

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 783 (Delegate Gutierrez, *et al.*)
 Economic Matters

Consumer Protection - Collection and Sale of Consumer Debt - Restrictions

This bill expands the prohibitions under the Maryland Consumer Debt Collection Act by prohibiting a collector from attempting to collect a debt unless the collector possesses verifiable information regarding (1) the ownership of the debt (including documentation that the collector has the right to collect the debt); (2) the amount of the debt; and (3) the connection of the debtor, or the person related to the debtor, to the debt.

The bill also specifies the circumstances in which an original creditor may not sell a debt. An original creditor is also required to provide documentation to a debt buyer regarding (1) the amount of the debt; (2) any actions the original creditor has taken to collect the debt (including information regarding specific communications with the debtor); and (3) payments that the debtor made to the original creditor. If an original creditor sells a debt, it must provide specified documentation to the debtor. Finally, the bill prohibits a debt buyer from purchasing a debt from another debt buyer or reselling a debt (unless the sale is to the original creditor).

Fiscal Summary

State Effect: General fund expenditures increase by \$90,700 in FY 2017 for the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation (DLLR) to hire additional examiners to handle additional complaints. Future year expenditures reflect annualization and inflation. The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	90,700	110,100	114,500	119,100	123,800
Net Effect	(\$90,700)	(\$110,100)	(\$114,500)	(\$119,100)	(\$123,800)

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

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: Meaningful.

Analysis

Bill Summary: The bill defines “debt buyer” as a person that purchases or acquires debt arising out of a consumer transaction from an original creditor. An “original creditor” is a person that initially makes a loan to a consumer in connection with a consumer transaction.

An affidavit used as documentation of a debt must (1) contain an original signature; (2) reflect the actual date of signing; and (3) be based on the direct knowledge of the signatory and the signatory's review of the records of the original creditor and (if applicable) the debt buyer.

Supporting documents in a civil action (including affidavits) may not be created solely for the purpose of filing a civil action.

An original creditor may not sell a debt:

- for which the original creditor does not possess the information required under the bill;
- that has been charged off for three or more years;
- for which the debtor has not made a payment within three years before the proposed sale of the debt;
- that is the subject of any civil action;
- if the debtor is a member of the U.S. Armed Forces or the National Guard;
- if the debtor is deceased at the time of the proposed sale of the debt; or
- that is subject to a payment plan or payment agreement with the debtor.

If an original creditor sells a debt, it must provide the debtor written notification specifying (1) that the original creditor has sold the debt; (2) the name of the debt buyer that purchased the debt; (3) the total amount of the debt at the time of sale; and (4) that additional information may be requested by a debtor at no additional charge to the debtor.

Current Law: 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.

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

An unfair or deceptive trade practice under MCPA includes, among other acts, 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 services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division within the Office of the Attorney General is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. 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: The State Collection Agency Licensing Board, under the Office of the Commissioner of Financial 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.

State Fiscal Effect: DLLR advises it expects an additional 375 written complaints under the bill. The department further advises that each examiner can handle 225 complaints annually, not including phone inquiries. As a result, the commissioner’s current complaint staff of six financial examiners would be unable to resolve the anticipated additional complaints within 60 days. Thus, DLLR requires one and one-half additional financial examiners as a result of the bill.

General fund expenditures increase by \$90,748 in fiscal 2017, which accounts for the bill’s October 1, 2016 effective date. This estimate reflects the cost of hiring one and one-half financial examiners to handle additional complaints brought under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.5
Salaries and Fringe Benefits	\$81,344
Operating Expenses	<u>9,404</u>
Total FY 2017 State Expenditures	\$90,748

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

The Consumer Protection Division of the Office of the Attorney General advises that it can likely handle any additional complaint volume with existing resources, assuming that it receives 50 or fewer complaints. This analysis assumes most complaints are handled instead by DLLR.

Small Business Effect: The bill may negatively impact licensees to the extent that it limits their ability to collect debts and exposes them to liability for violations.

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

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mel/kdm

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