

Michigal Occupational Code

M.C.L. 339.901 et seq.

339.901. Definitions

Section 901. As used in this article:

(a) "Claim" or "debt" means an obligation or alleged obligation for the payment of money or thing of value arising out of an expressed or implied agreement or contract for a purchase made primarily for personal, family, or household purposes.

(b) "Collection agency" means a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another arising out of an expressed or implied agreement. A collection agency shall include a person representing himself or herself as a collection or repossession agency, or a person performing the activities of a collection agency, on behalf of another, which are regulated by this act. A collection agency shall also include a person who furnishes or attempts to furnish a form or a written demand service represented to be a collection or repossession technique, device, or system to be used to collect or repossess claims, if the form contains the name of a person other than the creditor in a manner indicating that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payment directly to the creditor rather than to the other person whose name appears on the form. Collection agency also includes a person who uses a fictitious name or the name of another in the collection or repossession of claims to convey to the debtor that a third person is collecting or repossessing or has been employed to collect or repossess the claim. Collection agency does not include a person whose collection activities are confined and are directly related to the operation of a business other than that of a collection agency such as, but not limited to, the following:

(i) A regular employee when collecting amounts for 1 employer if all collection efforts are carried on in the name of the employer.

(ii) A state or nationally chartered bank when collecting its own claims.

(iii) A trust company when collecting its own claims.

(iv) A state or federally chartered savings and loan association when collecting its own claims.

(v) A state or federally chartered credit union when collecting its own claims.

(vi) A licensee under Act No. 21 of the Public Acts of 1939, as amended, being sections 493.1 to 493.26 of the Michigan Compiled Laws.

(vii) A business licensed by this state under a regulatory act in which collection activity is

regulated.

(viii) An abstract company doing an escrow business.

(ix) A licensed real estate broker or salesperson if the claims being handled by the broker or salesperson are related to or in connection with his or her real estate business.

(x) A public officer or person acting under a court order.

(xi) An attorney handling claims and collections on behalf of clients and in the attorney's own name.

(c) "Collection agency manager" means the individual responsible for the operation of a collection agency.

(d) "Communicate" means the conveying of information regarding a debt directly or indirectly to a person through any medium.

(e) "Creditor" or "principal" means a person who offers or extends credit creating a debt or a person to whom a debt is owed or due or asserted to be owed or due. Creditor or principal shall not include a person who receives an assignment or transfer of a debt solely for the purpose of facilitating collection of the debt for the assignor or transferor. In those instances, the assignor or transferor of the debt shall continue to be considered the creditor or the principal for purposes of this article.

(f) "Consumer" or "debtor" means a natural person obligated or allegedly obligated to pay a debt.

(g) "Insolvency" means the failure of a licensee to pay debts in the ordinary course of business.

(h) "Office" means a regular place of business where complete records are kept of collections and claims handled by a licensee.

339.902. Collection practices board

Section 902. A collection practices board is created.

339.903. Application of article

Section 903. This article applies to a person who, by a device, subterfuge, or pretense, makes a pretended purchase or takes a pretended assignment of an account from another person to evade this article.

339.904. License required, exceptions; qualifications

Section 904. (1) Except as otherwise provided in this article, a person shall not operate a collection agency or commence in the business of a collection agency without first applying for and obtaining a license under this article from the department for each place of business.

(2) A person is not subject to the licensing requirement of subsection (1) if the person's collection activities in this state are limited to interstate communications. This subsection does not exempt a person from other requirements of law that regulate collection practices.

(3) The department may require financial statements, references, or other information it considers necessary to determine the qualifications of the applicant, including but not limited to, the names, addresses, and references of each member of a partnership or of each officer, director, or shareholder holding 10% or more of the outstanding shares of the agency.

(4) Each individual, partner of a partnership, or officer or director of a corporation that is an applicant shall be not less than 18 years of age, be of good moral character, and have the financial responsibility, reputation, and experience such as to command the confidence of the community and to warrant the belief that the business will be operated lawfully, honestly, and fairly.

339.906. Nontransferability of title; notice of change

Section 906. A collection agency license is not transferable to another person or location. Notification of changes in the corporate structure, partnership, name, or address shall be submitted in writing within 30 days after the date of the change.

