

# **Sydnor\_testimony SB0156 Civil Actions-Specialties.**

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Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Senator Charles E. Sydnor III**  
**Testimony Regarding SB 0156: Civil Actions –**  
**Specialties Statute of Limitations**  
**Before the Senate Judicial Proceedings Committee**  
**February 3, 2022**

Good afternoon Chair Smith, members of the Judicial Proceedings Committee.

Today I come before you to present SB0156. This legislation is intended to correct and check one aspect of the ruling of the Court of Appeals in the matter of *Cain v. Midland Funding, LLC*. 38–2020 (Md. Aug. 4, 2021). The decision is comprehensive and covers a lot of territory, however this bill concerns a limited issue created by the *Cain* holding: that actions on judgments may be brought by creditors for twelve years but judgment debtors only have three years to bring a claim. The Court concluded that the language is “ambiguous” and ultimately held:

the 12-year statute of limitations under CJ § 5-102(a)(3) is intended to apply to an action to enforce a judgment. Because the Petitioners are not seeking to enforce a judgment, but rather, are seeking money damages resulting from Midland's efforts to collect the judgment, CJ § 5-102(a)(3) does not apply and such claims are subject to the default three-year statute of limitations under CJ § 5-101.

There is no just or fair reason for the Court’s holding in *Cain* to apply the specialty statute of limitations in Courts and Judicial Proceedings § 5-102 to one party to a judgment and not to the other party to the judgment. A plain reading of the statute does not support the majority’s holding granting special relief for judgment creditors and not judgment debtors. The Court’s interpretation of the statute should not be attributed to the intent of the General Assembly which is prohibited by Maryland Constitution Article III, § 33<sup>1</sup> from passing such special legislation.

Since the Court believed the statute was ambiguous and likely misinterpreted this body’s intent, we have a responsibility, a constitutional duty, to address this and provide unambiguous language.

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<sup>1</sup> The General Assembly shall not pass local, or special Laws, in any of the following enumerated cases, viz.: For extending the time for the collection of taxes; granting divorces; changing the name of any person; providing for the sale of real estate, belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees; giving effect to informal, or invalid deeds or wills; refunding money paid into the State Treasury, or releasing persons from their debts, or obligations to the State, unless recommended by the Governor, or officers of the Treasury Department. And the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law. The General Assembly, at its first Session after the adoption of this Constitution, shall pass General Laws, providing for the cases enumerated in this section, which are not already adequately provided for, and for all other cases, where a General Law can be made applicable.

Senate Bill 156 is solely intended to provide unambiguous language that a creditor and debtor will both have the same length of time to resolve an action on or related to, or concerning a judgment.

I have had conversations with some concerned parties and I am providing an amendment to address some of the concerns raised since this bill was introduced; I have added an amendment clarifying that SB0156 applies to the judgment specialty and not the other specialties. I would also like to note that some opponents have expressed concern that this bill will impact the remaining aspects of the *Cain* case that are before the Circuit Court for Baltimore City. Those arguments are without merit in that the Court of Appeals held the plaintiffs in *Cain* could proceed individually on their claims.

For the aforementioned reasons, I ask that this committee provide SB156 a favorable report.

# **SB 156 - CPD - memo in support.pdf**

Uploaded by: Wilson Meeks

Position: FAV

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Attorney General

**ELIZABETH F. HARRIS**  
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February 3, 2022

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Wilson M. Meeks - Consumer Protection Division

Re: Senate Bill 156 – Civil Actions – Specialties – Statute of Limitations (SUPPORT)

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The Consumer Protection Division of the Office of the Attorney General supports Senate Bill 156, sponsored by Senator Sydnor. Senate Bill 156 would expand the application of the twelve-year statute of limitations period for actions on specialties (specialties are, to provide some examples, judgments, bonds, and certain promissory notes and contracts under seal).<sup>1</sup> The statutory twelve-year limitations period currently applies only to actions “on” specialties. The bill would amend the statute so that it also applies the twelve-year limitations period to all actions “related to, or concerning” specialties.

The intent of Senate Bill 156 is to address the interpretation of Section 5-102 of the Judicial Proceedings Article in a recent Maryland Court of Appeals decision, *Cain v. Midland Funding, LLC*, 475 Md. 4, 256 A.3d 765 (2021), holding that the statute, as currently written, applies the twelve year limitations period only to actions seeking to “enforce rights granted by a specialty.”<sup>2</sup> The unfair result of this holding is that, while actions filed by judgment creditors to enforce judgments can be filed within twelve years, actions by the judgment debtor seeking damages from the enforcement of an unlawfully obtained judgment are subject to Maryland’s default three-year statute of limitations.<sup>3</sup>

The Division is particularly concerned with this imbalance as it pertains to judgments against consumers, including consumer debtors like credit card users or auto loan borrowers. The reality is that Maryland courts are flooded with lawsuits by debt collectors against consumer debtors, the vast majority of which are resolved via default judgment without the active participation of the debtors. Reports indicate that such default judgments are often against the poor, that default often

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<sup>1</sup> See Md. Code Ann., Cts. & Jud. Proc. § 5-102.

<sup>2</sup> *Cain v. Midland Funding, LLC*, 475 Md. 4, 256 A.3d 765, 787 (2021).

