



**House
Legislative
Analysis
Section**

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**GENERAL AMENDMENTS TO LAW
GOVERNING COLLECTION AGENCIES**

**House Bill 4983 (Substitute H-3)
First Analysis (10-24-95)**

**Sponsor: Rep. Kirk A. Profit
Committee: Commerce**

THE APPARENT PROBLEM:

The Occupational Code provides for the licensing and regulation of collection agencies, a responsibility previously performed by the former Department of Licensing and Regulation but assigned to the Department of Commerce after the DLR was abolished by executive order in 1991. The Collection Practices Board advises the department in developing administrative rules governing collection agencies and periodically reviews the act to ensure its provisions reflect current practices within the industry. At present, though the act regulates collection agencies headquartered both in and outside of the state, it does not differentiate between the two regarding certain requirements. For example, all collection agencies licensed to operate in the state must both maintain company records in Michigan and deposit money earned here in a Michigan-based financial institution, and are subject to occasional review of their operating practices by the department--requirements that pose an inconvenience for out-of-state licensees and increase the costs of doing business here. To reduce this regulatory burden, the board has recommended changes to make it easier for out-of-state collection agencies to do business here. Other language also has been requested to clarify the attorney-client relationship that applies to situations involving collection agencies and creditors. And finally, the Department of Commerce has requested eliminating certain unnecessary administrative paperwork involving collection agencies and repealing certain obsolete sections of the act.

THE CONTENT OF THE BILL:

The Occupational Code regulates collection agencies headquartered both in the state and outside of it, and requires them to meet certain criteria to operate in Michigan. The bill would amend the act to revise requirements regarding record-keeping, auditing, and the keeping of deposits, and other matters pertaining to the operation of collection agencies.

Record-keeping, audits. A collection agency currently must keep books and records of its business activities in

Michigan and provide copies of this information upon request to the Department of Commerce. The bill would require a licensee located in the state to maintain its books and records in Michigan, while one licensed to do business in Michigan that was headquartered in another state could maintain its books and records in either state. Except as specified in the bill, a licensee that chose to maintain its books and records in another state would have to pay the costs of a "compliance attestation report" (CAR) by the department, and the department would have to charge expenses according to standard travel regulations of the Department of Management and Budget. However, the department could allow a licensee that was located in another state to submit to a CAR instead of a department-performed audit, as long as it was conducted by a certified public accountant who was licensed in that state.

Depository accounts. At present, licensees must maintain a separate depository account in a bank or savings and loan association, and money collected must be deposited within three business days after its receipt. The bill would require a licensee located in Michigan to maintain a "trust" (rather than "depository") account in this state, whereas an out-of-state licensee could maintain a trust account either in a Michigan-based financial institution or in one located in the state where it was headquartered, provided the account was maintained only for money collected as a Michigan licensee. The bill also would clarify that such accounts could be maintained in a state or nationally chartered bank, savings and loan association, or credit union.

Other provisions. The act currently prohibits a licensee from exercising authority on behalf of a creditor to employ the service of an attorney unless this was authorized in writing by the creditor. The bill also would prohibit a licensee from retaining an attorney to collect a claim unless specifically authorized in writing by the creditor, and specifies that a licensee could act as an agent of the creditor in dealing with the attorney only if a creditor had specifically authorized this in writing.

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Penalties. A licensed collection agency that commits any of various prohibited activities is guilty of a misdemeanor and, for a first-time violation, can be fined up to \$500, jailed for up to 90 days, or both; subsequent violations can incur fines of up to \$1,000, up to a year in jail, or both. Under the bill, a licensee not located in the state that failed to pay the expenses of an audit conducted by the commerce department would be subject to these penalties. The bill would also delete from the list of prohibited activities the use of unapproved forms, or alteration of forms.

Repeals. The bill would repeal a section that creates a collection practices board, and a section dealing with submission of proof for meeting license application requirements.

MCL 339.104 et al.

FISCAL IMPLICATIONS:

The Department of Commerce says the bill would not affect state or local budget expenditures. (10-18-95)

ARGUMENTS:

For:

The bill would adopt many of the provisions recommended by the State Collection Practices Board regarding requirements that apply to collection agencies, particularly to those headquartered in other states. At present, the act requires all collection agencies to deposit money earned in Michigan into a Michigan-based financial institution; under the bill, such earnings could be deposited in a home-state financial institution, as long as the funds were kept separate from other earnings. The bill would make similar changes regarding the keeping of books and records, and would allow an out-of-state collection agency to provide to the Department of Commerce a "compliance attestation report," which is similar to an audit only not as expensive, enabling it to review the company's activities in this state. These changes should make it easier and less costly for out-of-state firms to do business in Michigan without compromising regulatory oversight of them. Other general amendments contained in the bill would clarify the attorney-client relationship in legal matters involving collection agencies and creditors, eliminate a provision making it a violation to submit to the department unapproved forms (which the department says only increases the amount of paperwork it is required to perform), and repeal two obsolete sections of the act.

Response:

The bill would repeal a section that created the Collections Practices Board, which advises the Department of Commerce on regulatory matters and developing administrative rules relative to collection agencies. Repealing this section would abolish the board and the important advisory role it provides. According to a spokeswoman for the department, the repeal language was added to the bill inadvertently, and should be deleted.

POSITIONS:

The Michigan Association of Collection Agencies supports the bill. (10-18-95)

The Department of Commerce has not yet taken a formal position on the bill. (10-23-95)