

SUBSTITUTE FOR
SENATE BILL NO. 947

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 901, 910, and 917 (MCL 339.901, 339.910, and
339.917), section 901 as amended by 1981 PA 83 and sections 910 and
917 as amended by 1996 PA 151.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 901. As used in this article:

2 (a) "Claim" or "debt" means an obligation or alleged
3 obligation for the payment of money or thing of value arising out
4 of an expressed or implied agreement or contract for a purchase
5 made primarily for personal, family, or household purposes.

6 (b) "Collection agency" means a person **THAT IS** directly or
7 indirectly engaged in ~~soliciting a claim for collection or~~

1 collecting or attempting to collect a claim owed or due or asserted
2 to be owed or due another, or repossessing or attempting to
3 repossess a thing of value owed or due or asserted to be owed or
4 due another arising out of an expressed or implied agreement. ~~A~~
5 ~~collection~~**COLLECTION** agency ~~shall include~~**INCLUDES** a person
6 representing himself or herself as a collection or repossession
7 agency, or a person performing the activities of a collection
8 agency, on behalf of another, ~~which~~**THAT** are regulated by this
9 act. ~~A collection~~**COLLECTION** agency ~~shall also include~~**INCLUDES** a
10 person ~~who~~**THAT** furnishes or attempts to furnish a form or a
11 written demand service represented to be a collection or
12 repossession technique, device, or system to be used to collect or
13 repossess claims, if the form contains the name of a person other
14 than the creditor in a manner indicating that a request or demand
15 for payment is being made by a person other than the creditor even
16 though the form directs the debtor to make payment directly to the
17 creditor rather than to the other person whose name appears on the
18 form. Collection agency also includes a person ~~who~~**THAT** uses a
19 fictitious name or the name of another in the collection or
20 repossession of claims to convey to the debtor that a third person
21 is collecting or repossessing or has been employed to collect or
22 repossess the claim. Collection agency does not include a person
23 whose collection activities are confined and are directly related
24 to the operation of a business other than that of a collection
25 agency such as, but not limited to, the following:
26 (i) A regular employee when collecting amounts for 1 employer
27 if all collection efforts are carried on in the name of the

1 employer.

2 (ii) A state or nationally chartered bank when collecting its
3 own claims.

4 (iii) A trust company when collecting its own claims.

5 (iv) A state or federally chartered savings and loan
6 association when collecting its own claims.

7 (v) A state or federally chartered credit union when
8 collecting its own claims.

9 (vi) A licensee under ~~Act No. 21 of the Public Acts of 1939, as~~
10 ~~amended, being sections 493.1 to 493.26 of the Michigan Compiled~~
11 ~~Laws.~~ **THE REGULATORY LOAN ACT, 1939 PA 21, MCL 493.1 TO 493.24.**

12 (vii) A business licensed by this state under a regulatory act
13 in which collection activity is regulated.

14 (viii) An abstract company doing an escrow business.

15 (ix) A licensed real estate broker or salesperson if the claims
16 being handled by the broker or salesperson are related to or in
17 connection with his or her real estate business.

18 (x) A public officer or person acting under a court order.

19 (xi) An attorney handling claims and collections on behalf of
20 clients and in the attorney's own name.

21 (c) "Collection agency manager" means the individual
22 responsible for the operation of a collection agency.

23 (d) "Communicate" means the conveying of information regarding
24 a debt directly or indirectly to a person through any medium.

25 (e) "Creditor" or "principal" means a person ~~who~~ **THAT** offers
26 or extends credit creating a debt or a person to ~~whom~~ **WHICH** a debt
27 is owed or due or asserted to be owed or due. Creditor or principal

1 ~~shall~~**DOES** not include a person ~~who~~**THAT** receives an assignment or
 2 transfer of a debt solely for the purpose of facilitating
 3 collection of the debt for the assignor or transferor. In those
 4 instances, the assignor or transferor of the debt shall continue to
 5 be considered the creditor or the principal for purposes of this
 6 article.

