

Michigan Association of Collection Agencies' Opposition to HB 4657 & 4658

- **Consumers already have protections on both federal and state level**
 - o Federal Fair Debt Collection Practices Act
 - o Michigan Collection Practices Act
 - o Michigan Occupational Code
- **Both bills are unconstitutionally vague and, as a result, cannot be adhered to and/or enforced**
 - o According to the standard regarding unconstitutionally vague statutes, fair notice of what conduct is prohibited must be provided to those individuals who are required to abide by these statutes (i.e., collection agencies should be able to know exactly what conduct is prohibited), and also apply clear standards for those who are tasked to enforce these statutes (police, prosecutors, judges, and juries).
 - "A statute may be challenged for vagueness on three grounds: (1) that it fails to provide fair notice of the conduct proscribed; (2) that it is so indefinite that it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; or (3) that its coverage is overbroad and impinges on First Amendment protections." *People v. Harris*, 495 Mich 120, 133-134; 845 NW2d 477 (2014).
 - "Thus, the key question is whether the ... statute provides adequate notice to citizens regarding what conduct is prohibited and sufficient guidance to fact-finders in order to avoid arbitrary enforcement." *People v. Harris*, 495 Mich 120, 135; 845 NW2d 477 (2014).
 - o How are these statutes vague and ambiguous?
 - "A licensee or regulated person could not do any of the following":
 - ***"Implicate a debtor in a crime"***
 - o Is a licensee prohibited from suggesting to the debtor that they are committing a crime by not paying (already prohibited under federal and state law), or is it intended to prevent a licensee from turning a debtor into authorities if the licensee learned that a debtor was, in fact, committing a crime (which arguably a licensee would be ethically or morally obligated to report)?
 - ***"Engage in conduct to disgrace a debtor while collecting a claim"***
 - o What is conduct that would "disgrace" a debtor? "Disgrace" is not a legal term of art and is so subjective that no licensee could ever be on proper notice of what conduct is and is not permitted.
 - ***"Disrupt the tranquility, peace, and harmony of a debtor's residency by violence or other verbal or physical means"***
 - o Presumably, any telephone call or written letter from a debt collector could "disrupt the tranquility, peace, and harmony of a debtor's resident" by verbal means. Any debtor might naturally feel uncomfortable or unnerved receiving a call, letter, or other notice from a debt collector, even if the communication is wholly appropriate and otherwise legally permitted under existing federal and state laws. Licensees agree that violence and physicality are not permitted in debt collection, but "verbal" means "in the form of words" (according to Merriam-Webster), which is to say it includes any and all written or oral communication.
 - ***"Incite the debtor to commit an assaultive crime"***
 - o Under what circumstance would subpart (D) apply? Is it actually saying that a debt collector cannot talk a debtor into committing an assault on a third party? When would that ever happen? What about if the debtor – annoyed by lawful communications from the licensee – finds and attacks the licensee? Is that inciting them to commit an assaultive crime?