<sup>3</sup> See Md. Code Ann., Cts. & Jud. Proc. § 5-101.

occurs because debtors are unaware of or do not understand the proceedings, do not know their rights, or do not have time or resources to mount a defense, and that the judgments can have a disastrous impact on debtors' lives.<sup>4</sup> It is also reportedly common for default judgments to be based on lawsuits rife with errors and compliance issues that can go undiscovered until "long after the debt buyers have already won court judgments against alleged debtors," issues that likely result from the typical process under which debt collectors purchase debt from original creditors in bulk, for pennies on the dollar, then make mass legal filings based on incomplete or erroneous information.<sup>5</sup> As a result, many consumers may be unaware of the judgments entered against them until they are enforced. Yet, under the statute of limitations as interpreted by the Court's majority, debt collectors have twelve years to enforce judgments against debtors, while debtors unfairly lose the ability to recover damages from potentially problematic and unlawful judgments if they don't file a claim within three years.

The facts of *Cain v. Midland* provide a concrete example of how this imbalanced system can be inequitable. There, Midland Funding LLC obtained judgments against thousands of Maryland debtors, even though it had no legal right to file any of the underlying lawsuits because it was not licensed as debt collector in Maryland.<sup>6</sup> Under the Court of Appeals' decision, Midland has twelve years to enforce those thousands of unlawfully obtained judgments, while consumers are prevented from seeking return of their payments on, or any other damages from the judgments unless they filed claims within three years of the judgment or when the consumers first made a payment on the judgment.<sup>7</sup> (Exacerbating this unfairness, the Court of Appeals also rejected the argument that the limitations period reset each time the consumer was obligated to pay on Midland's unlawfully obtained judgments).<sup>8</sup>

The Division supports Senate Bill 156 because it would remedy this kind of unfair one sidedness, allowing an equal twelve years for filing causes of action enforcing or challenging specialties, including ones seeking to recover damages on specialties, placing debt collectors and judgment debtors on more equal footing, and respectfully requests that the Judicial Proceedings Committee issue a favorable report.

cc: The Honorable Charles Sydnor  
Members, Judicial Proceedings Committee

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<sup>4</sup> See The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts*, at 16 (May 6, 2020); Peter A. Holland, "Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers," *Loyola Consumer Law Review* 26, 186 (2014).

<sup>5</sup> See Human rights Watch, *Rubber Stamp Justice, US Courts, Debt Buying Corporations, and the Poor*, at 32-50 (January 20, 2016) ([www.hrw.org/sites/default/files/report\\_pdf/us0116\\_web.pdf](http://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf)); Consumer Financial Protection Bureau, press release, *CFPB Settles Lawsuit with Debt Collectors and Debt Buyers Encore Capital Group, Midland Funding, Midland Credit Management, and Asset Acceptance Capital Corp.* (Oct. 15, 2020) (announcing settlement of claims against national debt collectors and buyers for, among other things, "suing consumers without possessing" account documentation and for time-barred debts) ([www.consumerfinance.gov/about-us/newsroom/cfpb-sues-debt-collectors-and-debt-buyers-encore-capital-group-et-al/](http://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-debt-collectors-and-debt-buyers-encore-capital-group-et-al/)).

<sup>6</sup> See *Cain v. Midland*, 256 A.3d at 776-77.

<sup>7</sup> See *Cain v. Midland*, 256 A.3d at 783, 791.

<sup>8</sup> See *Cain v. Midland*, 256 A.3d at 792.

# **Consumer Law Center Support for SB 156.pdf**

Uploaded by: Phillip Robinson

Position: FWA

# CONSUMER LAW CENTER LLC

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To: Senate Judicial Proceedings Committee  
From: Phillip Robinson  
Date: February 1, 2022  
Subject: **STATEMENT IN SUPPORT TO SB 156**

**ON BEHALF OF THE CONSUMERS THROUGHOUT THE STATE OF MARYLAND WHO ARE VICTIMS OF THE UNFAIR AND DECEPTIVE CONDUCT IN CIVIL LITIGATION, I SUPPORT SB 156 AND ENCOURAGE THE COMMITTEE TO SUPPORT THE LEGISLATION WITH THE SPONSOR'S AMENDMENT.**

This legislation is intended to reverse a limited aspect of the holdings of the Court of Appeals in *Cain v. Midland Funding, LLC.*, 38–2020 (Md. Aug. 4, 2021). In *Cain* the court found that the General Assembly intended for the specialty statute of limitations in Courts and Judicial Proceedings § 5-102(a)(3) related to judgments did not apply to all parties to the judgment but only applied to judgment creditors.

A plain reading of the statute simply does not support this conclusion. Instead, the plain language states that ‘an action on’ a ‘judgment’ ‘shall be filed within 12 years after the cause of action accrues.’

The Court’s holding in *Cain* addressed by SB 156 establishes that judgment creditors have twelve years to pursue an action on a judgment but judgment debtors only have three years to do the same pursuant to Courts and Judicial Proceedings § 5-101. With respect to the Court of Appeals, the General Assembly does not have the authority to pass special legalization to favor one party to a judgment because such legislation would be unconstitutional under Maryland Constitution, Article III § 33. Laws that confer a benefit, rather than a detriment, on a single party at the time of its enactment are not permitted. *See, e.g., Beauchamp v. Somerset Cnty. Sanitary Comm'n*, 256 Md. 541 (1970) (finding a law that benefits one party an unconstitutional special law).



In Maryland's constitutional framework, the General Assembly has the duty to check and balance its sister branches of government. SB 156 is intended to reverse and overrule a limited holding in *Cain* related to Courts and Judicial Proceedings § 5-102(a)(3) and apply it to all parties to the judgment and not just in favor of judgment creditors. **The bill would become effective October 1, 2022 and ensure that the negative consequences created by the Court of Appeals do not establish special status for one party to a judgment and not to others.** All parties to a judgment should have the same benefits.

