



HOUSE BILL No. 4983

June 16, 1995, Introduced by Reps. Profit, Randall and Middaugh and referred to the Committee on Commerce.

A bill to amend sections 104, 909, 910, 912, 915a, and 917 of Act No. 299 of the Public Acts of 1980, entitled as amended "Occupational code," 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:

1 Section 1. Sections 104, 909, 910, 912, 915a, and 917 of
2 Act No. 299 of the Public Acts of 1980, sections 909, 910, and
3 915a as amended and section 917 as added by Act No. 83 of the
4 Public Acts of 1981, being sections 339.104, 339.909, 339.910,
5 339.912, 339.915a, and 339.917 of the Michigan Compiled Laws, are
6 amended to read as follows:

1 Sec. 104. (1) "Department" means the department of
2 ~~licensing and regulation~~ COMMERCE.

3 (2) "Director" means the director of ~~licensing and~~
4 ~~regulation~~ THE DEPARTMENT OF COMMERCE or an authorized represen-
5 tative of the director of ~~licensing and regulation~~ THE DEPART-
6 MENT OF COMMERCE.

7 (3) "Disability" means an infirmity ~~which~~ THAT prevents a
8 board member from performing a duty assigned to the board
9 member.

10 (4) "Files" means the records, memoranda, opinions, minutes,
11 and similar written materials ~~which~~ THAT were formerly in the
12 physical dominion of a board abolished by this act and the
13 records, memoranda, opinions, minutes, and similar written mate-
14 rials of a board created under this act.

15 (5) "Formal complaint" means a document THAT STATES THE
16 CHARGES OF EACH ALLEGED VIOLATION AND IS prepared by the depart-
17 ment or the department of attorney general after a complaint has
18 been received by the department. ~~, which document states the~~
19 ~~charges of each alleged violation.~~

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

26 (7) "Good moral character" means good moral character as
27 defined in SECTION 1 OF Act No. 381 of the Public Acts of 1974,

1 ~~as amended,~~ being ~~sections~~ SECTION 338.41 ~~to 338.47~~ of the
2 Michigan Compiled Laws.

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

6 (9) "Knowledge and skill" means the information, education,
7 practical experience, and the facility in applying that informa-
8 tion, education, and practical experience.

9 Sec. 909. (1) A collection agency shall maintain a sepa-
10 rate depository account ~~in a bank or savings and loan associa-~~
11 ~~tion within this state~~ in which all money collected under this
12 article by the collection agency shall be deposited within 3
13 banking days after receipt. THE DEPOSITORY ACCOUNT SHALL BE
14 ESTABLISHED IN 1 OF THE FOLLOWING INSTITUTIONS:

15 (A) A STATE OR NATIONALLY CHARTERED BANK.

16 (B) A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIA-
17 TION OR SAVINGS BANK.

18 (C) A STATE OR FEDERALLY CHARTERED CREDIT UNION.

19 (D) AN ENTITY OF THE FEDERALLY CHARTERED FARM CREDIT
20 SYSTEM.

21 (2) A COLLECTION AGENCY THAT IS LOCATED IN THIS STATE SHALL
22 MAINTAIN ITS DEPOSITORY ACCOUNT IN THIS STATE. A COLLECTION
23 AGENCY THAT IS LOCATED IN ANY OTHER STATE MAY MAINTAIN ITS DEPOS-
24 ITORY ACCOUNT IN THIS STATE OR IN THE STATE IN WHICH THE COLLEC-
25 TION AGENCY IS LOCATED.

26 (3) The depository account shall be identified and
27 distinguished from the collection agency's personal or general

1 checking or other depository account and shall be designated as a
2 trust account. The trust account shall always contain sufficient
3 funds to pay money due or owing to the client less money owed to
4 the licensee by the client. Except as provided in this section,
5 a disbursement may not be made from the account except to a
6 client for money owed to the client or to pay costs advanced for
7 a client. Periodically, the collection agency may withdraw from
8 the trust account money ~~which~~ THAT has accrued to the collec-
9 tion agency from a collection deposited or from an adjustment
10 resulting from costs advanced and payments made directly to
11 clients.

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

18 (a) Permanent records ~~which~~ THAT show the chronological
19 sequence in which funds are received and disbursed. For funds
20 received, the record shall include the date of receipt and depos-
21 it, the number of the account to which deposited, the name of the
22 debtor, the name of the principal, and the amount. For disburse-
23 ments, the record shall include the date, the payee, the check
24 number, and the amount, with a corresponding debtor reference.

