

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 418
Judicial Proceedings

(Senator Frosh, *et al.*)

**Small Claims - Examination in Aid of Enforcement - Prohibition on Arrest or
Incarceration for Failure to Appear**

This bill prohibits an individual from being arrested or incarcerated for failure to respond to an order to appear in court (1) for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court or (2) to show cause why the individual should not be found in contempt for failure to appear in court for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court.

The bill applies to any order to appear or any show cause order for contempt for failure to appear in court for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court on or after the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures if the bill results in fewer incarcerations in Baltimore City for contempt of court in these cases.

Local Effect: Potential minimal decrease in local expenditures if the bill results in fewer incarcerations in local detention facilities for contempt of court in these cases.

Small Business Effect: None.

Analysis

Current Law: In the circuit courts or the District Court, a judgment creditor may file a request for examination in aid of enforcement of a money judgment no earlier than 30 days after the entry of a money judgment. Upon this request, the court where the money judgment was entered or recorded may issue an order requiring the appearance for examination under oath before a judge or examiner of (1) the judgment debtor or (2) any other person if the court is satisfied by affidavit or other proof that it is probable that the person has property of the judgment debtor, is indebted for a sum certain to the judgment debtor, or has knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The order must specify when, where, and before whom the examination will be held and that failure to appear may result in the person served being held in contempt. The order must be served upon the judgment debtor or other person in the manner provided in the Maryland Rules. The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

The order must be served on the defendant within 30 days of its issuance. According to the District Court, if the order has been properly served on the defendant and the defendant will not cooperate with attempts to discover his/her assets, the judgment creditor can file a request for a Show Cause Order. The order summons the defendant to court to explain why he/she should not be held in contempt. A judgment creditor can only request a Show Cause Order when the defendant has (1) ignored written interrogatories and an order from the judge compelling his/her answers or (2) failed to appear for an oral examination ordered by the court. If the defendant fails to appear in court for the Show Cause hearing, the judgment creditor is authorized to file an Attachment for Contempt. If the judge chooses to issue the attachment, the defendant is taken into custody by the sheriff's office and is brought before the court to explain his/her failure to appear. The defendant may be required to post a bond for his/her release, which is forfeited should the defendant fail to appear at the next hearing.

Under Maryland Rule 3-633, a judgment creditor in the District Court may obtain discovery to aid the enforcement of a money judgment by (1) use of interrogatories and (2) examination before a judge or examiner. The District Court may order a subsequent examination of a judgment debtor or other person by the same judgment creditor only for good cause shown.

The District Court has exclusive jurisdiction over a small claims action, which is a civil action for money in which the amount in controversy does not exceed \$5,000, exclusive of interest, costs, and attorney's fees. Pretrial discovery is not permitted in a small claims action and the rules of evidence do not apply. The court must conduct the trial of a small claims action in an informal manner.

Background: Though the term “debtors’ prison” is usually associated with Dickensian England, the concept is making a comeback in present day society. According to news reports, debt collectors have used sheriff’s deputies and the threat of jail to intimidate people into paying debts, for those who cannot pay, the worsening economy, combined with debt collection lawsuits, have resulted in individuals being incarcerated for contempt of court for failing to respond to court hearings or other court orders.

Additional Information

Prior Introductions: None.

Cross File: HB 597 (Delegate Clippinger) - Judiciary.

Information Source(s): Baltimore County, Yahoo! Finance/CBS Money Watch, District Court of Maryland website (www.courts.state.md.us/district/forms/civil/dccv060br.html), Public Justice Center, Department of Legislative Services

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