

Legislative Analysis



COLLECTION AGENCY: ALLOW TO EMPLOY ATTORNEY

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Senate Bill 385 reported from committee without amendment

Analysis available at
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Sponsor: Sen. Jim Stamas

1st House Committee: Financial Services

2nd House Committee: Regulatory Reform

Senate Committee: Regulatory Reform

(Enacted as Public Act 197 of 2017)

Complete to 11-27-17

BRIEF SUMMARY: Senate Bill 385 would allow a collection agency to employ an attorney under certain conditions.

FISCAL IMPACT: Senate Bill 385 would not have a significant fiscal impact on any units of state or local government.

THE APPARENT PROBLEM:

Michigan is one of only two states that does not allow collection agencies to employ in-house attorneys. Yet, it is said that the majority of lawsuits against debt collectors are related to compliance with various state and federal laws regulating the industry. To ensure that they are acting within the scope of these laws, collection agencies must hire outside attorneys, which is more expensive than if they could employ an attorney to advise them on compliance issues. Further, current law prohibits a collection agency from “sharing quarters” or office space, or even a common waiting room, with a practicing attorney or a lender. Such antiquated laws, say some, create a significant competitive disadvantage compared to similar businesses in other states and hinder the agencies’ attempts to resolve debt obligations quickly, costing all sides extra time and money. According to testimony offered before the House committee, statistics from other states show that lawsuits involving data security are lower when agencies have an in-house attorney to offer guidance and legal advice. In light of the national trend for collection agencies to employ attorneys for largely compliance matters, legislation to lift the prohibitions on Michigan-based collection agencies has been offered.

THE CONTENT OF THE BILL:

Currently, Article 9 of the Occupational Code prohibits a licensee (a person holding a collection agency license or collection agency manager’s license) from certain acts. Included in the prohibitions is listing the name of an attorney in a written or oral communication, collection letter, or publication. **Senate Bill 385** would amend the Code to apply this prohibition only to attempts to collect a debt on behalf of a person other than the licensee or an affiliate of the licensee. The prohibition would not apply if the attorney were an employee of the licensee engaged in collecting claims owned by the licensee or its affiliate.

A licensee is also currently prohibited from furnishing legal advice, otherwise engaging in the practice of law, representing that the person is competent to do so, or instituting a legal action on behalf of another person. **Under the bill**, this prohibition would not apply to an attorney employed by the licensee who furnishes legal advice to, or represents the interests of, the

licensee or an affiliate of the licensee. However, an attorney who is an employee of a licensee could not institute a legal action to collect a claim unless the claim were owned by the licensee or its affiliate.

The Code also currently prohibits a licensee from sharing quarters or office space, or having a common waiting room, with a practicing attorney or a lender. **The bill** would delete the underlined text and amend the Code to prohibit a licensee from sharing quarters or office space with a lender or with a practicing attorney who is not an employee of the licensee. The revised provision would not prohibit a licensee from occupying a separate space in the same building in which a practicing attorney has office space or from sharing a common waiting area with a practicing attorney who is not an employee or with a lender.

In addition, the Code currently prohibits a licensee from employing or retaining an attorney to collect a claim. **Under the bill**, this prohibition would not apply to a claim owned by the licensee or its affiliate. The bill retains the current provision allowing a licensee to exercise authority on behalf of a creditor to retain an attorney if the creditor has specifically authorized the collection agency in writing to do so.

The bill would stipulate that it is not to be construed as creating an exception to Section 1 of Public Act 354 of 1917, which pertains to the practice of law by corporations and voluntary associations, or Section 916 of the Revised Judicature Act, which prohibits the unauthorized practice of law.

“Affiliate” under the bill would mean that term as defined in Section 776 of the Business Corporation Act. That act defines “affiliate” to mean a person that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

Finally, the bill would make several revisions of a technical or editorial nature for clarity.

Senate Bill 385 would take effect 90 days after its enactment.

MCL 339.915a

HOUSE COMMITTEE ACTION:

The House committee reported the Senate-passed version of the bill without amendments.

ARGUMENTS:

For:

Senate Bill 385 would remove what is seen by many in the industry as antiquated provisions that hinder collection agencies from quickly resolving debt obligations and that do not well serve the interests of consumers. As stated earlier, the legal advice that an in-house attorney could provide a collection agency regarding compliance with complicated state and federal laws can ensure that consumer protections currently in place are adhered to. The Senate substitute also preserves certain statutory protections for both creditors and the public by only allowing an agency to list the name of an attorney in written or oral communications or in a collection in an attempt to collect a debt on behalf of the agency. (The bill retains the

prohibition on engaging in such conduct on behalf of someone other than the agency, such as a creditor client.) The bill in its current form also retains the prohibition on the unauthorized practice of law. Yet some prohibitions, such as not sharing quarters in the same building, would be amended so that an in-house attorney could actually be “in house”.

The stated intent during committee testimony was for the bill to enable a collection agency to employ in-house attorneys to advise them on compliance issues and other matters pertaining to the agency, and not to be used to intimidate consumers behind in a debt. Should such a thing happen, there are remedies under state and federal law for an injured consumer to bring a civil action against the collection agency. Since the bill would bring Michigan in line with practices common in 48 states, and since important protections for consumers are protected in the bill, the legislation should not favor collection agencies over consumers.

Against:

Though no formal arguments against the bill in its current form were offered, some concerns were raised regarding the bill being interpreted as allowing an in-house attorney to intimidate those with debt obligations owed to the collection agency employing the attorney.

POSITIONS:

Representatives of the Michigan Association of Collection Agencies testified in support of the bill. (11-8-17)

Encore Capital indicated support for the bill. (11-8-17)

The State Bar of Michigan indicated support for the bill. (11-8-17)

The Michigan Chamber of Commerce indicated support for the bill. (11-8-17)

The Michigan Creditors Bar Association indicated a neutral position on the bill. (11-8-17)

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