

Legislative Analysis



DEFINITION OF "COLLECTION AGENCY": EXCLUDE FORWARDING COMPANIES

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Senate Bill 656 (as reported from House Committee)
Senate Bill 657 (reported as Substitute H-1)
Sponsor: Sen. Rick Jones
House Committee: Financial Services
Senate Committee: Banking and Financial Services
Complete to 5-5-16

SUMMARY:

These bills would amend two separate acts to revise the definition of the term "collection agency." Notably, it would exclude from the definition of "collection agency" a forwarding agency that, acting on behalf of a creditor or lender, forwards a claim, collection, or repossession to a collection agency or to a person whose collection activities are excluded from licensing under Article 9.

Senate Bill 656 would amend Article 9 of the Occupational Code (MCL339.901), which deals with collection practices and under which collection agencies are licensed. Senate Bill 657 would make similar amendments to Public Act 70 of 1981, which regulates the collection practices of various types of businesses that are not collection agencies, including financial institutions, real estate professionals, and attorneys (MCL 445.251).

Senate Bill 656

Currently, the term "collection agency" in Article 9 is defined, in part, as a person directly or indirectly engaged in collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another arising out of an express or implied agreement. The bill would remove the phrase "or indirectly" from the definition.

Another element of the definition would also be rewritten to say that it does include "an individual who, in the course of collecting, repossessing, or attempting to collect or repossess, represents himself or herself as a collection or repossession agency, or a person that performs collection activities that are regulated under [Article 9] on behalf of another."

In addition, as used in Article 9, the phrases "collecting or attempting to collect a claim," "repossessing or attempting to repossess a thing of value," and "collection activities" would not include any of the following activities of a claim forwarder or remarketer under a contract with a creditor: (1) forwarding repossession assignments on behalf of the creditor to a collection agency that is licensed under [this act] for repossessing or attempting to repossess a thing of value owed or alleged to be owed on a claim; or (2) providing or procuring the services of an auction or other remarketer in connection with the disposition or preparation for disposition of a thing of value that was previously repossessed by a

creditor or by another person on behalf of the creditor (pursuant to the authorization of a creditor and on a creditor's behalf).

Senate Bill 657

This bill would make similar amendments to Public Act 70 of 1981, which regulates the collection practices of various types of businesses.

That act contains a slightly different definition of "collection agency": a person that is directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another arising out of an express or implied agreement. Senate Bill 657 would remove the underlined phrases from the definition.

The bills would take effect 90 days after being enacted in to law.

FISCAL IMPACT:

The bills would have no fiscal impact on state or local government.

BACKGROUND:

This bill is understood to be counteracting the Michigan Supreme Court's unanimous decision in *Badeen v PAR, Inc.* (issued June 13, 2014)¹ in which the court held that "a forwarding company comes within the definition of "collection agency" in MCL 339.901(b) when it contacts a creditor asking for debts to allocate to local collection agents." This Supreme Court decision overturned decisions of the Wayne County Circuit Court and the Michigan Court of Appeals.

According the decisions, the plaintiffs in the case "alleged that defendant forwarding companies acted as collection agencies under Michigan law but did so without a license, in violation of MCL 339.904(1), and that defendant lenders, who hired the forwarding companies, violated Michigan law by hiring unlicensed collection agencies, in violation of MCL 445.252(s)." They "further alleged that the violations injured them by impeding their business while not complying with Michigan law."

The court noted that "forwarding companies act as middlemen between the lenders and the local collection agents. The forwarding companies operate nationwide, and when a creditor needs a collection it contracts with a forwarding company, which, in turn, allocates the collection to a collection agent in the appropriate location. The forwarding companies maintain networks of collection agents and negotiate favorable rates that save creditors money and allow the forwarding companies to make a profit. Plaintiffs allege that this business model negatively affects licensed local collection agents."

¹ <http://courts.mi.gov/Courts/MichiganSupremeCourt/Clerks/Recent%20Opinions/13-14-Term-Opinions/147150-Opinion.pdf>

The Supreme Court also said:

"We are sympathetic to the fact that the forwarding companies are included in this language even though the Legislature could not have known when it defined collection agencies that the forwarding industry would come to exist. But any revision of the statutory language must be left to the Legislature. Put another way, our concern is not whether forwarding companies, by virtue of their unique business model, should be considered collection agencies; this Court may only decide whether forwarding companies satisfy the existing statutory definition. The Legislature might wish to consider revising the definition of "collection agency" in the future. But under existing law, forwarding companies fall within the statutory definition of "collection agency," and this Court will not strain the statute's language just to exempt forwarding companies from the definition."

POSITIONS:

- Department of Licensing and Regulation supports the bills. (3-16-16)
- Center One Debt Management Services LLC supports the bills. (3-16-16)
- Michigan Bankers Association supports the bills. (3-23-16)
- Michigan Creditors Association supports the bills. (3-16-16)
- Millennium Capital and Recovery Corporation supports the bills (3-16-16)
- Primeritus supports the bills (3-16-16)

- Michigan Credit Union League is neutral on the bill. (3-16-16)

- A representative of Michigan Creditors and Michigan Association of Repossession Agencies testified in opposition to the bills. (3-16-16)
- A representative of Midwest Recovery testified in opposition to the bills. (3-16-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.