7 (f) "Consumer" or "debtor" means a natural person obligated or
 8 allegedly obligated to pay a debt.

9 (g) "Insolvency" means the failure of a licensee to pay debts
 10 in the ordinary course of business.

11 (h) "Office" means a regular place of business where complete
 12 records are kept of collections and claims handled by a licensee.

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

19 (a) Permanent records that show the chronological sequence in
 20 which ~~funds are~~**MONEY IS** received and disbursed. For ~~funds~~**MONEY**
 21 received, the record shall include the date of receipt and deposit,
 22 the number of the account to which **IT IS** deposited, the name of the
 23 debtor, the name of the principal, and the amount. For
 24 disbursements, the record shall include the date, the payee, the
 25 check number, and the amount, with a corresponding debtor
 26 reference.

27 (b) ~~Each~~**FOR AN** agency licensee, ~~shall~~**ALL OF THE FOLLOWING:**

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

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

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

12 (C) The amount and description of each debit and each credit
13 and date of each debit and credit.

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

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

17 (A) The name of the debtor.

18 (B) The principal amount of the obligation.

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

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

24 (E) The balance owing.

25 (c) ~~All receipts~~ **EACH RECEIPT** issued, ~~shall be signed by and~~
26 with the name or initials of the ~~person issuing~~ **INDIVIDUAL WHO**
27 **ISSUED** the receipt and ~~shall show~~ the name of the issuing agency.

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

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

13 (4) The department may require a collection agency to file a
14 sworn financial report of the trust account **THE COLLECTION AGENCY**
15 **IS** required to ~~be maintained by the collection agency~~ **MAINTAIN** and
16 may designate the information ~~to be contained~~ **THE COLLECTION AGENCY**
17 **MUST INCLUDE** in the report.

18 (5) ~~Collection agency~~ **THE DEPARTMENT MAY AUDIT A COLLECTION**
19 **AGENCY'S** books, accounts, and records ~~shall be audited by the~~
20 ~~department on a biennial basis or~~ when determined necessary by the
21 director.

22 (6) Information provided to the director under this section
23 ~~shall be~~ **IS** exempted from disclosure except in actions commenced
24 under this article.

25 (7) A collection agency that is located in this state shall
26 maintain its books and records in this state. A collection agency
27 that is licensed to do business in this state but is located in

1 another state may maintain its books and records either in this
2 state or in the state where it is located. Except as provided in
3 subsection (8), a collection agency that chooses to maintain its
4 books and records in another state shall pay the expenses of a
5 compliance attestation report by the department. The department
6 shall charge expenses in accordance with the standardized travel
7 regulations of the department of **TECHNOLOGY**, management, and
8 budget.

9 (8) In place of a department audit **UNDER SUBSECTION (5)**, the
10 department may permit a collection agency that is located in
11 another state to submit to a compliance attestation report
12 conducted by a certified public accountant who is licensed in the
13 state in which the collection agency is located.

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

17 (a) Cancellation of a surety bond.

18 (b) Failure to notify the director of any changes in corporate
19 or partnership structure ~~pursuant to~~**UNDER** section 906.

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

22 (d) Commencing operation before issuance of a license ~~pursuant~~
23 ~~to~~**UNDER** 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~~**UNDER** section 910(2).

27 (g) Failure to submit an annual report ~~pursuant to~~**UNDER**

1 section 910(3).

2 (h) Failure to file a sworn financial report when required by
3 the director ~~pursuant to~~ **UNDER** section 910(4).

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

7 (j) Failure to pay the expenses of an audit conducted by the
8 department ~~pursuant to~~ **UNDER** section 910(7), if the licensee is not
9 located in this state.

10 (k) Violation of any federal or state act relating to debt
11 collection.

12 Enacting section 1. The legislature recognizes that the
13 purpose of this article is to regulate the practice of debt
14 collection. It is not the intent of the legislature in the creation
15 of this article to regulate companies that hire licensed collection
16 agencies to repossess collateral.