

Act No. 151  
Public Acts of 1996  
Approved by the Governor  
March 24, 1996  
Filed with the Secretary of State  
March 25, 1996

**STATE OF MICHIGAN**  
**88TH LEGISLATURE**  
**REGULAR SESSION OF 1996**

Introduced by Reps. Profit, Randall and Middaugh

# **ENROLLED HOUSE BILL No. 4983**

AN ACT to amend sections 104, 909, 910, 912, 915a, and 917 of Act No. 299 of the Public Acts of 1980, entitled as amended "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," sections 909, 910, and 915a as amended and section 917 as added by Act No. 83 of the Public Acts of 1981, being sections 339.104, 339.909, 339.910, 339.912, 339.915a, and 339.917 of the Michigan Compiled Laws; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Section 1. Sections 104, 909, 910, 912, 915a, and 917 of Act No. 299 of the Public Acts of 1980, sections 909, 910, and 915a as amended and section 917 as added by Act No. 83 of the Public Acts of 1981, being sections 339.104, 339.909, 339.910, 339.912, 339.915a, and 339.917 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 104. (1) "Department" means the department of commerce.

(2) "Director" means the director of the department of commerce or an authorized representative of the director of the department of commerce.

(3) "Disability" means an infirmity that prevents a board member from performing a duty assigned to the board member.

(4) "Files" means the records, memoranda, opinions, minutes, and similar written materials that were formerly in the physical dominion of a board abolished by this act and the records, memoranda, opinions, minutes, and similar written materials of a board created under this act.

(5) "Formal complaint" means a document that states the charges of each alleged violation and is prepared by the department or the department of attorney general after a complaint has been received by the department.

(6) "General public" means each individual residing in this state who is 18 years of age or older, other than a person or the spouse of a person who is licensed or registered in the occupation or who has a material financial interest in the occupation being regulated by the specific article in which the term is used.

(7) "Good moral character" means good moral character as defined in section 1 of Act No. 381 of the Public Acts of 1974, being section 338.41 of the Michigan Compiled Laws.

(8) "Incompetence" means a departure from, or a failure to conform to, minimal standards of acceptable practice for the occupation.

(9) "Knowledge and skill" means the information, education, practical experience, and the facility in applying that information, education, and practical experience.

Sec. 909. (1) A collection agency shall maintain a separate trust account in which all money collected under this article by the collection agency shall be deposited within 3 banking days after receipt. The trust account shall be established in 1 of the following institutions:

- (a) A state or nationally chartered bank.
- (b) A state or federally chartered savings and loan association or savings bank.
- (c) A state or federally chartered credit union.

(2) A collection agency that is located in this state shall maintain its trust account in this state. A collection agency that is located in any other state may maintain its trust account in this state or in the state in which the collection agency is located provided that the account is maintained solely for money collected under this article.

(3) The trust account shall be identified and distinguished from the collection agency's personal or general checking or other depository account and shall be designated as a trust account. The trust account shall always contain sufficient funds to pay money due or owing to the client less money owed to the licensee by the client. Except as provided in this section, a disbursement may not be made from the account except to a client for money owed to the client or to pay costs advanced for a client. Periodically, the collection agency may withdraw from the trust account money that has accrued to the collection agency from a collection deposited or from an adjustment resulting from costs advanced and payments made directly to clients.

Sec. 910. (1) A collection agency shall keep and use books, accounts, or records that the department requires to determine whether the collection agency is complying with this article and the rules promulgated under this article. These books, accounts, and records shall consist of at least, but not be limited to, all of the following:

(a) Permanent records that show the chronological sequence in which funds are received and disbursed. For funds received, the record shall include the date of receipt and deposit, the number of the account to which deposited, the name of the debtor, the name of the principal, and the amount. For disbursements, the record shall include the date, the payee, the check number, and the amount, with a corresponding debtor reference.

(b) Each agency licensee shall:

(i) Maintain records or books of accounts that set forth the account of each client in alphabetical order according to the names of the clients. If the licensee's books of accounting are kept in numerical order, then the licensee shall maintain an alphabetical cross index of each client corresponding with the number of the account. Each account shall reflect the true condition of each debtor's account at the end of each calendar month and shall include all of the following:

- (A) The name and address of the client.
- (B) The name of the debtor or debtors from whom collection was or is being made.
- (C) The amount and description of each debit and each credit and date of each debit and credit.
- (D) The balance due to or owing from each client.

(ii) Maintain a record and history of each claim or account for collection that shall clearly show all of the following:

- (A) The name of the debtor.
- (B) The principal amount of the obligation.

(C) Any other or additional amounts or items charged or collected with a description of amounts or items charged or collected.

(D) Each payment received or collected and the date of receipt or collection.

(E) The balance owing.

(c) All receipts issued shall be signed by and with the name or initials of the person issuing the receipt and shall show the name of the issuing agency.

(2) A collection agency shall preserve the books, accounts, and records and make them or true copies of them accessible to the department for at least 3 years after making the final payment entry on an account recorded in those books, accounts, and records.

(3) Annually before May 16 a collection agency shall file a report with the department giving relevant information that the department requires concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the collection agency. The report shall be made under oath and in the form prescribed by the department.

