



STATE BAR OF MICHIGAN

PUBLIC POLICY POSITION

Bill Number:

[SB 0385](#) Occupations; collection practices; engagement of staff attorneys by licensed debt collection agencies; allow. Amends sec. 915a of [1980 PA 299](#) ([339.915a](#)).

Date position was adopted:

September 27, 2017

Board of Commissioners Vote:

Unanimous

Explanation of the position, including any recommended amendments:

Oppose as introduced.

SB 385 amends the statute that licenses collection agencies to allow collection agencies to hire in-house counsel to represent a third party creditor in debt collection litigation.

Under current practice, when a creditor has been unsuccessful in collecting a debt, that creditor will hire a debt collector to assist with collection efforts. When these collection efforts fail and litigation is required, the debt collector often acts as an agent of the creditor to hire outside counsel to initiate litigation. In this situation, the creditor, not the collection agency, is the client of the outside counsel.

Under current Michigan law, a collection agency is prohibited from, among other things, (a) “listing the name of an attorney in a written or oral communication, collection letter or publication;” (b) “furnishing legal advice, or otherwise engaging in the practice of law;” (c) “sharing quarters or office space, or having a common waiting room with a practicing attorney;” and (d) “employing or retaining an attorney to collect a claim,” and (e) “demanding or obtaining a share of the compensation for service performed by any attorney in collecting a claim or demand.” MCL 339.915a(a)-(e).

SB 385 creates an exception to the prohibitions listed above for attorneys who are employees of the collection agency and engaged in collecting a claim. This would allow in-house counsel for a collection agency to “furnish[] legal advice” and “institut[e] a judicial proceeding on behalf of another,” meaning that instead of hiring outside counsel to represent the creditor, the collection agency could choose to have its own in-house counsel represent the creditor.

Under current Michigan law, this would constitute an exception to the unauthorized practice of law. Pursuant to MCL 450.681, a corporation may not “practice or appear as an attorney-at-law for any person other than itself in any court” or “make it a business to practice as an attorney-at-law, for any person other than itself.” Even if the in-house counsel is licensed to practice law in Michigan, he or she would still be engaged in the unauthorized practice of law because the employer collection agency is not a law firm and not authorized to practice law. *See Bay Cty Bar Assoc v Finance Sys,*



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345 Mich 434 (1956) (holding that a collection agency may not represent the interests of a creditor in a collection action, explaining that “[w]hen this is done by one not licensed as an attorney it constitutes the unauthorized practice of law whether done by him in person or through his agent, regardless of whether the latter be a laymen or a licensed attorney”).

Further, SB 385 would affect several ethical rules. For example, MRPC 1.13(a) requires a lawyers employed as in-house counsel to represent the business and not a third party and MRPC 5.4 prohibits a lawyer and non-lawyer from sharing fees or forming a partnership that consists at least in part of the practice of law.

The State Bar opposes this bill.