

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 137

(Senator Zirkin)

Finance

Commercial Law - Contract Provisions - Payment of Legal Fees

This bill requires that an attorney's fee-shifting provision in any contract equally apply to both contracting parties.

The bill applies to all contracts entered into on or after the bill's effective date.

Fiscal Summary

State Effect: 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. No effect on revenues.

Local Effect: The bill does not directly affect governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law/Background: Generally, Maryland follows the rule that each party in a legal action must pay his or her litigation expenses regardless of the verdict in the case. This rule, commonly known as the "American Rule," is in contrast to the "English Rule" which gives the prevailing party a right to recover legal fees from the losing party. However, there are numerous exceptions to this general rule in Maryland statute and Maryland rules which require one party to pay another party's "reasonable attorney's fees." Additionally, parties may contract to award legal expenses to the prevailing party in the event of litigation.

There is no requirement in Maryland that consumer contracts which provide for the reimbursement of legal fees in a legal action to enforce the contract be reciprocal for both parties. As a result, one party can stipulate that the other party may not receive reasonable attorney's fees and costs even if the other party prevails in litigation. Statutes exist in other states that make, by operation of law, such a one-sided fee-shifting provision in a contract reciprocal. For instance, Oregon requires that, in legal actions based on a contract that specifically provides for the reimbursement of attorney's fees and costs incurred to enforce the contract, the prevailing party is reimbursed, regardless of whether the prevailing party was the party specified in the contract.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Oregon State Legislature, *LegalEase Newsletter*, Maryland State Ethics – Legal Information Institute, Department of Legislative Services

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