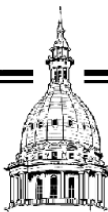




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

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House Bill 4983 (Substitute H-3 as passed by the House)

Sponsor: Representative Kirk A. Profit

House Committee: Commerce

Senate Committee: Financial Services

Date Completed: 2-13-96

CONTENT

The bill would amend the Occupational Code, with regard to collection agencies, to revise requirements pertaining to deposit accounts, record-keeping and audits, and employing an attorney on behalf of a creditor.

Deposit Accounts

The Code requires a collection agency to maintain a separate "depository" account in a bank or savings and loan association within Michigan, in which all money collected under the Code by the collection agency must be deposited within three banking days after receipt. The bill, instead, would require that the money be deposited in a "trust" account established in one of the following institutions:

- A state- or nationally chartered bank.
- A state- or Federally chartered savings and loan association or savings bank.
- A state- or Federally chartered credit union.

A collection agency located in Michigan would have to maintain its trust account in Michigan. A collection agency located in another state could maintain its trust account in Michigan or in the state in which the agency was located, provided that the account was maintained solely for money collected under the Code. (The three-day deposit requirement still would apply.)

Record-Keeping and Audits

The Code requires that a collection agency preserve its books, accounts, and records within Michigan. The bill would delete the requirement that they be maintained in this State. Instead, the bill would require that a collection agency located in Michigan maintain its books and records in Michigan. A collection agency that was licensed to do business in Michigan, but was located in another state could maintain its books and records either in Michigan or in the state in which it was located.

A collection agency that chose to maintain its books and records in another state would have to pay the expenses of a compliance attestation report (or audit) by the Department of Commerce. The Department would have to charge expenses in accordance with the standardized travel regulations of the Department of Management and Budget. As an alternative to a Department of Commerce

audit, the Department could permit an out-of-state collection agency to submit to an audit conducted by a certified public accountant who was licensed in the state in which the agency was located.

The Code lists several actions that are subject to penalties under the Code. Those penalties include one or more of the following:

- Placement of a limitation on a license or certificate of registration for an occupation regulated under the Code.
- Suspension of a license or certificate of registration.
- Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- Revocation of a license or certificate of registration.
- A civil fine to be paid to the Department of Commerce, not to exceed \$10,000.
- Censure.
- Probation.
- A requirement that restitution be made.

The bill would add to the list of actions subject to the penalties listed above failure to pay the expense of an audit conducted by the Department of Commerce, if the licensee were not located in Michigan.

Employing An Attorney

The Code prohibits a collection agency from exercising authority on behalf of a creditor to employ the service of an attorney unless the creditor has specifically authorized the collection agency, in writing, to do so. The bill, instead, would prohibit a collection agency from employing or retaining an attorney to collect on a claim, and provides that a licensee could exercise authority on behalf of creditor to employ the service of an attorney, if the creditor gave specific written permission. The bill also provides that the licensee could act as agent of the creditor in dealing with an attorney only if the creditor had specifically authorized the licensee, in writing, to do so.

Repeal

The bill would repeal a section of the Code that specifies that having been engaged in the business of a collection agency for three years immediately preceding July 1, 1975, is prima facie proof for meeting licensure requirements (MCL 339.914).

MCL 339.104 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Barsch

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.