**PLEASE VOTE FAVORABLE WITH AMENDMENT ON SB 156 AND ADOPT THE SPONSOR'S AMENDMENT.**

# **SB 156 Testimony.pdf**

Uploaded by: Scott Borison

Position: FWA

**BORISON FIRM, LLC**  
*A Consumers Rights Firm*

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To: Senate Judicial Proceedings Committee  
From: Scott C. Borison  
Date: February 1, 2022  
Subject: **STATEMENT IN SUPPORT OF SB 156**

**THIS TESTIMONY IS IN SUPPORT OF SB 156. THE BILL PROMOTES FAIRNESS TO ALL PARTIES TO THE SAME TRANSACTIONS. THE INTERPRETATION OF THE STATUTE BY THE COURT OF APPEALS CHANGES THE LAW FROM ONE APPLIED TO ALL PARTIES TO AN ACTION TO A LAW THAT FAVORS ONLY ONE SIDE OF THE TRANSACTION. I SUPPORT SB 156 AND ENCOURAGE THE COMMITTEE TO SUPPORT THE LEGISLATION WITH THE SPONSOR'S AMENDMENT.**

There is no preference for the application of the statute of limitations expressed in the language of Courts and Judicial Proceedings § 5-102 to favor one side of a transaction over the other. Instead, the language of the statute refers to actions not parties and begins stating:

(a) An action on one of the following specialties shall be filed within 12 years after the cause of action accrues ....

It continues to list the actions that the provision pertains to including:

(3) Judgment;

The law makes no reference to a particular party to the action but the Court of Appeals in *Cain v. Midland Funding, LLC.*, 38–2020 (Md. Aug. 4, 2021) determined that the law as written only provides a 12 year statute to creditors filing actions on judgments not consumers. As a result, creditors have twelve (12) years to enforce a judgment when consumers to the same transaction only have three (3) years to bring an action. Respectfully, the Court of Appeals decision adds a limitation to the statute that is not supported by the words of the statute and potentially turns the statute into a special law that favors one party to the same transaction over the other party to the transaction. This bill clarifies that such an interpretation is inconsistent with the statute by expressing rejecting the limitations on the statute made by the judiciary.

**FOR THESE REASONS, I ENCOURAGE THE COMMITTEE TO SUPPORT AND  
VOTE FAVORABLE ON SB 156.**

**Respectfully submitted,**

**/s/ Scott C. Borison**

**Borison Firm, LLC.**

# **SB0156 - JPR - UNF - MMBBA - Gough.pdf**

Uploaded by: DENNIS RASMUSSEN

Position: UNF



Testimony offered on behalf of:  
**MARYLAND MORTGAGE BANKERS & BROKERS ASSOCIATION, INC.**

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**IN OPPOSITION OF:**  
**SB0156 – Civil Actions – Specialties – Statute of Limitations**

**Judicial Proceedings Committee**  
**Hearing – 2/3/2022 at 1:00 PM**

The Maryland Mortgage Bankers and Brokers Association, Inc. (“MMBBA”)  
**OPPOSE SENATE BILL0156 for the following reasons:**

Senate Bill0156 would extend the statute of limitations from three years to 12 years for debtors to bring actions against lenders/debt collectors in connection with (or, in the words of SB 156, “related to or concerning”) loan documents that are under “seal” or deemed to be “specialties.” Lenders have the benefit of the extended 12-year statute of limitations for loan documents that are under “seal” or deemed to be “specialties,” but debtors currently do not.

SB0156, if enacted, would have the effect of reversing a decision of the Maryland Court of Appeals decided in August 2021 titled *Cain v. Midland Funding, LLC*. Midland Funding, LLC allegedly engaged in improper debt collection activities in connection with money judgments against the plaintiffs at a time when Midland was not licensed as a collection agency under Maryland law. The plaintiffs sued Midland claiming unjust enrichment and asserted statutory and disgorgement claims. The Court of Appeals held that the plaintiffs’ claims for monetary damages were barred by the three-year statute of limitations and that the plaintiffs were not entitled to the extended 12-year statute of limitations.

The basis for the MMBBA opposition is that statute of limitations is designed to prohibit stale claims from proceeding, and the legislature has historically crafted only a few exceptions from the general three-year rule. SB0156 would improperly expand the statute of limitations in an area that has already been judicially considered.

For these reasons, the MMBBA urges an **UNFAVORABLE REPORT on Senate Bill0156.**

Timothy J. Gough, Co-Chair, MMBBA Legislative Committee  
[tgough@baycapitalmortgage.com](mailto:tgough@baycapitalmortgage.com) - (410) 320-0852

# **RMAI UNFAVORABLE MD SB 156 2022 02 01.pdf**

Uploaded by: Donald Maurice

Position: UNF



## **TESTIMONY OF DON MAURICE OUTSIDE COUNSEL TO RMAI IN OPPOSITION TO SB 156**

### **Civil Actions – Specialties – Statute of Limitations**

**February 3, 2022**

My name is Don Maurice, and I am Outside Counsel to Receivables Management Association International. RMAI is a national nonprofit trade association representing over 590 businesses that purchase or support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our membership includes banks, nonbank lenders, debt buying companies, collection agencies, and collection law firms. RMAI respectfully opposes SB 156 because it brings uncertainty to the law, makes multiple limitations periods subject to the same cause of action, and is harmful to consumers and businesses alike.

Statutes of limitations serve two purposes. First, “to ensure fairness to defendants by encouraging promptness in bringing claims, thus avoiding problems that may stem from delay, such as loss of evidence, fading of memory, and disappearance of witnesses.”<sup>1</sup> Second, statutes of limitations are designed “to provide adequate time for diligent plaintiffs to file suit . . . and to serve societal purposes, including judicial economy.”<sup>2</sup>

The statute of limitations that is the subject of the bill, Md. Courts and Judicial Proceedings Code Ann. § 5-102, was first enacted in 1957. In the ensuing 54 years, decisional law from Maryland Courts as well as federal and other state courts have interpreted the statute. None have identified the statute’s failure to promote the two purposes outlined above.