339.907. Corporate surety or cash bond

Section 907. The department shall require a collection agency to file and maintain in force for each license a corporate surety or a cash bond conditioned upon the faithful accounting of all money collected upon accounts entrusted to the collection agency in a form prescribed by the department in a sum the department considers necessary, but for not less than \$5,000.00 nor more than \$50,000.00. The bond shall be for the benefit of a person damaged by the wrongful taking of money collected by the agency or failure of the collection agency to report or remit proceeds of collections made. A person injured may bring an action upon the bond. The aggregate liability to all injured persons shall not exceed the sum of the bond. The surety on the bond shall have the right to cancel the bond upon giving 30 days' written notice to the department and after that date shall be relieved of liability for a breach of condition occurring after the effective date of the cancellation. An action on a bond shall not be commenced after the expiration of 1 year from the effective date of cancellation of the bond.

339.908. Manager or owner manager

Section 908. (1) As used in this section, "owner manager" means a person who does all of the following:

(a) Obtains a license under section 904 [FN1] as an individual, a partner in a partnership, or an officer of a corporation.

(b) Meets all the requirements specified in section 911(2). [FN2]

(c) Personally supervises an office of the collection agency for which he or she obtains a license under section 904.

(2) A collection agency shall not engage in the collection agency business unless each collection agency office is under the personal supervision of a licensed collection agency manager or an owner manager. An owner manager shall not be required to be licensed as a collection agency manager. An out of state collection agency which initiates collection activity from within this state shall be required to be under the personal supervision of a licensed collection agency manager or owner manager.

(3) A collection agency shall notify the department in writing of the person responsible for the operation of each office. The notification shall be made not more than 30 days after the person assumes the responsibility.

(4) A person shall not personally supervise more than 1 office.

339.909. Trust accounts

Section 909. A collection agency shall maintain a separate depository account in a bank or savings and loan association within this state in which all money collected under this article by the collection agency shall be deposited within 3 banking days after receipt. The depository account shall be identified and distinguished from the collection agency's personal or general checking or other depository account and shall be designated as a trust account. The trust account shall always contain sufficient funds to pay money due or owing to the client less money owed to the licensee by the client. Except as provided in this section, a disbursement may not be made from the account except to a client for money owed to the client or to pay costs advanced for a client. Periodically, the collection agency may withdraw from the trust account money which has accrued to the collection agency from a collection deposited or from an adjustment resulting from costs advanced and payments made directly to clients.

339.910. Books, accounts, records; reports

Section 910. (1) A collection agency shall keep and use books, accounts, or records which the department requires to determine whether the collection agency is complying with this article and the rules promulgated under this article. These books, accounts, and records shall consist of at least, but not be limited to, all of the following:

(a) Permanent records, which show the chronological sequence in which funds are received and disbursed. For funds received, the record shall include the date of receipt and deposit, the number of the account to which deposited, the name of the debtor, the name of the principal, and the amount. For disbursements, the record shall include the date, the payee, the check number, and the amount, with a corresponding debtor reference.

(b) Each agency licensee shall:

(i) Maintain records or books of accounts, setting forth the account of each client in alphabetical order according to the names of the clients. If the licensee's books of accounting are kept in numerical order, then the licensee shall maintain an alphabetical cross index of each client corresponding with the number of the account. Each account shall reflect the true condition of each debtor's account at the end of each calendar month and shall include all of the following:

(A) The name and address of the client.

(B) The name of the debtor or debtors from whom collection was or is being made.

(C) The amount and description of each debit and each credit and date of each debit and credit.

(D) The balance due to or owing from each client.

(ii) Maintain a record and history of each claim or account for collection which shall clearly show all of the following:

(A) The name of the debtor.

(B) The principal amount of the obligation.

(C) Any other or additional amounts or items charged or collected with a description of amounts or items charged or collected.

(D) Each payment received or collected and the date of receipt or collection.

(E) The balance owing.

(c) All receipts issued shall be signed by and with the name or initials of the person issuing the receipt and shall show the name of the issuing agency.

(2) A collection agency shall preserve the books, accounts, and records within the state, and make them or true copies of them accessible to the department for at least 3 years after making the final payment entry on an account recorded in those books, accounts, and records.

(3) Annually before May 16 a collection agency shall file a report with the department giving relevant information which the department requires concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the collection agency. The report shall be made under oath and in the form prescribed by the department.

(4) The department may require a collection agency to file a sworn financial report of the trust account required to be maintained by the collection agency and may designate the information to be contained in the report.

(5) Collection agency books, accounts, and records shall be audited by the department on a biennial basis or when determined necessary by the director.

(6) Information provided to the director under this section shall be exempted from disclosure except in actions commenced under this article.

339.911. Manager's license; application; requirements

Section 911. The department shall issue a collection agency manager's license or a collection agency license to an individual who meets all of the following requirements:

(a) Has a high school diploma or demonstrates to the satisfaction of the department that the applicant possesses the equivalent of a high school education.

(b) Has had at least 6 months of full-time experience in the collection of accounts.

