



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 656 and 657 (as enacted)
Sponsor: Senator Rick Jones
Senate Committee: Banking and Financial Institutions
House Committee: Financial Services

PUBLIC ACTS 656 & 657 of 2016

Date Completed: 1-19-17

CONTENT

Senate Bill 656 amended Article 9 of the Occupational Code to do the following:

- **Revise the definition of "collection agency".**
- **Exclude from the definition of "collection agency" a forwarding agency that forwards a claim, collection, or repossession to a licensed collection agency or a person whose collections activities are exempt from licensing.**
- **Specify various activities of a claim forwarder or remarketer that are not considered "collecting or attempting to collect a claim", "repossessing or attempting to repossess a thing of value", or "collection activities".**

Senate Bill 657 amended Public Act 70 of 1981, which regulates the collection practices of various types of businesses, to do the following:

- **Revise the definition of "collection agency".**
- **Specify various activities of a claim forwarder or remarketer that are not considered "collecting or attempting to collect a claim", "repossessing or attempting to repossess a thing of value", or "collection activities".**

Each bill took effect on September 7, 2016.

Senate Bill 656

Article 9 of the Code governs the licensure and business of a collection agency. As amended by the bill, "collection agency" means a person that is directly 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 former definition referred to "directly or indirectly".

Previously, the term included a person representing himself or herself as a collection or repossession agency, or a person performing the activities of a collection agency, on behalf of another that are regulated by Code. The bill instead specifies that "collection agency" includes 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.

A collection agency does not include a person whose collection activities are confined and are directly related to the operation of a business other than a collection agency, such as a State

or nationally chartered bank, or trust company, that collects its own claims. Under the bill, "collection agency" also does not include a forwarding agency that, acting on behalf of a creditor or lender, forwards a claim, collection, or repossession only to a collection agency licensed under Article 9 or to a person whose collection activities are excluded or exempted from licensing under Article 9.

The bill specifies that, as used in Article 9, "collecting or attempting to collect a claim", "repossessing or attempting to repossess a thing of value", and "collection activities" do not include any of the following activities of a claim forwarder or remarketer under a contract with a creditor:

- Forwarding repossession assignments on behalf of the creditor to a licensed collection agency for repossessing or attempting to repossess a thing of value owed or alleged to be owed on a claim.
- Pursuant to the authorization of a creditor and on its behalf, 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 another person on the creditor's behalf.
- Communicating with a creditor or the collection agency regarding the performance of any of the activities described above.

Senate Bill 657

Public Act 70 of 1981 governs the collection practices of a "regulated person". "Regulated person" means a person whose collection activities are confined and are directly related to the operation of a business other than that of a collection agency, including, for example, a State or federally chartered bank, or trust company, that collects its own claim.

As amended by the bill, "collection agency" means a person that is directly engaged 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. Previously, the definition referred to "directly or indirectly" and included "soliciting a claim for collection".

Also, under the bill, the phrases "collecting or attempting to collect a claim", "repossessing or attempting to repossess a thing of value", and "collection activities" do not include any of the activities of a claim forwarder or remarketer pursuant to a contract with a creditor as described in Senate Bill 656.

MCL 339.901 (S.B. 656)
445.251 (S.B. 657)

BACKGROUND

Until approximately 20 years ago, the debt collection industry involved two parties: a creditor and a debt collection agency the creditor hired to collect on a delinquent account. In the mid-1990s, the industry modified its practices. A forwarder or forwarding company, within the context of debt collections, is an intermediary that operates between a creditor and a debt collection agency. The current business practice involves the creditor hiring a forwarding company, which receives an assignment of an unpaid account. Forwarding companies typically operate in several states or nationwide, but maintain networks of local collection agencies. A forwarding company negotiates rates among local collection agencies, and then hires one to collect on the account. Forwarding companies do not contact debtors.

A licensed collection agency manager alleged that this business model negatively affected licensed local collection agents, and, in 2010, on behalf of himself and other similarly situated

parties, filed a class action against several forwarding companies and the lenders that used them. The class alleged, in part, that forwarding companies were operating as collection agencies but without obtaining a license as required under Article 9 of Michigan's Occupational Code. The Michigan Supreme Court agreed. In a 2014 opinion, *Badeen v. PAR, Inc.*, the Court held that although the defendant forwarding companies did not solicit consumers directly for the collection of debts, they nevertheless satisfied the definition of "collection agency" when they contacted creditors for assignments of unpaid debts to allocate to collection agencies (496 Mich 75).

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

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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.