



February 1, 2022

Chairman William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

Re: SB 156 - Civil Actions – Specialties – Statute of Limitations– OPPOSE

Dear Chairman Smith, Vice-Chairman Waldstreicher, and Members of the Senate Judicial Proceedings Committee,

On behalf of Encore Capital Group and its wholly owned subsidiaries, including Midland Credit Management and Midland Funding (collectively “Encore”), I am writing regarding Senate Bill 156. Simply put, SB 156 seeks to overhaul long-standing Maryland law related to the statute of limitations – law that was recently re-affirmed by the Maryland Court of Appeals in *Cain v. Midland Funding, LLC*.¹ Not surprisingly, such a sea change would create a host of harmful unintended consequences.

SB 156’s stated purpose is to extend the statute of limitations for claims related to any judgment from three to 12 years – a change that would not only upend hundreds of years of law in Maryland, but would abrogate last year’s holding in *Cain*. In *Cain*, the Court of Appeals confirmed that the three-year statute of limitations related to asserting a claim, and the 12-year statute of limitations related to enforcing a judgment were different and distinct. *Cain* unequivocally held that all claims of judgment debtors – including those seeking to challenge a judgment – fall under the state’s general three-year statute of limitations. After their attempt to quadruple the statute of limitations for judgment debtors was unanimously rejected by Maryland’s highest court, counsel for the judgment debtors in *Cain* are now seeking a second bite at the apple by attempting to get the Legislature to do what the Court of Appeals would not.

There is no compelling reason to overturn *Cain*, modify hundreds of years of precedent, and ignore the many long-standing principles that are behind statutes of limitation, including the need for finality in and economy of litigation. Indeed, if SB 156 were to become law, it would lead to a web of unintended consequences. For example, creating such a carveout just for judgment debtors would create inconsistent and illogical results for different types of plaintiffs, would serve to benefit plaintiffs’ lawyers, and ultimately would open the doors to increased malpractice lawsuits by clients against

¹ 256 A.3d 765 (Md. 2021).



their own attorneys. Accordingly, we respectfully ask the esteemed Committee to vote “No” on this legislation.

Encore Capital Group, Inc.

By way of background, Encore is a publicly traded financial services company that has provided over 60 years of service to consumers in Maryland and throughout the nation. Purchasing primarily charged-off credit card debt, we currently own accounts with over 708,000 Maryland residents and we have an office in Catonsville, Maryland. We offer flexible repayment plans, do not collect any fees or post-judgment interest on accounts, and often significantly discount the total debt balance owed. Per our Consumer Bill of Rights,² we treat our consumers with dignity and respect, with the ultimate goals of creating pathways to economic freedom by partnering with consumers to restore their financial health. We also have robust hardship policies in place, and since the beginning of the pandemic we have stopped all bank garnishments and provided significant debt forgiveness for our consumers experiencing hardship. In 2020, we were proud to forgive over \$6.9 million in debt owed by Maryland residents.

For a small percentage of our consumers who have the ability, but not the willingness, to repay their debt obligations, we end up filing a collection lawsuit against them. Filing suit is typically a last resort for us, and we do so when consumers have ignored multiple attempts to resolve their debt obligations outside of the litigation process.

Like other creditors and debt purchasers, we must abide by a three-year statute of limitations to file a lawsuit against a consumer.³ To obtain a judgment against a consumer, under Maryland law there are significant document and data requirements.⁴ Consumer defendants may, of course, answer our complaint, seek to dismiss a complaint, or counter-sue against us. Once a court of law evaluates the full evidence, claims and defenses presented, it issues a final judgment. In cases for which a judgment is entered in our favor, like any other judgment creditor, we have 12 years to collect the judgment amount.⁵

Below, we further discuss our significant concerns with SB 156.

² Our Consumer Bill of Rights is located at <https://www.midlandcredit.com/are-you-a-customer/consumer-bill-of-rights/>.

³ Md. Code, Cts. & Jud. Proc. § 5-101.

⁴ Md. R. Civ. P. Dist. Ct. 3-306, 3-308 and 3-509.

⁵ Md. Code, Cts. & Jud. Proc. § 5-102(a).



By Giving Judgment Debtors a Special Exemption from the General Three-Year Statute of Limitations, SB 156 Would Quadruple the Statute of Limitations Not Only for Licensing Claims, But For Any Consumer Claim Relating to a Judgment

Expanding the three-year limitations period to 12 years would refer to any sort of consumer protection claim you can think of related to a lawsuit and judgment, and would impact all judgment creditors (not just debt purchasers like our company, but also banks, hospitals, electricians, dentists, doctors, plumbers, contractors, and anyone who seeks repayment through the court process of money owed).

