

SENATE BILL 725

D3

7lr0885

By: **Senators Smith, Benson, Conway, Currie, Feldman, Kagan, Kelley, King, Lee, Manno, Muse, Nathan–Pulliam, Pinsky, and Ramirez**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Discovery in Aid of Enforcement of Money Judgment – Body**
3 **Attachment**

4 FOR the purpose of prohibiting a court from issuing a body attachment for an individual
5 for failure to appear in court in response to a certain show cause order unless the
6 court makes certain findings; prohibiting money paid by an individual arrested on a
7 certain body attachment or another person on behalf of the individual to obtain the
8 individual's release on certain conditions from being applied to reduce the amount of
9 an outstanding money judgment or otherwise forfeited to the judgment creditor
10 unless the court makes certain findings; altering certain terminology; and generally
11 relating to enforcement of a money judgment.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 6–411
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2016 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Courts and Judicial Proceedings**

20 6–411.

21 (a) [An individual arrested] **THIS SECTION APPLIES TO A BODY ATTACHMENT**
22 for failure to appear in court to show cause why [the] AN individual should not be found in
23 contempt for failure to answer interrogatories or to appear for an examination in aid of
24 enforcement of a money judgment.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(B) A COURT MAY NOT ISSUE A BODY ATTACHMENT UNLESS THE COURT FINDS THAT:

(1) (I) THE INDIVIDUAL WAS ACTUALLY SERVED WITH THE SHOW CAUSE ORDER AND WILLFULLY FAILED TO APPEAR FOR THE SHOW CAUSE HEARING;

(II) A BODY ATTACHMENT IS A PROPORTIONATE RESPONSE TO THE INDIVIDUAL'S CONDUCT, TAKING INTO ACCOUNT THE AMOUNT OF THE JUDGMENT AND ANY INFORMATION KNOWN ABOUT THE ABILITY OF THE INDIVIDUAL TO SATISFY THE JUDGMENT; AND

(III) THE PRINCIPAL AMOUNT OF THE JUDGMENT, EXCLUDING INTEREST, COSTS, AND ATTORNEY'S FEES, EXCEEDS THE MONETARY LIMIT FOR A SMALL CLAIM ACTION UNDER § 4-405 OF THIS ARTICLE; OR

(2) THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT REQUIRE THE ISSUANCE OF A BODY ATTACHMENT.

(C) AN INDIVIDUAL ARRESTED ON A BODY ATTACHMENT shall be taken immediately:

(1) If the court is in session, before the court that issued the [order that resulted in the arrest] BODY ATTACHMENT; or

(2) If the court is not in session, before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the individual's appearance at the next session of the court that issued the [order that resulted in the arrest] BODY ATTACHMENT.

[(b)] (D) If a judicial officer determines that the individual should be released on other than personal recognizance without any additional conditions, the judicial officer shall impose on the individual the least onerous condition or combination of conditions that will reasonably ensure the appearance of the individual as required.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF AN INDIVIDUAL OR ANOTHER PERSON ON BEHALF OF AN INDIVIDUAL PAYS ANY MONEY TO OBTAIN THE INDIVIDUAL'S RELEASE ON CONDITIONS IMPOSED BY A JUDICIAL OFFICER UNDER SUBSECTION (D) OF THIS SECTION, THE MONEY:

(I) MAY NOT BE APPLIED TO REDUCE THE AMOUNT OF THE OUTSTANDING JUDGMENT OR OTHERWISE FORFEITED TO THE JUDGMENT CREDITOR; AND

1 **(II) SHALL BE RETURNED TO THE INDIVIDUAL OR OTHER**
2 **PERSON WHO PAID THE MONEY ON BEHALF OF THE INDIVIDUAL ON THE**
3 **APPEARANCE OF THE INDIVIDUAL BEFORE THE COURT THAT ISSUED THE BODY**
4 **ATTACHMENT.**

5 **(2) MONEY PAID BY AN INDIVIDUAL OR ANOTHER PERSON ON BEHALF**
6 **OF AN INDIVIDUAL TO OBTAIN THE INDIVIDUAL'S RELEASE ON CONDITIONS**
7 **IMPOSED BY A JUDICIAL OFFICER UNDER SUBSECTION (D) OF THIS SECTION MAY BE**
8 **APPLIED TO REDUCE THE AMOUNT OF THE OUTSTANDING JUDGMENT OR**
9 **OTHERWISE FORFEITED TO THE JUDGMENT CREDITOR IF THE COURT FINDS THAT:**

10 **(I) THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT REQUIRE**
11 **THAT THE MONEY BE APPLIED TO REDUCE THE AMOUNT OF THE OUTSTANDING**
12 **JUDGMENT OR OTHERWISE FORFEITED TO THE JUDGMENT CREDITOR; AND**

13 **(II) 1. THE MONEY BELONGED TO THE INDIVIDUAL OR**
14 **OTHER PERSON WHO PAID THE MONEY ON BEHALF OF THE INDIVIDUAL; AND**

15 **2. THE MONEY WAS NOT DERIVED FROM A SOURCE THAT**
16 **IS EXEMPT FROM EXECUTION ON A JUDGMENT, INCLUDING SOCIAL SECURITY**
17 **PAYMENTS.**

18 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
19 **October 1, 2017.**