuits. FTC found that complaints and attachments filed in debt collection cases often do not provide adequate information for consumers to answer complaints or for judges to rule on motions for default judgment. FTC recommended that "courts more rigorously apply existing rules to require that collectors provide adequate information and that jurisdictions consider adopting rules mandating the information which must be included or attached to the complaint."

The report's findings are further evidenced by the work of the commissioner's Enforcement Unit. In 2011, the unit identified a series of problems related to purchasers of consumer debt seeking judgments based on affidavits in District Court, including collection agencies filing complaints claiming ownership of debt but that were unable to prove ownership. These problems led to the board, the Maryland Rules Committee, and the Judiciary to draft new rules, effective January 1, 2012, which will require consumer debt purchasers to submit to the district court documentation evidencing ownership of the debt prior to being allowed to obtain affidavit judgments against consumers.

Court Costs and the Maryland Legal Services Corporation (MLSC)

Court costs and charges for the circuit courts are set by the State Court Administrator with the approval of the Board of Public Works. The initial filing fee for a civil case in the circuit courts is \$135. In the District Court, the filing fee for civil cases range from \$12 for summary judgment cases and \$43 for all other civil cases. A judge may waive the prepayment of filing fees and costs in a civil case because of indigency.

A portion of the filing fee for civil cases in both the circuit courts (\$55) and District Court (\$8 for summary ejectment cases, \$18 for all other civil cases) is a surcharge distributed to MLSC.

MLSC was established by the Maryland General Assembly in 1982. It receives and distributes funds to nonprofit grantees that provide legal assistance to eligible clients in civil cases. The MLSC fund and the surcharge on filing fees were established in 1998. Since MLSC's creation, it has made grants of more than \$164 million. Grantees reported handling more than 140,000 cases in fiscal 2011, which included legal assistance with housing, family, employment, disability, public benefits, and special education. Approximately 10% of the cases closed in fiscal 2011 were consumer/finance related.

Debt Management Services Providers and the U.S. Trustee Program

Before providing debt management services for a consumer, a debt management services provider must provide a written notice to the consumer stating (1) that federal law mandates the consumer receive pre-bankruptcy credit counseling services from a nonprofit approved by the U.S. Trustee Program; (2) whether the debt management services provider is approved by the U.S. Trustee Program; and (3) that the consumer should contact a federal bankruptcy court to obtain a list of credit counseling agencies that are approved by the U.S. Trustee program. The U.S. Trustee program, run through the U.S. Department of Justice, monitors bankruptcy actions to ensure the absence of fraud and just and economical resolution of cases.

MD Hope Housing Counseling Network

The Department of Housing and Community Develop provides financial support and training to 31 nonprofit agencies providing foreclosure-related counseling services. The statewide network, MD Hope Housing Counseling Network, annually assists approximately 6,000 consumers facing foreclosure by advising citizens on mortgage fraud and acting as a resource to negotiate with mortgage servicers.

State Fiscal Effect: The division advises that one and one-half staff are necessary to establish and administer the fund and adopt regulations. The Department of Legislative Services concurs.

As the bill does not authorize use of the fund for administrative expenses, general funds must be used for this purpose. Thus, general fund expenditures for OAG increase by \$79,611 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring one administrator and one part-time management associate to develop the regulatory program, create grant application guidelines, review grant applications, interview potential grantees, communicate with the courts to ensure correct funding, and handle daily activities. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Total Positions (full-time equivalent)	1.5
Salaries and Fringe Benefits	\$71,609
Other Operating Expenses	<u>8,002</u>
Total FY 2013 OAG Expenditures	\$79,611

Future year expenditures reflect full salaries with annual increases, employee turnover, and annual increases in ongoing operating expenses.

General fund expenditures also increase for the Administrative Office of the Courts by \$30,398 in fiscal 2013 in order to reprogram cash registers to include the new fee. Additionally, the courts advise that, in the majority of District Court locations, the fee will require manual flagging and tracking. This may result in a significant operational impact.

Special fund revenues increase significantly to reflect the potentially large number cases filed by debt collection agencies attempting to collect unpaid consumer debt. The amount of the increase is not quantifiable due to the lack of data regarding the number of applicable cases. There were 107,814 general civil cases filed in the circuit courts and 354,955 in the District Court. While the court's statistics are too broad to determine the

exact number of applicable cases, the commissioner's 2011 Annual Report states that "tens of thousands of collection actions have been filed in Maryland courts." However, as noted above, the recently enacted Maryland Rule requiring a debt collection agency to provide evidence of ownership of the debt is expected to significantly decrease the number of cases filed in the courts. If 30,000 applicable cases are filed in the District Court and circuit courts, the resulting increase in special fund revenues is \$900,000.

Special fund expenditures would increase correspondingly to distribute funds to nonprofit entities for consumer credit and debt counseling and legal assistance.

Additional Information

Prior Introductions: None.

Cross File: SB 831 (Senator Ramirez, *et al.*) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Legal Services Corporation; U.S. Department of Justice; Department of Legislative Services

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