It should also be noted that the statute of limitations to bring consumer protection claims is, to our knowledge, between three and six years long in every other state. By contrast, like Maryland, in most states the time frame to enforce a judgment is however long the judgment is. For example, in New York, the statute of limitations to file a general claim, including a consumer protection claim, is three years.⁶ At the same time, the time frame to enforce a judgment in New York is 20 years, because judgments are valid in New York for 20 years.⁷

In Maryland, the statute of limitations for consumer protection claims and virtually all claims is three years, even for very serious causes of action such as:

- Catastrophic personal injury claims
- Defective product claims
- Breaches of contract
- Fraud claims, such as claims by Seniors defrauded by scam artists.⁸

The statute of limitations is an inquiry notice statute, such that the “clock” on the statute of limitations period starts to run once a plaintiff discovers the alleged injury. The three-year limitations period does not apply to judgment debtors alone, but likewise applies to the time period for claims creditors may bring to sue consumers for breach of contract.

There are good policy reasons that the General Assembly long ago adopted three years as the standard statute of limitations for claims in Maryland. Three years is sufficient time to investigate the claim, marshal the evidence, and find counsel. Three years prevents claims from being asserted after memories have faded, witnesses have relocated or evidence has been lost or disposed of pursuant to standard document

⁶ NY Civil Practice Law & Rules § 214-i.

⁷ NY Civil Practice Law & Rules § 211(b).

⁸ Md. Code, Cts. & Jud. Proc. § 5-101.



retention and destruction policies. Further, under the critical concept of finality of judgments (which

the *Cain* court wrote about extensively), at some point society requires that disputes end and the parties move on. These policy considerations are as strong today as they have ever been, and nothing has undermined them.

SB 156, however, would give special treatment to judgment debtors and grant them a 12-year statute of limitations to sue, while the vast majority of other claims (personal injury, product claims, *etc.*) would remain under a three-year statute of limitations. Judgment creditor claims for breach of contract would, under SB 156, continue to fall under the three-year statute of limitations.

One unintended consequence of SB 156 is that it would open the floodgates of litigation, by expanding the limitations period for judgment creditors to sue by an additional nine years. Moreover, while whether or not a debt buyer was properly licensed was a question in the underlying *Cain* litigation, SB 156 would open the doors to claims far wider than merely licensing matters.

This Bill Does Not “Even the Playing Field”

The playing field is already level for both creditors and debtors: they each have three years to bring suit from the time they become aware of a violation. The 12-year specialty statute, on the other hand, is different than the statute of limitations. It tells Maryland citizens how long they have to **collect** on any judgment.

In Maryland, the reason the General Assembly decided on the 12-year specialty for judgment collection is that courts have already determined that the judgment creditor’s claim is valid and worthy of a verdict. Having gone all the way through the court process, the judgment creditor is then given sufficient time to **collect** the judgment. The 12-year period is simply a recognition that it may take, in certain circumstances, a long time to collect damages that a court has awarded.

The 12-year period is also intended to protect judgment debtors. As the Court of Appeals said in *Cain*, it “gives a judgment debtor some breathing room to pay debts over time...”⁹ Society has evolved from requiring immediate payment of debt and the 12-year specialty statute provides judgment debtors with time to pay off the judgments against them. If there were less time, more judgment debtors would be forced into bankruptcy.

⁹ *Cain* at 789.



Under current law, the statute of limitations for most civil claims in Maryland is three years, and that applies to both claims by debtors and creditors. The bill's proponents say that they want to provide parity between judgment creditors and judgment

debtors. The proponents, however, are comparing apples to oranges. As stated above, both creditors and debtors are currently treated equally: both have three years to bring their claims. Judgments are treated differently because there is a fundamental difference between a judgment and a claim. A judgment has been validated by a judge or jury, and is no longer a mere claim. The proponents of the bill are wrong to equate the time to *bring a claim* with the time to *enforce a judgment*.

After Failing to Convince the Court of Appeals That Their Massive Proposed Expansion Was Appropriate, The Lawyers From *Cain* Are Now Attempting to Convince This Committee

This is not the first time that the trial attorneys behind SB 156 have tried to get a special carve out from the general three-year statute of limitations for judgment debtors. In *Cain*, they argued that consumer claims under the Maryland Consumer Debt Collection Act, Maryland Collection Agency Licensing Act, and Maryland Consumer Protection Act should be governed by the 12-year time frame to enforce judgments and other specialties. The Court of Appeals, citing many years of precedent, and reams of policy justification, rejected this argument. In so doing, the Court held that judgment debtors should be subject to the general three-year statute of limitations to bring claims, just as judgment creditors are required to file claims against consumers for breach of contract under the three-year statute of limitations.

Cain held in no uncertain terms that the 12-year statute of limitations only applies to "specialties," including *enforcing* a judgment. The Court of Appeals repeatedly said the 12-year statute of limitations does *not* apply to consumer protection claims unrelated to *enforcing* a judgment. The 12-year statute of limitations applies to a narrow group of specialties, but it does not apply to claims for breach of contract, consumer protection violations, fraud, unfair competition, defective products, personal injury, or a host of other claims that purposefully fall under the three-year limitations period. SB 156, however, would give only to judgment debtors an exemption from the general three-year statute of limitations that governs creditors, victims of fraud, personal injury victims, and almost all other causes of action in Maryland. While the Court of Appeals in *Cain* rejected such an exemption, petitioners' attorneys in that case are seeking to circumvent the Court of Appeals ruling through this bill.