(c) Has passed the examination approved by the department.

(d) Is at least 18 years of age.

(e) Is of good moral character.

339.912. Manager's license; examination

Section 912. An applicant for a collection agency manager's license shall take a written examination developed by the board and the department to test the applicant's knowledge of the collection agency business, collection practices, customs and ethics, and the laws and rules relating to the operations of collection agencies.

339.913. Manager's license; display

Section 913. A collection agency manager's license shall be displayed on the premises where licensed business or activity is conducted.

339.914. Proof of requirements

Section 914. Satisfactory proof of having been a collection agency manager or having been engaged in the business of a collection agency for a period of 3 years immediately before July 1, 1975, is prima facie proof of the applicant meeting the requirements specified in section 911(2).

339.915. Prohibited acts

Section 915. A licensee shall not commit 1 or more of the following acts:

- (a) Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or the stationery of a credit bureau unless it is disclosed that it is the collection department of the credit bureau.
- (b) Using forms or instruments which simulate the appearance of judicial process.
- (c) Using seals or printed forms of a government agency or instrumentality.
- (d) Using forms that may otherwise induce the belief that they have judicial or official sanction.
- (e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt.
- (f) Misrepresenting in a communication with a debtor any of the following:
 - (i) The legal status of a legal action being taken or threatened.
 - (ii) The legal rights of the creditor or debtor.
 - (iii) That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property.
 - (iv) That accounts have been turned over to innocent purchasers for value.
- (g) Communicating with a debtor without accurately disclosing the caller's identity or cause

expenses to the debtor for a long distance telephone call, telegram, or other charge.

(h) Communicating with a debtor, except through billing procedure, when the debtor is actively represented by an attorney, the attorney's name and address are known, and the attorney has been contacted in writing by the credit grantor or the credit grantor's representative or agent, unless the attorney representing the debtor fails to answer written communication or fails to discuss the claim on its merits within 30 days after receipt of the written communication.

(i) Communicating information relating to a debtor's indebtedness to an employer or an employer's agent unless the communication is specifically authorized in writing by the debtor subsequent to the forwarding of the claim for collection, the communication is in response to an inquiry initiated by the debtor's employer or the employer's agent, or the communication is for the purpose of acquiring location information about the debtor.

(j) Using or employing, in connection with collection of a claim, a person acting as a peace or law enforcement officer or any other officer authorized to serve legal papers.

(k) Using or threatening to use physical violence in connection with collection of a claim.

(l) Publishing, causing to be published, or threatening to publish lists of debtors, except for credit reporting purposes when in response to a specific inquiry from a prospective credit grantor about a debtor.

(m) Using a shame card, shame automobile, or otherwise bring to public notice that the consumer is a debtor, except with respect to a legal proceeding which is instituted.

(n) Using a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor. All communications shall be made from 8 a.m. to 9 p.m. unless the debtor expressly agrees in writing to communications at another time. All telephone communications made from 9 p.m. to 8 a.m. shall be presumed to be made at an inconvenient time in the absence of facts to the contrary.

(o) Using profane or obscene language.

(p) Using a method contrary to a postal law or regulation to collect an account.

(q) Failing to implement a procedure designed to prevent a violation by an employee.

(r) Communicating with a consumer regarding a debt by postcard.

339.915a. Prohibited acts

Section 915a. A licensee shall not commit 1 or more of the following acts:

- (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, or representing that the person is competent to do so, or to institute a judicial proceeding on behalf of another.
- (c) Sharing quarters or office space, or having a common waiting room with a practicing attorney or a lender.
- (d) Exercising authority on behalf of a creditor to employ the service of an attorney unless 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 shall be the client of the attorney, and the licensee shall not represent the client in court.
- (e) 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.
- (f) Soliciting, purchasing, or receiving an assignment of a claim for the sole purpose of instituting an action on the claim in a court.
- (g) Advertising or threatening to advertise for sale a claim as a means of forcing payment of the claim, unless the collection agency is acting as the assignee for the benefit of creditors or acting under an order of a court.
- (h) Failing to deposit money collected into the trust account required to be maintained under this article.
- (i) Commingling money collected for a client with the collection agency's own general or operating funds.
- (j) Using a part of a client's money in the conduct of a collection agency's business.
- (k) Refusing or intentionally failing to remit to a client all money collected, due, and owing the client less any commission owed to the licensee within 45 days after the day on which the money was collected.
- (l) Failing to give a debtor a written receipt for cash payment, or other payment when specifically requested, showing the amount of money received and the debt to which it was applied and the name of the specific account receiving the money.
- (m) Refusing or intentionally failing to return to a creditor all original documents deposited with the claim when the claim is returned, if requested. When requested by the creditor, there shall be a signed agreement between the agency and the creditor if any closing out fee is charged to the

creditor for unpaid claims returned or collection activities discontinued.

