

SUBSTITUTE FOR
SENATE BILL NO. 385

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 915a (MCL 339.915a), as amended by 1996 PA 151.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 915a. (1) A licensee shall not commit any of the
2 following acts:

3 (a) Listing the name of an attorney in a written or oral
4 communication, collection letter, or publication **IN AN ATTEMPT TO**
5 **COLLECT A DEBT ON BEHALF OF A PERSON OTHER THAN THE LICENSEE OR AN**
6 **AFFILIATE OF THE LICENSEE. THIS SUBDIVISION DOES NOT APPLY IF THE**
7 **ATTORNEY IS AN EMPLOYEE OF THE LICENSEE AND IS ENGAGED IN**
8 **COLLECTING CLAIMS OWNED BY THE LICENSEE OR AN AFFILIATE OF THE**
9 **LICENSEE.**

10 (b) Furnishing legal advice, or otherwise engaging in the
11 practice of law, or representing that the person is competent to do

1 so, or to institute a ~~judicial proceeding~~ **LEGAL ACTION** on behalf of
2 another **PERSON**. **THIS SUBDIVISION DOES NOT APPLY TO AN ATTORNEY WHO**
3 **IS AN EMPLOYEE OF THE LICENSEE AND IS FURNISHING LEGAL ADVICE TO OR**
4 **REPRESENTING THE INTERESTS OF THE LICENSEE OR AN AFFILIATE OF THE**
5 **LICENSEE. HOWEVER, AN ATTORNEY WHO IS AN EMPLOYEE OF A LICENSEE MAY**
6 **NOT INSTITUTE A LEGAL ACTION TO COLLECT A CLAIM UNLESS THE CLAIM IS**
7 **OWNED BY THE LICENSEE OR AN AFFILIATE OF THE LICENSEE.**

8 (c) Sharing quarters or office space ~~, or having a common~~
9 ~~waiting room with a practicing attorney or a lender.~~ **LENDER OR WITH**
10 **A PRACTICING ATTORNEY WHO IS NOT AN EMPLOYEE OF THE LICENSEE. THIS**
11 **SUBDIVISION DOES NOT PROHIBIT A LICENSEE FROM OCCUPYING A SEPARATE**
12 **SPACE IN THE SAME BUILDING IN WHICH A PRACTICING ATTORNEY HAS**
13 **OFFICE SPACE OR SHARING A COMMON WAITING AREA WITH A PRACTICING**
14 **ATTORNEY.**

15 (d) Employing or retaining an attorney to collect a claim, ~~—A~~
16 **UNLESS THE CLAIM IS OWNED BY THE LICENSEE OR AN AFFILIATE OF THE**
17 **LICENSEE. HOWEVER, A** licensee may exercise authority on behalf of a
18 creditor to ~~employ the service of~~ **RETAIN** an attorney if the
19 creditor has specifically authorized the collection agency in
20 writing to do so and the licensee's course of conduct is at all
21 times consistent with a true relationship of attorney and client
22 between the attorney and the creditor. After referral to an
23 attorney, the creditor ~~shall be~~ **IS** the client of the attorney, and
24 the licensee shall not represent the client in court. The licensee
25 may act as an agent of the creditor in dealing with the attorney
26 only if the creditor has specifically authorized the licensee to do
27 so in writing.

1 (e) Demanding or obtaining a share of the compensation for
2 service performed by an attorney in collecting a claim or demand,
3 or collecting or receiving a fee or other compensation from a
4 consumer for collecting a claim, other than a claim ~~owing~~ **OWED TO**
5 the creditor ~~pursuant to~~ **UNDER** the provisions of the original
6 agreement between the creditor and debtor.

7 (f) Soliciting, purchasing, or receiving an assignment of a
8 claim for the sole purpose of instituting an action on the claim in
9 a court.

10 (g) Advertising or threatening to advertise for sale a claim
11 as a means of forcing payment of the claim, unless the collection
12 agency is acting as the assignee for the benefit of creditors or
13 acting under an order of a court.

14 (h) Failing to deposit money collected into the trust account
15 required ~~to be maintained~~ under this article.

16 (i) Commingling money collected for a client with the
17 collection agency's own general or operating funds.

18 (j) Using a part of a client's money in the conduct of a
19 collection agency's business.

20 (k) Refusing or intentionally failing to remit to a client all
21 money collected, due, and owing the client, less any commission
22 owed to the licensee, within 45 days after the day on which the
23 money ~~was~~ **IS** collected.

24 (l) Failing to give a debtor a written receipt for cash
25 payment, or **FOR ANY** other payment ~~when~~ **IF A RECEIPT IS** specifically
26 requested, showing the amount of money received, ~~and~~ the debt to
27 which it ~~was applied~~ **THE LICENSEE IS APPLYING THE MONEY**, and the

1 name of the specific account receiving the money.

2 (m) Refusing or intentionally failing to return to a creditor
3 all original documents deposited with the claim when the claim is
4 returned, if requested. ~~When requested by the creditor, there shall~~
5 ~~be a signed agreement between the agency and the creditor if any~~ **IF**
6 **THE LICENSEE CHARGES A** closing out fee ~~is charged to the creditor~~
7 for **RETURNING** unpaid claims ~~returned or~~ **DISCONTINUING** collection
8 activities, ~~discontinued.~~ **THE LICENSEE SHALL ENTER INTO A WRITTEN**
9 **AGREEMENT WITH THE CREDITOR CONCERNING THOSE FEES IF REQUESTED BY**
10 **THE CREDITOR.**

11 (n) Identifying the collection agency other than by the name
12 ~~appearing~~ **THAT APPEARS** on the license.

13 (o) Permitting an employee to use a name other than the
14 employee's own name or the assumed name registered by the licensee
15 with the department in the collection of a debt.

16 (p) Operating under a name or in a manner that implies or
17 states that the collection agency is a branch of, or associated
18 with, or has been approved or licensed by, a department of federal,
19 state, or local government, or that implies that the collection
20 agency is a credit reporting agency **THAT** regularly ~~furnishing a~~
21 ~~credit report~~ **PROVIDES CREDIT REPORTS** about consumers unless it is
22 a credit reporting agency.

23 (q) Accepting a check or other payment instrument postdated by
24 more than 5 days unless the debtor is notified in writing of the
25 person's intent to deposit a postdated check or instrument not more
26 than 10 nor ~~less~~ **FEWER** than 3 business days before the deposit.

27 (r) Depositing or threatening to deposit a postdated check or

1 other postdated payment instrument before the date on the postdated
2 check or instrument.

3 (2) THIS SECTION SHALL NOT BE CONSTRUED AS CREATING AN
4 EXCEPTION TO SECTION 1 OF 1917 PA 354, MCL 450.681, OR SECTION 916
5 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.916.

6 (3) AS USED IN THIS SECTION, "AFFILIATE" MEANS THAT TERM AS
7 DEFINED IN SECTION 776 OF THE BUSINESS CORPORATION ACT, 1972 PA
8 284, MCL 450.1776.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.