ABA Legislative Action Alert

Urge the House to Pass H.R. 5082, the “Practice of Law Technical Clarification Act of 2018”

We need your help to enact important bipartisan legislation to curb abusive lawsuits and burdensome Consumer Financial Protection Bureau (CFPB) regulations harmful to creditor attorneys for their court-related activities. H.R. 5082 would achieve these aims—and restore traditional state court regulation and oversight of the legal profession—by clarifying that the Fair Debt Collection Practices Act (FDCPA) and the CFPB’s regulatory authority do not apply to attorneys engaged in debt collection litigation.

BACKGROUND

For years, attorneys have been regulated by the state supreme courts that license them and their state bar agencies, not Congress or federal agencies. These state courts and bars have extensive authority and tools to stop and punish any attorney misconduct in debt collection lawsuits that harm consumers. For example, state court and bar rules prohibit attorneys from filing frivolous lawsuits, taking legal actions to harass or intimidate defendants, or making false or deceptive claims during a court case, and any attorney violating these or other such rules can be severely punished.

Unfortunately, although the courts and their bar agencies are the proper authorities for overseeing all attorneys engaged in litigation, creditor attorneys have been unfairly singled out for special liability under the FDCPA and burdensome new regulations by the CFPB. As a result, many creditor attorneys are now routinely sued for their state court actions that are alleged to be technical violations of the Act, including accidently filing an otherwise valid collection suit in the wrong county, suing to recover a portion of a debt or fees that are in dispute, or deposing a third party without the express permission of the consumer or the court. Any creditor attorney engaging in these or many other ordinary litigation activities can be sued personally under the Act for statutory damages and substantial attorneys’ fees even when the consumer suffered no actual harm. The CFPB has also recently become much more aggressive in seeking to regulate creditor attorneys’ litigation activities in various ways.

H.R. 5082, sponsored by Reps. Alex Mooney (R-WV) and Vicente Gonzalez (D-TX), would curb these abusive lawsuits against creditor attorneys and prevent the CFPB from usurping the trial judge’s proper role in overseeing the litigation process and punishing any attorney misconduct. If passed, H.R. 5082 would clarify that attorneys engaged in debt collection litigation are not subject to technical lawsuits under the FDCPA or to the CFPB’s regulatory authority.

Some critics have claimed the bill would weaken existing consumer protections, but this is untrue because the bill is narrowly tailored and would only exempt the litigation activities of creditor attorneys that are conducted under the watchful eye of the trial judge. The bill would not exempt any of the attorneys’ other collection-related actions that occur before suit is filed or that are not related to the court case. Thus, consumers would still be fully protected at all stages of the collection process.

The House Financial Services Committee approved H.R. 5082 on March 21, and the House is expected to vote on the bill shortly after the November 6 election. The ABA sent a letter to the House on September 19 urging prompt passage.

URGENT ACTION REQUESTED

The ABA needs your help to pass this critical legislation as soon as possible. Please email or fax letters to your U.S. Representatives urging them to vote for H.R. 5082. (For your convenience, a sample bar letter to Representatives, the ABA Fact Sheet, and other background information are available on the ABA's FDCPA Reform web page.)

If you have any questions or need information regarding the names and email addresses of the key House staff to whom your letters should be sent, please contact Larson Frisby in the ABA Governmental Affairs Office at (202) 662-1098 or larson.frisby@americanbar.org. Please also email Larson copies of any letters you send to your Representatives to help us to coordinate and follow-up on your efforts. Thank you for your assistance on this important issue.