(n) Identifying the collection agency other than by the name appearing on the license.

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

(p) Operating under a name or in a manner which implies or states that the collection agency is a branch of, or associated with, or has been approved or licensed by a department of federal, state, or local government, or which implies that the collection agency is a credit reporting agency regularly furnishing a credit report about consumers unless it is a credit reporting agency.

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

(r) Depositing or threatening to deposit a postdated check or other postdated payment instrument before the date on the postdated check or instrument.

339.916. Action for damages or equitable relief

Section 916. (1) A person who suffers injury, loss, or damage, or from whom money was collected by the use of a method, act, or practice in violation of this article or rules promulgated under this article, may bring an action for damages or other equitable relief.

(2) If the court finds for the petitioner, recovery shall be in the amount of actual damages or \$50.00, whichever is greater. If the court finds that the method, act, or practice was a wilful violation, it may award a civil penalty of not less than 3 times the actual damages, or \$150.00, whichever is greater and shall award reasonable attorney's fees and court costs incurred in connection with the action.

339.917. Violations

Section 917. A licensee who commits 1 or more of the following is subject to the strictures described in article 6:

(a) Cancellation of a surety bond.

(b) Failure to notify the director of any changes in corporate or partnership structure pursuant to section 905 or 906, or both.

(c) Failure to apply for a separate license for each place of business pursuant to section 905.

- (d) Commencing operation before issuance of a license pursuant to section 904.
- (e) Operation before the renewal of an expired license.
- (f) Failure to preserve and make accessible books, accounts, and records pursuant to section 910(2).
- (g) Failure to submit an annual report pursuant to section 910(3).
- (h) Failure to file a sworn financial statement when required by the director pursuant to section 910(4).
- (i) Failure to allow an audit of books, accounts, and records on a biennial basis or when determined necessary by the director pursuant to section 910(5).
- (j) Using forms not approved by the director or altering a form previously approved.
- (k) Violation of any federal or state act relating to debt collection.

339.918. Notice of debt; dispute and verification of debt amount

Section 918. (1) Within 5 days after the initial communication with a consumer in connection with a collection of a debt, a collection agency shall send the consumer, unless the following information is contained in the initial communication or the consumer has paid the debt, a written notice containing all of the following information:

- (a) The amount of the debt owed.
 - (b) The date the communication was sent to the debtor.
 - (c) The name of the creditor to whom the debt is owed.
 - (d) A statement specifying that unless the consumer, within 30 days after receipt of this notice, disputes the validity of the debt, or a portion of the debt, the debt will be assumed to be valid.
 - (e) A statement specifying that, if the consumer notifies the collection agency in writing within 30 days after receipt of this notice, that the debt, or any portion of the debt, is disputed, the collection agency shall obtain verification of the debt or a copy of a judgment against the consumer and that a copy of the verification or judgment shall be mailed to the consumer by the collection agency.
- (2) If the consumer notifies the collection agency in writing, within 30 days after receiving the written notice, that the debt, or any portion of the debt, is disputed, collection of the debt or any disputed portion of the debt shall cease until the collection agency obtains verification of the

debt and a copy of the verification or judgment is mailed to the consumer by the collection agency. Verification of the debt or any disputed portion of the debt shall include the number and amount of previously made payments and the name and address of the original creditor, if different from the current creditor, or a copy of the judgment against the debtor.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed as an admission of liability by the consumer.

339.919. Debtor location information; communication with others

Section 919. (1) A collection agency communicating with any person other than the debtor, for the purpose of acquiring location information about the debtor, shall state all of the following:

(a) The name of the individual seeking the location information.

(b) Whether the purpose of the communication is for confirmation or correction of location information about the debtor.

(2) For purposes of this article, location information shall consist only of a debtor's place of abode and place of employment and the telephone number at each place.

339.920. Liquidation or other relief; application for court order

Section 920. If the department determines that a licensee is insolvent or has collected accounts, but failed to remit money due a claimant or forwarded money due a claimant within 45 days after the day of collection, or if the license of a collection agency has expired or been suspended or revoked, the department may apply to the circuit court for the county in which the main office of the agency is located for an order authorizing the director to take possession of the assets, books, and records of the licensee for the purpose of liquidating the business and for such other relief as the nature of the case and the interests of the claimants or aggrieved consumers require. The application for an order following the expiration, suspension, or revocation of a license shall not be made until after 10 days' notice to the licensee or former licensee.