We believe there is no compelling reason to overturn *Cain*'s holdings, which were based on many long-standing principles behind statutes of limitation, including the need for economy and finality of litigation. As the Court of Appeals stated in *Cain*,



“Statutes of limitation are intended simultaneously to provide adequate time for diligent plaintiffs to file suit, to grant repose to defendants when plaintiffs have tarried for an unreasonable period of time, and to serve societal purposes, including judicial

economy.”¹⁰ Here, the standard three-year period of limitation is more than enough time for plaintiffs to file their claims.

The Bill Supporters’ Claim that the Dissenting Opinion in *Cain* Supports the Bill Is Not Founded in Fact or Law, and Is a Total Misreading of the Opinion

While Judge McDonald dissented in the opinion, it was on the grounds of “when and how a cause of action accrues” --- *not* the length of time or extending any statute of limitations. The unanimous finding, in which Judge McDonald concurred, was that judgment debtors are not entitled to a 12-year statute of limitations to bring actions. Therefore, the proponents’ belief that the dissent supports the rationale for the bill is not founded in fact or law and it is a total misreading of this 45-page well-reasoned opinion.

This is not our conclusion, but it is in fact re-iterated in the first sentence of Judge McDonald’s dissent where he said, “The Majority Opinion is well-researched, well-written, and, in many respects, an important contribution to our case law.”¹¹

SB 156’s Special Interests Carveout for Judgment Creditors Would Create Illogical Results

The trial attorneys who lost *Cain* at the Court of Appeals, and who are still litigating what is left of *Cain*, have asked for this bill to be introduced. They, however, do not represent any client in doing so, and they would financially benefit from the quadrupling of the statute of limitations. This bill would open the floodgates for them and other trial lawyers to sue banks and debt purchasers.

If passed, the bill will create illogical results. For example, assume Debtor A wishes to assert claims under Maryland’s consumer protection act, but there is no judgment against her. She would have three years to assert those claims. On the other hand, if Debtor B wished to assert identical claims, but a judgment were entered against him, he would have 12 years to do so.

¹⁰ *Cain* at 794.

¹¹ McDonald, J., dissenting, at 806.



Ultimately, seeking a special carveout of the state's general three-year limitations period would serve to primarily benefit the attorneys who lost their arguments before the Court of Appeals, and are now seeking to use SB 156 as a vehicle to circumvent *Cain*.

Extending the Statute of Limitations for Judgment Debtors to 12 Years Could Result in Unintended Consequences for Litigation Attorneys

If the statute of limitations were to be extended to 12 years, there would be nothing to stop a client who lost in court from suing his own attorney 12 years later, claiming there was legal malpractice "related to or concerning" the judgment that resulted from his loss. Currently, legal malpractice claims fall under the state's general three-year statute of limitations, but if the judgment debtor's time to sue on anything related to or concerning a judgment were expanded to 12 years, this would mean that litigation clients could likewise sue their own attorneys under the expanded 12-year limitations period for alleged malpractice that resulted in a judgment.

Expanding the statute of limitations would mean that litigation attorneys would need to retain records far longer than they are currently required to do, in order to defend themselves against future malpractice claims. The Maryland Court Rules¹² only requires record retention of cases in the three to five years' range, depending on the matter. Passing this bill would require the Judicial Conference in conjunction with members of the Bar to hold hearings and receive comments on the new record retention requirements that would be necessary. Furthermore, attorneys would have to decide how much to pass on in costs to the client to for years of additional storage of records.

Conclusion

By extending the statute of limitations to claims seeking to challenge judgments, SB 156 seeks to fundamentally alter the law on the statute of limitations in Maryland – law that has been on the books and operating in perfect balance for hundreds of years. One need look no further than the Court of Appeals' recent thorough and thoughtful ruling in *Cain* to understand completely the policies and justifications behind the difference between a three-year statute of limitations to assert claims and a 12-year statute of limitations to collect judgments. Changing the law to artificially treat the assertion of claims and the enforcement of judgments as if they are the same thing makes little legal or practical sense, and would create a host of unintended consequences. We appreciate the Committee's time and attention on this matter, and urge the Committee to vote "No" on SB 156.

¹² Title 19, Attorneys; Chapter 300. Maryland Attorneys' Rules of Professional Conduct, *et seq.*



Better Solutions. Better Life.

Please do not hesitate to contact me at Sonia.Gibson@encorecapitalgroup.com with any questions or for further information.

Sincerely,

A handwritten signature in black ink that reads 'Sonia Gibson'.

Sonia Gibson
National Government Affairs

cc: Lorenzo Bellamy
Gil Genn