(4) The department may require a collection agency to file a sworn financial report of the trust account required to be maintained by the collection agency and may designate the information to be contained in the report.

(5) Collection agency books, accounts, and records shall be audited by the department on a biennial basis or when determined necessary by the director.

(6) Information provided to the director under this section shall be exempted from disclosure except in actions commenced under this article.

(7) A collection agency that is located in this state shall maintain its books and records in this state. A collection agency that is licensed to do business in this state but is located in another state may maintain its books and records either in this state or in the state where it is located. Except as provided in subsection (8), a collection agency that chooses to maintain its books and records in another state shall pay the expenses of a compliance attestation report by the department. The department shall charge expenses in accordance with the standardized travel regulations of the department of management and budget.

(8) In place of a department audit, the department may permit a collection agency that is located in another state to submit to a compliance attestation report conducted by a certified public accountant who is licensed in the state in which the collection agency is located.

Sec. 912. An applicant for a collection agency manager's license shall take a written examination developed by the department to test the applicant's knowledge of the collection agency business, collection practices, customs and ethics, and the laws and rules relating to the operations of collection agencies.

Sec. 915a. A licensee shall not commit any of the following acts:

- (a) Listing the name of an attorney in a written or oral communication, collection letter, or publication.
- (b) Furnishing legal advice, or otherwise engaging in the practice of law, or representing that the person is competent to do so, or to institute a judicial proceeding on behalf of another.
- (c) Sharing quarters or office space, or having a common waiting room with a practicing attorney or a lender.
- (d) Employing or retaining an attorney to collect a claim. A licensee may exercise authority on behalf of a creditor to employ the service of an attorney if the creditor has specifically authorized the collection agency in writing to do so and the licensee's course of conduct is at all times consistent with a true relationship of attorney and client between the attorney and the creditor. After referral to an attorney, the creditor shall be the client of the attorney, and the licensee shall not represent the client in court. The licensee may act as an agent of the creditor in dealing with the attorney only if the creditor has specifically authorized the licensee to do so in writing.
- (e) Demanding or obtaining a share of the compensation for service performed by an attorney in collecting a claim or demand or collecting or receiving a fee or other compensation from a consumer for collecting a claim, other than a claim owing the creditor pursuant to the provisions of the original agreement between the creditor and debtor.
- (f) Soliciting, purchasing, or receiving an assignment of a claim for the sole purpose of instituting an action on the claim in a court.
- (g) Advertising or threatening to advertise for sale a claim as a means of forcing payment of the claim, unless the collection agency is acting as the assignee for the benefit of creditors or acting under an order of a court.
- (h) Failing to deposit money collected into the trust account required to be maintained under this article.
- (i) Commingling money collected for a client with the collection agency's own general or operating funds.
- (j) Using a part of a client's money in the conduct of a collection agency's business.
- (k) Refusing or intentionally failing to remit to a client all money collected, due, and owing the client less any commission owed to the licensee within 45 days after the day on which the money was collected.
- (l) Failing to give a debtor a written receipt for cash payment, or other payment when specifically requested, showing the amount of money received and the debt to which it was applied and the name of the specific account receiving the money.
- (m) Refusing or intentionally failing to return to a creditor all original documents deposited with the claim when the claim is returned, if requested. When requested by the creditor, there shall be a signed agreement between the agency and the creditor if any closing out fee is charged to the creditor for unpaid claims returned or collection activities discontinued.
- (n) Identifying the collection agency other than by the name appearing on the license.
- (o) Permitting an employee to use a name other than the employee's own name or the assumed name registered by the licensee with the department in the collection of a debt.
- (p) Operating under a name or in a manner that implies or states that the collection agency is a branch of, or associated with, or has been approved or licensed by, a department of federal, state, or local government, or that implies that the collection agency is a credit reporting agency regularly furnishing a credit report about consumers unless it is a credit reporting agency.

(q) Accepting a check or other payment instrument postdated by more than 5 days unless the debtor is notified in writing of the person's intent to deposit a postdated check or instrument not more than 10 nor less than 3 business days before the deposit.

(r) Depositing or threatening to deposit a postdated check or other postdated payment instrument before the date on the postdated check or instrument.

Sec. 917. A licensee who commits 1 or more of the following is subject to the strictures described in article 6:

- (a) Cancellation of a surety bond.
- (b) Failure to notify the director of any changes in corporate or partnership structure pursuant to section 906.
- (c) Failure to apply for a separate license for each place of business pursuant to section 904.
- (d) Commencing operation before issuance of a license pursuant to section 904.
- (e) Operation before the renewal of an expired license.
- (f) Failure to preserve and make accessible books, accounts, and records pursuant to section 910(2).
- (g) Failure to submit an annual report pursuant to section 910(3).
- (h) Failure to file a sworn financial report when required by the director pursuant to section 910(4).
- (i) Failure to allow an audit of books, accounts, and records on a biennial basis or when determined necessary by the director pursuant to section 910(5).
- (j) Failure to pay the expenses of an audit conducted by the department pursuant to section 910(7), if the licensee is not located in this state.
- (k) Violation of any federal or state act relating to debt collection.

Section 2. Section 914 of Act No. 299 of the Public Acts of 1980, being section 339.914 of the Michigan Compiled Laws, is repealed.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.