The stated purpose behind the bill is to abrogate a recent decision by Maryland’s highest court interpreting § 5-102(a)(3) that sets the limit on how long a judgment can be enforced for reasons that are not made clear. That decision, however, did nothing to change how § 5-102(a)(3) has been interpreted. As the Court of Appeals noted, its “interpretation is consistent with our application of the statute in [Maryland] case law,” stretching as far back as 1883 interpreting prior iterations of the same statutory provision.<sup>3</sup>

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<sup>1</sup> *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 333, 635 A.2d 394 (1994).

<sup>2</sup> *Kumar v. Dhanda*, 426 Md. 185, 209, 43 A.3d 1029 (2012).

<sup>3</sup> *Cain v. Midland Funding, LLC*, 475 Md. 4, 43-44, 256 A.3d 765, 788 (2021), citing *Goodwin & Boone v. Choice Hotels Int’l, Inc.*, 346 Md. 153, 695 A.2d 168 (1997); *McMahan v. Dorchester Fertilizer Co.*, 184 Md. 155, 40 A.2d 313 (1944); *Johnson v. Foran*, 59 Md. 460, 461-63 (1883).



But SB 156 is not about enforcing judgments – instead, it is designed to undermine the two purposes of statutes of limitations: fairness to defendants and protecting diligent plaintiffs and societal interests.

For example, imagine a pedestrian who is seriously injured by a motor vehicle. The injured pedestrian suffers devastating trauma requiring continuing care for the rest of her life. She obtains a substantial judgment against the driver. The judgment is satisfied by executing on the driver's bank account allowing the injured pedestrian to secure her needed continuing care. Eleven years later, a relative of the driver appears, claiming the funds taken under the judgment were his and he sues the pedestrian for restitution. Today, that claim is subject to a three-year limitations period at most and would be dismissed. If SB 156 were enacted, it would allow the claim to continue in litigation. I don't imagine there will be many records or witnesses available 11 years later to allow the victim to easily defend against the claim. Bank records would be long gone and so would witnesses. The cost of defending an action with little documentary evidence or witness testimony would weigh heavily on our hypothetical victim and would likely influence her to settle.

And while this is an extreme example, it serves to underscore the path SB 156 is laying out. To be sure, SB 156 will shoehorn old, stale claims subject to shorter limitations periods into the longer limitations period applicable to enforcing judgment, merely because a judgment was involved. That is the absurd result which the Court of Appeals called out in *Cain* –

It would be illogical to apply a strained interpretation to the specialties statute and hold that a 12-year limitations period applies to claims under the [Maryland Consumer Protection Act] for unlicensed collection activities that result in the entry of a judgment, but only apply a three-year limitations period to claims for similar conduct that by happenstance, does not result in the entry of a judgment.<sup>4</sup>

SB 156 would destroy the finality of judgments. It would subject judgment holders – not just financial institutions, but victims of fraud, abuse, and mental and bodily injury – to the threat of distant litigation, merely because they sought to collect a judgment that was lawfully obtained. It is absurd and poses significant harm to everyone, except the plaintiffs' attorneys and bad actors who would handsomely benefit.

Thank you for your time. I would be happy to answer any questions.

# # #

For further information, contact David Reid, RMAI General Counsel, at [dreid@rmaintl.org](mailto:dreid@rmaintl.org) or (916) 482-2462 or Don Maurice, RMAI's outside counsel, at [dmaurice@mauricewutscher.com](mailto:dmaurice@mauricewutscher.com) or 908-237-4570.

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<sup>4</sup> *Cain v. Midland Funding, LLC*, 475 Md. 4, 48, 256 A.3d 765, 790 (2021).

#### ABOUT DON MAURICE

Don Maurice is a partner at Maurice Wutscher LLP, a law firm with offices throughout the United States. Don has practiced in consumer financial services law for over four decades. He is a fellow of the American College of Consumer Financial Services Lawyers, a fellow of the American Bar Foundation and serves on the Governing Committee of the Conference on Consumer Finance Law. He formerly chaired the Debt Collection Practices and Bankruptcy Subcommittee of the American Bar Association. He is admitted to the Bars of Massachusetts, New York, New Jersey, and the District of Columbia. He is editor of the Consumer Financial Services Blog ([cfsblog.com](http://cfsblog.com)).

# **SB0156\_2022\_MD Defense Counsel\_UNF.pdf**

Uploaded by: Gardner Duvall

Position: UNF



# MARYLAND DEFENSE COUNSEL, INC.

*Promoting justice. Providing solutions.*

## Senate Judicial Proceedings Committee

### SB 156 – Civil Actions – Specialties – Statute of Limitations

**Position: Unfavorable**

**February 3, 2022**

The Maryland Defense Counsel, Inc. (MDC) hereby submits their strong opposition to Senate Bill 156. Founded in 1962, MDC endeavors to attain equal justice for all, improve Maryland's courts and laws, and strengthen the defense of civil lawsuits through political activism, judicial candidate interviews, and educational conferences. With a focus on promoting the efficiency of the legal profession in dealing with common problems facing civil litigants, this statewide defense organization performed a "watchdog" role up until 1987 by monitoring legislation and addressing issues of concern to the defense bar. In more recent decades, MDC has funded a PAC and worked with a lobbyist to promote defense interests in the state legislature on behalf of its now 400 members.