25 (b) Each agency licensee shall:

26 (i) Maintain records or books of accounts ~~setting~~ THAT
27 SET forth the account of each client in alphabetical order

1 according to the names of the clients. If the licensee's books
2 of accounting are kept in numerical order, then the licensee
3 shall maintain an alphabetical cross index of each client corre-
4 sponding with the number of the account. Each account shall
5 reflect the true condition of each debtor's account at the end of
6 each calendar month and shall include all of the following:

7 (A) The name and address of the client.

8 (B) The name of the debtor or debtors from whom collection
9 was or is being made.

10 (C) The amount and description of each debit and each credit
11 and date of each debit and credit.

12 (D) The balance due to or owing from each client.

13 (ii) Maintain a record and history of each claim or account
14 for collection ~~which~~ THAT shall clearly show all of the
15 following:

16 (A) The name of the debtor.

17 (B) The principal amount of the obligation.

18 (C) Any other or additional amounts or items charged or col-
19 lected with a description of amounts or items charged or
20 collected.

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

23 (E) The balance owing.

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

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

6 (3) Annually before May 16 a collection agency shall file a
7 report with the department giving relevant information ~~which~~
8 THAT the department requires concerning the business and opera-
9 tions during the preceding calendar year of each licensed place
10 of business conducted by the collection agency. The report shall
11 be made under oath and in the form prescribed by the department.

12 (4) The department may require a collection agency to file a
13 sworn financial report of the trust account required to be main-
14 tained by the collection agency and may designate the information
15 to be contained in the report.

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

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

22 (7) A COLLECTION AGENCY THAT IS LOCATED IN THIS STATE SHALL
23 MAINTAIN ITS BOOKS AND RECORDS IN THIS STATE. A COLLECTION
24 AGENCY THAT IS LICENSED TO DO BUSINESS IN THIS STATE BUT IS
25 LOCATED IN ANOTHER STATE MAY MAINTAIN ITS BOOKS AND RECORDS
26 EITHER IN THIS STATE OR IN THE STATE WHERE IT IS LOCATED. EXCEPT
27 AS PROVIDED IN SUBSECTION (8), A COLLECTION AGENCY THAT CHOOSES

1 TO MAINTAIN ITS BOOKS AND RECORDS IN ANOTHER STATE SHALL PAY THE
2 EXPENSES OF AN AUDIT BY THE DEPARTMENT. THE DEPARTMENT SHALL
3 CHARGE EXPENSES IN ACCORDANCE WITH THE STANDARDIZED TRAVEL REGU-
4 LATIONS OF THE DEPARTMENT OF MANAGEMENT AND BUDGET.

5 (8) THE DEPARTMENT MAY PERMIT A COLLECTION AGENCY THAT IS
6 LOCATED IN ANOTHER STATE TO SUBMIT ITS OWN AUDIT IN LIEU OF AN
7 AUDIT BY THE DEPARTMENT. THE AUDIT SHALL BE CONDUCTED BY A CER-
8 TIFIED PUBLIC ACCOUNTANT WHO IS LICENSED IN THE STATE WHERE THE
9 COLLECTION AGENCY IS LOCATED AND SHALL MEET THE SAME STANDARDS AS
10 AN AUDIT CONDUCTED BY THE DEPARTMENT.

11 Sec. 912. An applicant for a collection agency manager's
12 license shall take a written examination developed by ~~the board~~
13 ~~and~~ the department to test the applicant's knowledge of the col-
14 lection agency business, collection practices, customs and
15 ethics, and the laws and rules relating to the operations of col-
16 lection agencies.

17 Sec. 915a. A licensee shall not commit ~~1 or more~~ ANY of
18 the following acts:

19 (a) Listing the name of an attorney in a written or oral
20 communication, collection letter, or publication.

21 (b) Furnishing legal advice, or otherwise engaging in the
22 practice of law, or representing that the person is competent to
23 do so, or to institute a judicial proceeding on behalf of
24 another.

25 (c) Sharing quarters or office space, or having a common
26 waiting room with a practicing attorney or a lender.

