

ABA Supports H.R. 5082, the “Practice of Law Technical Clarification Act of 2018”

For centuries, lawyers have been regulated primarily by the state supreme courts that license them, not Congress or federal agencies. Consistent with this principle, the [Fair Debt Collection Practices Act](#) (FDCPA) originally contained a complete exemption for lawyers collecting debts on behalf of their clients. In 1986, Congress voted to eliminate the lawyer exemption, based on its belief that the revised Act would only allow regulation of lawyers’ non-litigation collection activities. Despite Congress’ intent, however, the courts have applied the FDCPA to creditor lawyers even when they are engaged in litigation. In 2010, Congress passed the Dodd-Frank Act (DFA), which granted the new Consumer Financial Protection Bureau (CFPB) broad authority to regulate debt collectors and to enforce the FDCPA. Although [Section 1027\(e\)](#) of the DFA exempts most consumer lawyers from the CFPB’s authority, it may not apply to some creditor lawyers. [H.R. 5082](#), cosponsored by Reps. Alex Mooney (R-WV) and Vicente Gonzalez (D-TX), would restore proper judicial oversight of the legal profession by clarifying that neither the FDCPA nor the CFPB’s regulatory authority under the DFA applies to the litigation activities of creditor lawyers.

The ABA urges Congress to pass H.R. 5082 as soon as possible because:

- **State courts, not the CFPB or other agencies, are in the best position to regulate lawyers engaged in the practice of law.** Lawyers practicing law have long been regulated primarily by the highest court of the state in which the lawyer is licensed, not federal agencies or Congress. Over time, an extensive and effective system of judicial regulation of lawyers has developed—including admission requirements, ethical codes and disciplinary rules—which govern virtually every aspect of a lawyer’s professional life. As “officers of the court,” lawyers are subject to strict ethical rules and disciplinary action for any misconduct, including potential suspension or disbarment. Therefore, further regulation by the CFPB, other agencies, or Congress is unnecessary and is likely to conflict with regulation and oversight by the judicial branch of government.
- **The legislation is consistent with Congress’ original intent not to regulate lawyers engaged in the practice of law.** When Congress amended the FDCPA in 1986 to remove the original lawyer exemption, the bill’s sponsor, Rep. Frank Annunzio (D-IL), explained that the purpose of the change was to regulate only lawyers’ non-litigation collection activities. Despite the sponsor’s clear intent, courts have applied the FDCPA to creditor lawyers even when they are engaged in litigation activities. As a result, many creditor lawyers pursuing legitimate collection actions for clients in state court are routinely sued in federal court for technical violations of the FDCPA, resulting in harsh statutory penalties and attorney fees. H.R. 5082 would restore Congress’ intent by clarifying that lawyers engaged in litigation are not covered by the strict requirements of the FDCPA, though they are still subject to extensive judicial oversight and discipline.
- **The scope of the legislation is narrowly tailored and would only exempt creditor lawyers engaged in litigation activities; it would not create a broad exemption for lawyers’ non-litigation debt collection activities.** H.R. 5082 would clarify that while the FDCPA does not apply to lawyers’ filing of lawsuits and other litigation activities already subject to judicial oversight, the Act would still apply to lawyers’ extrajudicial collection activities, such as demand letters and phone calls to debtors. Similarly, while the bill would expand the current exemption in Section 1027(e) of the DFA to include both creditor and consumer lawyers, the CFPB would retain its existing authority over lawyers and others engaged in non-litigation collection activities.
- **For years, the Federal Trade Commission also recommended that the FDCPA be clarified to exempt creditor lawyers engaged in litigation.** In each annual report on the FDCPA from 1998 through [2006](#), the FTC urged Congress to reexamine and amend the definition of “debt collector” to exclude such lawyers from the Act.

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