In 2021, the Court of Appeals in *Cain v. Midland Funding, LLC*, 475 Md. 4, 256 A.3d 765 (2021), affirmed that the statute of limitations for certain common law claims and statutory consumer claims brought by judgment debtors relating to a judgment is three years, consistent with the legislative judgment reflected in Md. Code Ann., Cts. & Jud Proc. ("CJP"), § 5-101 and the well-established legal precedent interpreting same. The Court also affirmed the long line of cases holding that the statute of limitations to enforce a judgment is 12 years under CJP § 5-102(a)(3). SB 156 seeks to upend these time-honored principles and allow a plaintiff to have 12 years to file any type of claim so long as it is "relating to or concerning" a judgment.

As discussed in *Cain*, the Legislature has already determined that there are strong policy reasons for maintaining a three-year statute of limitations for claims in Maryland. A longer timeframe risks memories fading, witnesses moving, and evidence being disposed of due to standard retention policies. Three years is sufficient time for a plaintiff to find counsel, investigate a claim, and gather evidence. In addition, disputes must end and parties move on; in the vast majority of civil matters, there is no need to drag out for over a decade the possibility of becoming a defendant.

The 12-year statute of limitations period for specialties is a very limited provision. *Cain* held that the 12-year limitations period applies to *enforcing* judgments, but not to any action related to or concerning a judgment. The 12-year limitations period is necessary because judgments in Maryland are valid for 12 years. *See* Md. R. 2-625 ("A money judgment expires 12 years from the date of entry or most recent renewal."). The 12-year period is intended to assist debtors, as it "gives a judgment debtor some breathing room to pay debts over time...." *Cain*, 256 A.2d at 789.

The subject legislation appears to seek parity between judgment debtors and judgment creditors, but parity already exists with regard to the limitations period. Under current law, the

statute of limitations for most civil claims in Maryland is three years (CJP § 5-101), and both creditors and debtors have three years to bring their claims. Judgments, on the other hand, are treated differently under the 12-year limitations period for specialties (CJP § 5-102(a)), because there is a fundamental difference between a judgment and a cause of action. A judgment has been validated by a judge or jury and is no longer a mere claim. The time to bring a cause of action is different from the time to enforce a judgment, so it would make little sense to apply the 12-year time to enforce a judgment to the time in which a party may bring a claim.

Given the fundamental difference between claims and enforcement of judgments, it makes no sense to suddenly and arbitrarily expand the statute of limitations for any and all types of judgment-related claims to 12 years. **But that is exactly what SB 156 seeks to do.**

The Court of Appeals in *Cain* unanimously affirmed that the statute of limitations for certain common law and statutory claims brought by a judgment debtor related to or concerning a judgment is three years. The Maryland Defense Counsel urges the Committee to honor the well-researched, well-written ruling in *Cain* and to oppose SB 156.

For additional information, please contact:  
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# **2022-01-31 General Assembly PDF Final (03886773xA0**

Uploaded by: James Ulwick

Position: UNF

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February 1, 2022

Chairman William C. Smith, Jr.  
Senate Judicial Proceedings Committee  
2 E. Miller Senate Office Building  
Annapolis, Maryland 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:

I am a Maryland attorney, and have practiced here for more than 40 years. I represent Encore Capital Group and its wholly owned subsidiaries, including Midland Credit Management and Midland Funding (collectively “Encore”). I write on Encore’s behalf, and in conjunction with the written testimony of Ms. Gibson. I respectfully ask that you allow me to supplement Ms. Gibson's letter with my legal analysis. For all of the reasons stated below, I suggest that the Committee should not approve the proposed Bill.

SB 156 would extend the statute of limitations for claims relating to or concerning a judgment, from three to 12 years. This is an extraordinary change in the law, without precedent in the history of this State.

The first statute setting limitations on actions in Maryland was originally passed in 1715. It adopted the English statute of limitations - set in 1623 - in most respects. The primary difference was that the English statute provided for five years to bring an action, while the Maryland statute set three years as the appropriate time period. *See, Maryland Statutes of Limitation – McMahon v. Dorchester Fertilizing Co., Maryland Law Review, Volume Eight, Issue Four at pages 296–297.*

This three-year statute of limitations has been codified many times. The current version has long been found in the Courts and Judicial Proceedings Article at Section 5–101. It provides a general catch-all period of limitation:

“A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.”

The statute of limitations reflects a legislative judgment of what is deemed an adequate period of time within which a person of ordinary diligence should bring her action. *Walco Corporation v. Burger Chef Syst.*, 281 Md. 207 (1977). The statute of limitation strikes a balance between protecting the interest of a plaintiff that pursues her claim diligently, while allowing repose to a potential defendant. *Doe v. Archdiocese of Washington*, 114 Md. App. 169 (1997). For hundreds of years, the General Assembly has considered three years a sufficient amount of time for a diligent plaintiff to marshal her evidence, consult counsel and bring her claim. The three-year period of limitations applies to plaintiffs in many different circumstances, including many plaintiffs who may be severely injured or damaged. For example, the three-year statute of limitation applies to persons who have suffered grievous personal injuries, who have been injured by defective products, who have been defrauded, or whose contract has been breached.

As the Court of Appeals has explained on many occasions, although the statute of limitations should allow plaintiffs sufficient time to research, develop and file their claims, a competing consideration is that there must be fairness and finality for defendants. That is, there comes a time when a defendant ought to be secure in her reasonable expectation that the slate has been wiped clean of ancient obligations, and she ought not to be called on to resist a claim when evidence has been lost, memories have faded, and witnesses have disappeared. *Doughty v. Prettyman*, 219 Md. 83 (1959); *Feldman v. Granger*, 255 Md. 288 (1969).

