



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 385 (as introduced 5-17-17)
Sponsor: Senator Jim Stamas
Committee: Regulatory Reform

Date Completed: 9-13-17

CONTENT

The bill would amend the Occupational Code to revise restrictions pertaining to collection agencies' employment of attorneys to collect claims.

Article 9 of the Code governs collection agencies and provides for their licensure. A licensee under Article 9 is prohibited from employing or retaining an attorney to collect a claim. A licensee may exercise authority on behalf of a creditor to employ the service of an attorney if the creditor has specifically authorized the collection agency in writing to do so and the licensee's course of conduct is at all times consistent with a true relationship of attorney and client between the attorney and the creditor. After referral to an attorney, the creditor is not allowed to be the client of the attorney, and the licensee is not allowed to represent the client in court. The licensee may act as an agent of the creditor in dealing with the attorney only if the creditor has specifically authorized the licensee to do so in writing.

Under the bill, a licensee would be prohibited from retaining (but not employing) an attorney to collect a claim. The current provisions would not apply to a licensee that employed an attorney, or to an attorney who was employed by a licensee, to engage in the collection of claims.

Also, a licensee is prohibited from demanding or obtaining a share of the compensation for service performed by an attorney in collecting a claim or demand, or collecting or receiving a fee or other compensation from a consumer for collecting a claim, other than a claim owing the creditor pursuant to the provisions of the original agreement between the creditor and debtor. The bill specifies that this would not apply to a licensee that employed an attorney, or to an attorney who was employed by a licensee, to engage in the collection of claims.

In addition, Article 9 prohibits a licensee from listing the name of an attorney in a written or oral communication, collection letter, or publication. The bill would prohibit a licensee from doing so, unless the attorney was an employee of the licensee and was engaged in collecting a claim.

A licensee also is prohibited from furnishing legal advice, or otherwise engaging in the practice of law, or representing that the person is competent to do so, or to institute a judicial proceeding on behalf of another. Under the bill, this provision would not apply to an attorney who was an employee of the licensee.

Additionally, Article 9 prohibits a licensee from sharing quarters or office space, or having a common waiting room with a practicing attorney or a lender. The bill, instead, would prohibit

a licensee from sharing quarters or office space, or having a common waiting room with a lender or a practicing attorney who was not an employee of the licensee.

MCL 339.915a

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

SAS\S1718\s385sa

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.