

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1491

(The Speaker, *et al.*) (By Request - Office of the Attorney General)

Judiciary

Courts and Judicial Proceedings - Consumer Debt Collection Actions -
Restrictions

This bill establishes several procedural requirements for consumer debt collection actions.

Fiscal Summary

State Effect: The bill is procedural in nature and does not materially affect State finances.

Local Effect: The bill is procedural in nature and does not materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill prohibits a creditor or a collector from initiating a consumer debt collection action after the expiration of the statute of limitations applicable to the consumer debt collection action. In any consumer debt collection action maintained by a debt buyer or a collector acting on behalf of a debt buyer, the debt buyer or collector must have the burden of showing that the statute of limitations has not expired.

A debt buyer or a collector acting on behalf of a debt buyer may not initiate a consumer debt collection action unless the debt buyer or collector possesses specified documents, including (1) the agreement between the debtor and the original creditor or other documents that establish the debt, include all terms and conditions of the debt, and reflect the debtor's assent; (2) the charge-off account statement from the original creditor or if the charge-off account statement never existed, the last bill from the original creditor to the debtor;

(3) documents showing all charges and credits to the account after charge-off by the original creditor; (4) documents establishing the debt buyer's ownership of the account; and (5) all other documents that would be necessary to support a judgment on affidavit.

With respect to a consumer debt collection action, including a small claim action in the District Court, in addition to any other requirement of law or rule, a court may not enter a judgment in favor of a debt buyer or a collector unless the debt buyer or collector (1) introduces into evidence the documents specified above and (2) makes available for examination at a trial an individual with knowledge of the facts pertinent to the claims asserted.

Current Law: Maryland Rule 3-306 authorizes a plaintiff in an action for money damages in the District Court to file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint must be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed. If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit must include or be accompanied by an Assigned Consumer Debt Checklist and specified items pertaining to proof of the existence of the debt or account, proof of terms and conditions of the debt, proof of the plaintiff's ownership of the consumer debt, identification and nature of the debt or account, future services contract information, account charge-off information, information for debts and accounts not charged off, and collection agency licensing information for the plaintiff.

In collecting or attempting to collect an alleged debt, under the Maryland Consumer Debt Collection Act, a collector may not:

- use or threaten force or violence;
- threaten criminal prosecution, unless the transaction involved criminal action;
- disclose or threaten to disclose information which affects the debtor's reputation for credit worthiness with knowledge that the information is false;
- unlawfully contact a person's employer with respect to a delinquent indebtedness before obtaining a final judgment against the debtor;
- unlawfully disclose or threaten to disclose to a person other than the debtor, his or her spouse, or, if the debtor is a minor, his or her parent, information which affects the debtor's reputation with knowledge that the other person does not have a legitimate business need for the information;
- communicate with the debtor or a person related to him in a manner which can be reasonably expected to abuse or harass the debtor;
- use obscene or grossly abusive language in communicating with the debtor or a person related to him;
- claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or

- use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not.

A collector in violation of the Act is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury.

Background: The State Collection Agency Licensing Board, under the Office of the Commissioner of Financial Regulation within the Department of Labor, Licensing, and Regulation, licenses and regulates debt collection agencies. In fiscal 2015, the commissioner received 375 written complaints regarding collection agencies; the commissioner received a total of 1,579 complaints during this time.

Small Business Effect: Small businesses that operate as debt buyers or debt collectors may see reduced revenues to the extent that they experience delays in collecting on consumer debts, as it may take longer to acquire the information required by the bill. They may be unable to initiate collection on some debts due to the inability to produce the information required by the bill. They may also experience revenue reductions to the extent that more court judgments are not entered in favor of debt buyers or debt collectors due to the bill's prohibition.

Additional Information

Prior Introductions: None.

Cross File: SB 771 (The President)(By Request - Office of the Attorney General) - Judicial Proceedings.

Information Source(s): Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Office of the Attorney General; Department of Legislative Services

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