SB 156 would set aside this settled law and allow a plaintiff who claims to have been injured in connection with a judgment 12 years to bring her suit. There is no argument here that such a plaintiff could not bring her suit in the normal three-year period of limitations. Nor could there be, since every plaintiff who claims to be injured as a result of a judgment, is undoubtedly aware of her injury at or around the entry of the judgment. No judgment can be entered against a party unless that party has been served with a complaint, and given notice of its opportunity to defend. If that party claims that there was some illegal action that was taken that resulted in the judgment being entered against him or her, the ordinary three-year statute of limitation provides that party with more than enough time to consult a lawyer and bring the claim.

The proponents of SB 156 argue that a judgment creditor has 12 years to ***enforce her judgment***, and therefore a judgment debtor should have 12 years to ***bring a claim*** that relates to the judgment. The proponents say this is fairness, or parity. But the proponents of the bill mistakenly attempt to equate things that are not the same, and ignore the fact that parity already exists between creditors and debtors.

Creditors have three years to file a claim against any party that has defaulted on a debt. Similarly, any party who claims that it has been injured by another party obtaining judgment against it, has three years to bring that claim. The key here is that the three-year period applies equally to all ***claims***: ***claims*** brought for alleged defaults, and ***claims*** brought for alleged violations of the Consumer Protection Act or the Maryland Debt Collection Practices Act.



However, once a claim has been turned into a judgment, enforcement of that judgment is governed by a different statute of limitations. Since 1715, Maryland has granted judgment creditors 12 years to enforce their judgments. Thus, a judgment has long been considered to be a “specialty” and subject to a different period of limitations. Like the ordinary statute of limitations, the statute of limitations for specialties has been codified multiple times. It is found today in Section 5-102 of the Courts and Judicial Proceedings Article. It provides that an action on one of a number of identified specialties shall be filed within 12 years after the cause of action accrues or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner. One of the identified specialties is “judgment.”

*A judgment differs from a claim in significant ways.* A claim is a mere allegation. It must be supported by sufficient proof, and it does not grant its proponent any rights other than the right to bring his or her case. A judgment, on the other hand, constitutes a decision or a verdict by a court of proper jurisdiction that the claim is valid and it sets the amount of damages to be paid for that claim. Thus, claims and judgments are by no means interchangeable. A judgment represents a claim that has been validated by a court.

Because judgments and claims are different, they have different limitation periods associated with them. The ordinary three-year statute limitation applies to claims, and governs when a claim may be brought. The specialties limitation period for judgments has for a very long time been set at 12 years, because that is the period within which the judgment may be enforced, unless it is extended. As the Court of Appeals noted in *Cain v. Midland Funding*, this period of time has benefits for both judgment debtors and judgment creditors. Judgment creditors are given a longer period of time to enforce the judgment, which allows some “breathing room” for judgment creditors.

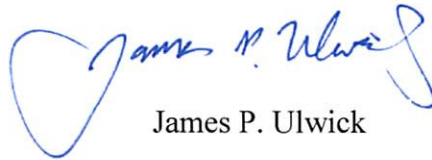
Most important, the judgment replaces the claim brought by the plaintiff. That party no longer needs to preserve its evidence; the judgment stands as its right to collect, and no further proof is required. Consequently, judgment creditors have no obligation to preserve evidence any longer, and frequently will not do so. The bill proposed here will alter that careful balance significantly to the detriment of judgment creditors. If a judgment debtor is given 12 years to bring its claim about deficiencies in the judgment, most judgment creditors will not have preserved their evidence or defenses to that claim. Like any other defendant, judgment creditors are entitled to repose, and there is no basis for arguing that these plaintiffs need more than the ordinary period of time within which to bring their claims.

Thus, it is wrong to equate the amount of time necessary to bring a claim, with the amount of time allowed to enforce a judgment. Claims (and defenses) require proof, and proof can become unavailable because of the passage of time. A judgment, on the other hand, requires no proof; it stands by itself as a declaration of a court that the claim was valid. It is a mistake therefore to equate the two, and the proponents of the bill are in error when they argue that the time period to bring a claim about a judgment should be the same as the time period to enforce a judgment.

Chairman William C. Smith, Jr.  
Senate Judicial Proceedings Committee  
February 1, 2022  
Page 4

As detailed in Ms. Gibson's letter, with which I agree, there are many additional reasons why the Committee should reject this bill. But, I believe the principal reason the bill should be rejected is that it is based on a faulty premise that the time period for judgment debtors to bring their claims should be equated with the time period the General Assembly has long allowed for the enforcement of judgments.

Sincerely,

A handwritten signature in blue ink, reading "James P. Ulwick". The signature is stylized with a large, looping initial "J" and a long, sweeping underline.

James P. Ulwick

## **Maryland S.B. 156- Anne Thomas, Chief Compliance O**

Uploaded by: Marina Banje

Position: UNF



**Cavalry Portfolio Services, LLC**  
1 American Lane, Suite 220  
Greenwich, CT 06831  
(914) 742-4382

**To:** Senate Committee on Judicial Proceedings;  
Senator Will Smith, Chair  
Senator Jeff Waldstreicher, Vice Chair

**From:** Anne Thomas, Chief Compliance Officer, Cavalry Portfolio Services, LLC

**Re: Senate Bill 156 - Opposition**

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Respected Senator Will Smith, Senator Jeff Waldstreicher and respected members of the Senate Committee on Judicial Proceedings, my name is Anne Thomas and I am the Chief Compliance Officer of Cavalry Portfolio Services, LLC. On behalf of Cavalry Portfolio Services, LLC and its affiliates ("Cavalry"), thank you for allowing us this opportunity to offer comments in opposition to Senate Bill 156 ("S.B. 156").

Cavalry is an RMAi<sup>1</sup> Certified Professional Receivables Company located in Greenwich, Connecticut. Thru its work, Cavalry works with business partners and consumers located in Maryland and that is why we are providing these comments. Cavalry does not support bad actors in the collection of consumer debt. In the development and implementation of its own policies and procedures, Cavalry encourages open and honest dealing with consumers.

