

# Legislative Analysis

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## COLLECTION AGENCY: ALLOW TO EMPLOY ATTORNEY

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### Senate Bill 385 (Substitute S-1 as passed by the Senate)

Analysis available at  
<http://www.legislature.mi.gov>

**Sponsor: Sen. Jim Stamas**

**1<sup>st</sup> House Committee: Financial Services**

**2<sup>nd</sup> House Committee: Regulatory Reform**

**Senate Committee: Regulatory Reform**

**Complete to 11-7-17**

## SUMMARY:

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

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 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** 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.

SB 385 would take effect 90 days after its enactment.

MCL 339.915a

**FISCAL IMPACT:**

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

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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.