

Law

Advocates fear side effects of ADR enforcement bill

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A bill standardizing the process of going to court to enforce an arbitration award contains a provision which could hurt victims of identity theft, consumer lawyers say.

House Bill 1330, sponsored by Del. Samuel I. "Sandy" Rosenberg, D-Baltimore, enacts a uniform \$25 filing fee to confirm an arbitration award in circuit court, which a proponent of the bill said is necessary because filing fees range from \$35 to \$115 depending on the county.

But some say another part of the bill will make it easier for a creditor to enforce an award that the consumer might never have known about.

"I think that slipped into the fine print of the bill is a ... provision which, as I understand it, could have really enormous legal implications," said F. Paul Bland Jr., a staff attorney with the Washington, D.C.-based consumer-rights firm Public Justice.

Rosenberg said he will try to examine consumer advocates' problems with the bill, amending it if necessary. He said it is possible that the proposed legislation would have consequences he did not intend.

"We're not trying to change the substantive law here," Rosenberg said. "We're trying to make consistent the post-arbitration procedures."

Currently, the losing party in arbitration has 90 days to file a motion to vacate or modify the arbitrator's decision, while the prevailing party has a year to petition a court to enforce it. The bill would require a court to enter the judgment if the losing party does not act within those first 90 days, Bland said.

That is a problem because many people, especially those whose names have been stolen by strangers who then rack up sky-high credit card bills, do not know when an arbitrator rules against them, Bland said. He said that notice of the award is sometimes sent to an outdated address, but that even when it ends up in the right hands, many people throw it away, thinking it is junk mail.

It is only when the creditor moves to enforce the judgment and they receive hand-delivered process service that many identity theft victims realize they are in trouble, said Jane Santoni of Williams & Santoni L.L.P. in Towson, who has represented this type of client. She said that's the only way a recent client of hers found out about a \$25,000 arbitration award against him for charges Santoni said an impostor incurred.

"In my client's case, it was the service that put him on notice, 'Oh my gosh, something's gone wrong here,'" Santoni said.

Bland said the bill is especially problematic because of what he believes are the underlying problems with contracts that require all disputes to go to arbitration. A study by his firm last year found that a leading arbitration company finds for the creditor in 94 percent of cases.

"I just think that this bill would grease the skids on a system that's already really unfair, where there's a lot of abuse already, and make it impossible in the cases where courts around the country have been putting a stop to this," Bland said.

Kenneth J. Breitbart, whose Baltimore firm Kenneth J. Breitbart & Associates P.A. handles debt cases for the creditors, proposed the bill to Rosenberg. He said it is an attempt to clean up the enforcement process so it reflects court systems' positive view of arbitration. Currently, moving to enroll a judgment can be as arduous as filing a lawsuit from scratch, he said.

"You might as well just file suit if they're going to make you do everything all over again," Breitbart said. "The old expression, 'sue the bastards,' that's the way you do it because it becomes cheaper and more effective."

He said that protecting identity theft victims is a worthy cause but that it does not have much to do with his bill.

"My answer to that is, it's something that needs its own remedy," Breitbart said. "Identity theft is its own problem. You don't abolish money because people rob banks to get money. This is a neutral statute.

"Yes, it is hard on people who lose an arbitration, and if it's somebody whose identity was stolen, it's something more for them to clean up, but it doesn't mean you should stick with an old remedy that doesn't work."

Breitbart said he did not draft the bill.

He testified in its favor at a hearing last month, using as support for his position a paper by a University of Baltimore School of Law student that advocates streamlining the enforcement process. No one testified against the bill; Bland said he was there to support another piece of legislation and did not know about H.B. 1330 until testimony on it began.

Bland and Sonya A. Smith-Valentine, a Greenbelt solo practitioner who handles debt cases, said that Rosenberg has a good record on consumer rights issues. They said they do not believe he understands the potential ramifications of his bill.

"This bill is going to be a nightmare and I don't think Del. Rosenberg really knows," Smith-Valentine said.

The bill has not yet come up for a vote by the House Judiciary Committee.