While Cavalry understands the legislature's efforts to ensure fair dealing between consumers, businesses and creditors, this bill could create unintended consequences that may ultimately harm Maryland consumers and so Cavalry respectfully opposes S.B. 156.

An unintended consequence of S.B. 156 is that it would increase litigation and be harmful to both consumers and businesses.

Cavalry like most creditors, views litigation and its associated high costs as a last resort where the creditor is unable to resolve the debt with the consumer through other means of collection. Currently, in Maryland, creditors and consumers have a 3-year statute of limitations period in which to file a lawsuit for breach of contract, violation of consumer protection laws, and various other similar causes of action.

As written, S.B. 156 would apply retroactively. By increasing the statute of limitations period from 3 years to 12 years for consumer claims, our industry will surely see a significant increase respect to with retroactive claims. In *Cain v. Midland Funding, LLC*, 475 Md. 4, 256 A.3d 765 (2021), the Maryland Court of Appeals ruled that a 12-year statute of limitations period that applies to categories of "specialties" such as enforcing a judgment, bond or promissory note does not also apply to judgment debtor claims merely related to or concerning a judgment. For judgment debtors, *Cain v. Midland Funding, LLC*

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<sup>1</sup> The Receivables Management Association International ("RMAi") is the nonprofit trade associate that represents companies that purchase performing and nonperforming receivables on the secondary market.



**Cavalry Portfolio Services, LLC**

1 American Lane, Suite 220

Greenwich, CT 06831

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held that their claims fall under the state's general 3-year statute of limitations period. S.B. 156's retrospective application will place increased burdens on the courts as consumer attorneys flood the courts with litigation. While bad actors could benefit, consumers and consumer-friendly businesses, such as Cavalry, could be harmed.

As written, S.B. 156 would apply the 12-year statute of limitations period to any actions on, related to or concerning judgments and other specialties. This change will result in a seemingly never-ending statute of limitations for any claim arising from post-judgment enforcement activity, because each post judgment action a creditor takes "relates to" the judgment and will basically restart the 12-year statute of limitations. The change will result in an increase of consumer litigation against creditors, only serving to enrich the trial attorneys creating the bill.

As drafted, we believe this legislation will bring unintended harm to consumers and unnecessary burdens placed on the business community. For all the reasons mentioned above, we strongly urge you to oppose S.B.156 as written.

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Cavalry appreciates your time in reviewing our concerns and recommendations. Please feel free to contact me at (914) 742-4382 to discuss further.

Thank you for your consideration,

A handwritten signature in cursive script that reads "Anne Thomas".

Anne Thomas

Chief Compliance Officer

Cavalry Portfolio Service, LLC

# **SB156\_EK\_unf.pdf**

Uploaded by: Orjanel Lewis

Position: UNF



**Memorandum in Opposition  
State of Maryland**

January 27, 2022

Senator Will Smith, Chair  
Senator Jeff Waldstreicher, Vice Chair  
Senate Committee on Judicial Proceedings  
Maryland Senate  
11 Bladen Street Room 2 East Wing  
Annapolis, MD 21401

Dear Senators Smith and Waldstreicher:

On behalf of PRA Group, Inc. and its wholly-owned subsidiaries (collectively, “PRA”), I am writing in **opposition** to Maryland Senate Bill 156 (referred to as “MD S 156”). While the rationale for the bill is understandable, as written, this bill may have an unintended negative impact to consumers and businesses.

PRA is a publicly-traded company that, through its subsidiaries, purchases portfolios of consumer receivables from major banks, and then partners with individuals as they repay their obligations, working toward financial recovery. We are a leader in the nonperforming loan industry and take our leadership obligations within our industry seriously. We work with consumers to resolve their obligations and typically offer a discount on the face value of the debt. In addition, we typically charge no interest or fees on debt we purchase domestically. PRA is also a willing participant to any action that combats predatory debt collection practices and those actions in harming both consumers and legitimate businesses.

Respectfully, PRA opposes MD S 156 as it will invite a flood of litigation and be harmful to both consumers and businesses. Current law provides both consumers and creditors with a three-year statute of limitations to sue. The statute of limitations for both consumers and creditors is three years across the board to file for breach of contract, violation of consumer protection laws, and a host of other similar causes of action. The 12-year statute of limitation applies narrowly to creditors enforcing judgments, because under the law, judgments are valid for 12 years. The longer 12-year statute of limitation is a protection for creditors to enforce judgments so long as they are valid. Similarly, there are separate protections under the law for consumers in the process—such as limitations on bank and wage garnishments.



This bill applies retroactively. By increasing the statute of limitations four-fold from three to 12 years for consumer claims, our industry will be flooded with retroactive claims from 2010-2019. This is retroactive legislation contra to the *Cain* holding, which provided that the 12-year statute of limitation applies only to creditor claims to enforce judgments, not consumer claims related to a judgment. Retroactive legislation is unjust as there is no fair chance of avoiding the wrong. Retroactive legislation will place increased burdens on the courts as consumer attorneys flood the courts with litigation. While bad actors could benefit, consumers and consumer-friendly business, such as PRA, could be harmed. Moreover, the integrity of the consumer credit system could be tarnished.

As written, any actions on, **RELATED TO OR CONCERNING** judgments and other specialties will be provided a 12-year statute of limitations. This change will result in a seemingly never-ending statute of limitations for any claim arising from post-judgment enforcement activity, because each post judgment action a creditor takes “relates to” the judgment and basically re-starts the 12-year statute of limitations. The change will result in an increase of consumer litigation against creditors, only serving to enrich the trial attorneys creating the bill. Increased litigation with consumers should not be the preferred public policy outcome of the bill.