1 (d) ~~Exercising~~ EMPLOYING OR RETAINING AN ATTORNEY TO
2 COLLECT A CLAIM. A LICENSEE MAY EXERCISE authority on behalf of
3 a creditor to employ the service of an attorney ~~unless~~ IF the
4 creditor has specifically authorized the collection agency in
5 writing to do so. AFTER THE REFERRAL OF A CLAIM TO AN ATTORNEY,
6 THE CREDITOR, NOT THE LICENSEE, IS THE CLIENT OF THE ATTORNEY,
7 and the licensee's course of conduct ~~is~~ SHALL BE at all times
8 consistent with a true relationship of attorney and client
9 between the attorney and the creditor. ~~After referral to an~~
10 ~~attorney, the creditor shall be the client of the attorney, and~~
11 ~~the licensee shall not represent the client in court.~~ THE
12 LICENSEE MAY ACT AS AN AGENT OF THE CREDITOR IN DEALING WITH THE
13 ATTORNEY ONLY IF THE CREDITOR HAS SPECIFICALLY AUTHORIZED THE
14 LICENSEE TO DO SO IN WRITING.

15 (e) Demanding or obtaining a share of the compensation for
16 service performed by an attorney in collecting a claim or demand
17 or collecting or receiving a fee or other compensation from a
18 consumer for collecting a claim, other than a claim owing the
19 creditor pursuant to the provisions of the original agreement
20 between the creditor and debtor.

21 (f) Soliciting, purchasing, or receiving an assignment of a
22 claim for the sole purpose of instituting an action on the claim
23 in a court.

24 (g) Advertising or threatening to advertise for sale a claim
25 as a means of forcing payment of the claim, unless the collection
26 agency is acting as the assignee for the benefit of creditors or
27 acting under an order of a court.

1 (h) Failing to deposit money collected into the trust
2 account required to be maintained under this article.

3 (i) Commingling money collected for a client with the col-
4 lection agency's own general or operating funds.

5 (j) Using a part of a client's money in the conduct of a
6 collection agency's business.

7 (k) Refusing or intentionally failing to remit to a client
8 all money collected, due, and owing the client less any commis-
9 sion owed to the licensee within 45 days after the day on which
10 the money was collected.

11 (l) Failing to give a debtor a written receipt for cash pay-
12 ment, or other payment when specifically requested, showing the
13 amount of money received and the debt to which it was applied and
14 the name of the specific account receiving the money.

15 (m) Refusing or intentionally failing to return to a credi-
16 tor all original documents deposited with the claim when the
17 claim is returned, if requested. When requested by the creditor,
18 there shall be a signed agreement between the agency and the
19 creditor if any closing out fee is charged to the creditor for
20 unpaid claims returned or collection activities discontinued.

21 (n) Identifying the collection agency other than by the name
22 appearing on the license.

23 (o) Permitting an employee to use a name other than the
24 employee's own name or the assumed name registered by the
25 licensee with the department in the collection of a debt.

26 (p) Operating under a name or in a manner ~~which~~ THAT
27 implies or states that the collection agency is a branch of, or

1 associated with, or has been approved or licensed by, a
2 department of federal, state, or local government, or ~~which~~
3 THAT implies that the collection agency is a credit reporting
4 agency regularly furnishing a credit report about consumers
5 unless it is a credit reporting agency.

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

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

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

16 (a) Cancellation of a surety bond.

17 (b) Failure to notify the director of any changes in corpo-
18 rate or partnership structure pursuant to section ~~905 or~~ 906.
19 ~~, or both.~~

20 (c) Failure to apply for a separate license for each place
21 of business pursuant to section ~~905~~ 904.

22 (d) Commencing operation before issuance of a license pursu-
23 ant to section 904.

24 (e) Operation before the renewal of an expired license.

25 (f) Failure to preserve and make accessible books, accounts,
26 and records pursuant to section 910(2).

1 (g) Failure to submit an annual report pursuant to section
2 910(3).

3 (h) Failure to file a sworn financial ~~statement~~ REPORT
4 when required by the director pursuant to section 910(4).

5 (i) Failure to allow an audit of books, accounts, and
6 records on a biennial basis or when determined necessary by the
7 director pursuant to section 910(5).

8 (j) ~~Using forms not approved by the director or altering a~~
9 ~~form previously approved.~~ FAILURE TO PAY THE EXPENSES OF AN
10 AUDIT CONDUCTED BY THE DEPARTMENT PURSUANT TO SECTION 910(7), IF
11 THE LICENSEE IS NOT LOCATED IN THIS STATE.

12 (k) Violation of any federal or state act relating to debt
13 collection.

14 Section 2. Sections 902 and 914 of Act No. 299 of the
15 Public Acts of 1980, being sections 339.902 and 339.914 of the
16 Michigan Compiled Laws, are repealed.