

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1253 (Delegate Dumais)
 Economic Matters

Business Regulation - Collection Agencies - Exemptions From Licensure

This bill expands an exemption from the requirement that a person be licensed to operate as a collection agency in the State. The bill exempts lawyers – and employees under the supervision of a lawyer – who are collecting debt for a client from the requirement to be licensed under the Maryland Collection Agency Licensing Act. As such, the requirement for licensure if the lawyer has an employee who is not a lawyer and is engaged primarily in debt solicitation, collection, or adjustment is repealed.

Fiscal Summary

State Effect: General fund licensing revenues decrease by \$72,800 in FY 2019 and by \$97,000 annually beginning in FY 2020 as fewer individuals are required to be licensed as debt collectors, as discussed below. Fine revenues decrease due to fewer licensing violations. Expenditures are likely not materially affected.

| (in dollars) | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
|--------------|------------|------------|------------|------------|------------|
| GF Revenue | (\$72,800) | (\$97,000) | (\$97,000) | (\$97,000) | (\$97,000) |
| Expenditure | 0 | 0 | 0 | 0 | 0 |
| Net Effect | (\$72,800) | (\$97,000) | (\$97,000) | (\$97,000) | (\$97,000) |

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: A lawyer who is collecting debt for a client is exempt from the Maryland Collection Agency Licensing Act, unless the lawyer has an employee who is (1) not a lawyer *and* (2) primarily engaged in soliciting debts for collection or primarily making contact with a debtor to collect or adjust a debt through a procedure identified with the operation of a collection agency.

Maryland Collection Agency Licensing Act, Generally

The Maryland Collection Agency Licensing Act requires a person to be licensed by the State Collection Agency Licensing Board (SCALB) whenever the person does business as a collection agency, generally defined as engaging, either directly or indirectly, in the business of (1) collecting a consumer claim; (2) collecting a consumer claim acquired when the claim was in default; (3) collecting a consumer claim using a name or other artifice that indicates that another party is attempting to collect a consumer claim; (4) using a system of forms that indicates that a person other than the owner is asserting a consumer claim; and (5) employing services to solicit a collection system to be used for collection of a consumer claim.

A “consumer claim” is defined as a claim for money owed or said to be owed by a resident of the State that arises from a transaction in which a private party sought credit, money, property, or services.

The Maryland Collection Agency Licensing Act does not apply to (1) banks; (2) federal or State credit unions; (3) mortgage lenders; (4) persons acting under an order of court; (5) certain real estate brokers or those acting on their behalf; (6) savings and loan associations; (7) title companies as to their escrow businesses; (8) trust companies; (9) certain lawyers collecting debt on behalf of a client; and (10) specified persons who are collecting debt on behalf of another person. In addition, the following persons are excluded from the license requirement: (1) a regular employee of a creditor while the employee is acting under the general direction and control of the creditor to collect a consumer claim that the creditor owns; and (2) a regular employee of a licensed collection agency while the employee is acting within the scope of employment.

An applicant for a license must submit an application under oath and pay a fee set by the board. (The fee is \$350 per year.) An applicant is also required to execute a \$5,000 surety bond for the benefit of any member of the public who has a loss or other damage as the result of a violation of the Maryland Collection Agency Licensing Act or the Maryland Consumer Debt Collection Act. The board may deny a license if an applicant fraudulently uses or attempts to obtain a license, or if the applicant or an associate has had a license revoked.

A person may not do business as a collection agency without a State license. A person who violates this law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 or imprisonment for up to six months or both.

Background:

State Collection Agency Licensing Board

SCALB is chaired by the Commissioner of Financial Regulation, exists within the Office of the Commissioner of Financial Regulation (OFR), and has statutory responsibility for the licensing of collection agencies operating in Maryland. The Governor, with the consent of the Senate, appoints the four-member board, consisting of two consumer representatives and two industry representatives. The commissioner serves as chairman. The board addresses written complaints, conducts hearings on alleged violations, mediates disputes, and issues orders requiring licensees to correct violations. The board also informs both licensees and the public about abusive debt collection practices.

Law Firms and Debt Collection in Maryland

OFR advises that some law firms engaged in debt collection activities have violated Maryland debt collection requirements in the past, resulting in harm to consumers in the State. OFR goes on to note that a number of activities related to debt collection are conducted by non-attorney employees (*e.g.*, telephone calls, dunning letters, foreclosure notices, etc.), and that licensing requirements have permitted OFR to seek redress for consumers who have been harmed.

State Revenues: According to OFR, there are nearly 1,800 debt collection licensees in the State. Of that total, 388 are attorneys or law firms. Assuming all of those 388 licensees meet the bill's exemption criteria, general fund revenues decrease by approximately \$97,000 annually. (Although the annual fee is \$350, a portion of that fee – \$100 – is retained by the Nationwide Multistate Licensing System and Registry and is not credited to the general fund.)

Because of the bill's October 1, 2018 effective date, however, some licensees who will otherwise be exempt must still register in fiscal 2019. Assuming that only three-fourths of the 388 licensees are affected by the bill in fiscal 2019, general fund revenues decrease by approximately \$72,750 in fiscal 2019 and then by the full \$97,000 annually beginning in fiscal 2020.

Revenues are likely to be further reduced as fewer fines are issued for failure to register as a collection agency. The magnitude of the reduction cannot be reliably estimated but is likely to be minimal.

Small Business Effect: The bill likely exempts over 20% of existing licensees from the requirement to register with SCALB. For those licensees that qualify as small businesses, the bill results in savings related to the licensing fee and surety bond requirement. Newly exempt licensees also realize time savings, as they are no longer subject to the annual licensing process.

Additional Comment: Senate Bill 6 and House Bill 187 of 2018 require licensing, investigation, and examination fees for various nondepository financial institutions – including collection agencies – to be deposited into the Nondepository Special Fund, rather than the general fund. Thus, if either Senate Bill 6 or House Bill 187 is enacted, Nondepository Special Fund revenues, rather than general fund revenues, are affected by this bill.

Additional Information

Prior Introductions: None.

Cross File: SB 68 (Senator Norman) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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md/kdm

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