As drafted, we believe this legislation will bring unintended harm to consumers and unnecessary burdens placed on the business community. For all the reasons mentioned above, we respectfully oppose passage of this legislation as it is currently drafted.

Thank you very much for your attention in this important matter. Please feel free to contact me directly for any further information.

Best regards,

Elizabeth A. Kersey  
Senior Vice President, Communications and Public Policy  
PRA Group  
150 Corporate Boulevard  
Norfolk, VA 23502  
[Elizabeth.Kersey@PRAGroup.com](mailto:Elizabeth.Kersey@PRAGroup.com)  
(757) 961-3525 (office)  
(757) 641-0558 (mobile)



## **2022 MDDCCUA - SB156 - Civil Actions - Specialties**

Uploaded by: Providence LLC

Position: UNF



Chair William C. Smith  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

**SB156 - Civil Actions - Specialties - Statute of Limitations**  
**Testimony on Behalf of MD|DC Credit Union Association**  
**Position: Oppose**

Chair Smith, Vice-Chair Waldstreicher, and Members of the Committee:

The MD|DC Credit Union Association, on behalf of the 70+ Credit Unions and their 2.2 million members that we represent in the State of Maryland, appreciates the opportunity to testify on this legislation. Credit Unions are member-owned, not-for-profit financial cooperatives whose mission is to educate and help members achieve financial well-being. **We respectfully oppose this bill.**

Our opposition to this bill stems solely from the legal principle of finality. When a credit union, or a third-party collector used by a credit union, enforces a judgment or takes action on a promissory note, we need to know that we can move on in a timely manner after resolution. Judge Booth, who sits on the Maryland Court of Appeals, in her opinion in *Cain v. Midland funding* (the holding of which this bill is directed to abrogate), provided a clear and detailed explanation of the principle of finality concerning this very statute. This holding and the underlying principles should be protected.

There is a difference in the statute of limitations for a judgment creditor enforcing a judgment against the debtor (12 years) and the ability of a judgment debtor to assert a claim against a judgment creditor for a matter arising out of the entry of a judgment (3 years). The argument is that this is unfair; however, the history and rationale behind this difference in limitation periods paints a different picture.

As the court found in *Cain v. Midland funding*:

"The language in the original specialties statute clearly contemplated a 12-year statute of limitations for actions on a judgment brought *against* a judgment debtor. There is nothing in the prior version of the statute that could be construed to establish a 12-year statute of limitations for a judgment debtor to assert a claim against a judgment creditor for a matter arising out of the entry of a judgment."<sup>1</sup>

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<sup>1</sup> *Cain v. Midland Funding, LLC*, 256 A.3d 765, 788 (Md. 2021)



Continuing, the court explains that the differentiation in the statute of limitations length was not an oversight by the legislature; this is settled law, affirmed by the Supreme Court.

"Our interpretation of the plain language of CJ § 5-102(a)(3) —as establishing a 12-year statute of limitations only to *enforce* a judgment and not establishing the same period to *challenge* a judgment—is consistent with principles of finality expressed by the Supreme Court and by this Court for over a century."<sup>2</sup>

The rationale is simple. The 12-year statute of limitations period for enforcement is meant to protect consumers.

"The competing construction—that the General Assembly would establish a longer limitations period only to *enforce* a judgment—is consistent with the general purpose of collection laws, which enable judgments to be paid over a longer time period thereby ensuring that payment is not unduly burdensome to a judgment debtor."<sup>3</sup>

The 3-year statute of limitation to challenge a judgment provides creditors a standard and reasonable timeline to move on after resolution. This, as referenced above, is the well-settled principle of finality.

"[i]t is most desirable of course that there should be an end to litigation, and a judgment is presumed to be a settlement of all matters in dispute in that particular case; and once entered, parties are no longer under the necessity of preserving the evidences upon which their claims rested."<sup>4</sup>

Thank you for your consideration. We appreciate the ability to voice our concerns and look forward to a continued partnership. Please do not hesitate to contact me at 443-325-0774 or [jbratsakis@mddccua.org](mailto:jbratsakis@mddccua.org), should you have any questions.

Sincerely,

John Bratsakis  
President/CEO  
MD|DC Credit Union Association  
8975 Guilford Rd., Suite 190  
Columbia, MD 21046

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<sup>2</sup> *Cain v. Midland Funding, LLC*, 256 A.3d 765, 788-89 (Md. 2021)

<sup>3</sup> *Cain v. Midland Funding, LLC*, 256 A.3d 765, 789-90 (Md. 2021)

<sup>4</sup> *Id.* (citing *Abell v. Simon*, 49 Md. 318, 324 (1878))

## **MD SB 156 Written Testimony (Encore Capital Group)**

Uploaded by: Sonia Gibson

Position: UNF



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*.<sup>1</sup> 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

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<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> To obtain a judgment against a consumer, under Maryland law there are significant document and data requirements.<sup>4</sup> 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.<sup>5</sup>

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

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

<sup>3</sup> Md. Code, Cts. & Jud. Proc. § 5-101.

<sup>4</sup> Md. R. Civ. P. Dist. Ct. 3-306, 3-308 and 3-509.

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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

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<sup>6</sup> NY Civil Practice Law & Rules § 214-i.

<sup>7</sup> NY Civil Practice Law & Rules § 211(b).

<sup>8</sup> 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...”<sup>9</sup> 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.

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<sup>9</sup> *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.”<sup>10</sup> 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.”<sup>11</sup>

### **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.

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<sup>10</sup> *Cain* at 794.

<sup>11</sup> 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 Rules<sup>12</sup> 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.

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



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Please do not hesitate to contact me at [Sonia.Gibson@encorecapitalgroup.com](mailto: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