

CONSUMER LAW SECTION
Public Policy Position
SB 0385

The Consumer Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 656 members. The Consumer Law Section is not the State Bar of Michigan and the position expressed herein is that of the Consumer Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Consumer Law Section has a public policy decision-making body with 15 members. On September 12, 2017, the Section adopted its position after an electronic discussion and vote. 11 members voted in favor of the Section's position on SB 0385, 0 members voted against this position, 0 members abstained, 4 members did not vote.

The Consumer Law Section Opposes SB 0385

The Consumer Law Section opposes [SB 0385](#).

Explanation: See attached document.

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STATEMENT OF THE COUNCIL OF THE CONSUMER LAW SECTION
IN OPPOSITION TO SENATE BILL 385

Senate Bill 385 will weaken the consumer protections against abusive and deceptive collection practices by debt collection agencies. It will allow a debt collection agency to add an attorney's name to its letterhead, to furnish legal advice or engage in the practice of law, to share office space with a lawyer, to retain an attorney by simply having an attorney as "an employee." This seems to contravene federal and state debt collection laws, in addition to ethical laws. Therefore, the Council of the Consumer Law Section opposes Senate Bill 385.

The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692e(3), prohibits "[t]he false representation or implication that any individual is an attorney or that any communication is from an attorney." Like the FDCPA, the Michigan collection practices statutes prohibit "misleading" communications in connection with the collection of debts. Specifically, the FDCPA and the Michigan collection practices statutes each expressly prohibit communications purporting to be from an attorney that are not actually communications from an attorney. 15 U.S.C. § 1692(e)(3); M.C.L. §§ 339.915(a), 445.252(a). The Michigan statute, MCL § 445.252(a), also prohibits "[c]ommunicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney . . . unless the regulated person is an attorney"

To ensure that debt collection agencies do not mislead or misrepresent to consumers, debt collection agencies currently are not allowed to list attorneys on their letterheads or use a law firm's name or engage in the practice of law or share space with a law firm. SB 385 would now allow a debt collection agency to add an attorney's name to its letterhead or use a law firm's name in its collection letter by simply saying the attorney "is an employee." This seems to eradicate the prohibition of misleading and deceptive communication.

Moreover, SB 385 seems to allow debt collection agencies to circumvent the unauthorized practice of law prohibition if the attorney "is an employee." First, SB 385 does not specifically provide that the "attorney employee" must be licensed to practice law in Michigan. So simply having an attorney who is an employee suggests that it is possible that the "attorney employee" may not be authorized to practice law in Michigan. (MRPC 5.5).

Further,

It is improper for a lawyer to:

1. Assist a layman in the unauthorized practice of law;
2. Permit a lay intermediary to act as a go-between for himself and the person desiring legal services;
3. Share legal fees with a non-lawyer where not authorized by the Disciplinary Rules;
4. Permit or solicit a layman to solicit clients on the lawyer's behalf.

See Ethics Opinion CI-683

http://www.michbar.org/opinions/ethics/numbered_opinions/OpinionID=407

Finally, SB 385 seems to contravene current law that prohibits debt collection agencies from retaining attorneys to collect the claim without being authorized by the creditor. Without creditor authorization – courts have held that this may be considered unauthorized practice of law. Accordingly, the Council of the Consumer Law Section opposes Senate Bill 385.

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