

As Introduced

**130th General Assembly
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H. B. No. 173

Representatives Terhar, Mallory

Cosponsors: Representatives Grossman, Brenner, Blair, Beck, Bishoff

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A B I L L

To amend sections 4710.01 and 4710.03 and to enact 1
sections 4710.20 to 4710.32 of the Revised Code to 2
regulate providers of debt settlement services. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4710.01 and 4710.03 be amended and 4
sections 4710.20, 4710.21, 4710.22, 4710.23, 4710.24, 4710.25, 5
4710.26, 4710.27, 4710.28, 4710.29, 4710.30, 4710.31, and 4710.32 6
of the Revised Code be enacted to read as follows: 7

Sec. 4710.01. As used in ~~this chapter~~ sections 4710.01 to 8
4710.04 of the Revised Code: 9

(A) "Person" includes individuals, partnerships, 10
associations, corporations, trusts, and other legal entities. 11

(B)(1) "Debt adjusting" means doing business in debt 12
adjusting, budget counseling, debt management, or debt pooling 13
service, or holding oneself out, by words of similar import, as 14
providing services to debtors in the management of their debts, to 15
do either of the following: 16

~~(1)(a)~~ (a) To effect the adjustment, compromise, or discharge of 17
any account, note, or other indebtedness of the debtor; 18

~~(2)(b)~~ To receive from the debtor and disburse to the
debtor's creditors any money or other thing of value. 19
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(2) "Debt adjusting" does not include debt settlement
services as defined in section 4710.20 of the Revised Code. 21
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(C) "Resides" means to live in a particular place on a
temporary or a permanent basis. 23
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Sec. 4710.03. Nothing in ~~this chapter~~ sections 4710.01 to
4710.04 of the Revised Code applies to any of the following: 25
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(A) The federal national mortgage association; the federal
home loan mortgage corporation; a bank, bank holding company,
trust company, savings and loan association, credit union, savings
bank, or credit card bank, that is regulated by the office of the
comptroller of currency, office of thrift supervision, federal
reserve, federal deposit insurance corporation, national credit
union administration, or division of financial institutions; or to
subsidiaries of any of these entities; 27
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(B) Debt adjusting incurred in the practice of law in this
state; 35
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(C) A person that incidentally engages in debt adjusting to
adjust the indebtedness owed to that person; 37
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(D) A registrant as defined in section 1321.51 of the Revised
Code; 39
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(E) A registrant or licensee as both are defined in section
1322.01 of the Revised Code. 41
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Sec. 4710.20. As used in sections 4710.20 to 4710.32 of the
Revised Code: 43
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(A) "Affiliate" means any of the following: 45

(1) A person that controls, is controlled by, or is under 46

common control with a provider. 47

(2) An executive officer or director of a provider or any individual performing functions similar to an executive officer or director. 48
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(3) An executive officer or director of a person described in division (A)(1) of this section or any individual performing functions similar to an executive officer or director. 51
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(B) "Concessions" means assent to repayment of a debt on terms more favorable to a debtor than the terms of the contract between the debtor and a creditor. 54
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(C) "Control" means the right to control at least ten per cent of the voting power of another person. 57
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(D) "Day" means a calendar day. 59

(E) "Debtor" means an individual to whom a provider furnishes debt settlement services. 60
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(F) "Debt settlement services agreement" means an agreement between a provider and a debtor for the furnishing of debt settlement services. 62
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(G)(1) "Debt settlement services" means the services as an intermediary between a debtor and one or more unsecured creditors of the debtor for the purpose of obtaining concessions with respect to the debtor's unsecured debt, which concessions may include a reduction in the principal amount of the debt. 65
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(2) "Debt settlement services" does not include any of the following: 70
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(a) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state; 72
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(b) Financial planning services provided in a financial planner-client relationship by a licensed member of a financial 75
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<u>planning profession.</u>	77
<u>(H) "Financial institution" means any national bank, any bank doing business under authority granted by the superintendent of financial institutions or the regulatory authority of another state, any federal savings association, any savings and loan association or savings bank doing business under authority granted by the superintendent or the regulatory authority of another state, any trust company, or any credit union regulated by a state or federal regulatory authority.</u>	78 79 80 81 82 83 84 85
<u>(I) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.</u>	86 87
<u>(J) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.</u>	88 89 90 91 92 93
<u>(K) "Principal amount of the debt" means the amount of a debt at the time of the execution of a debt settlement services agreement.</u>	94 95 96
<u>(L) "Program" means a program or strategy in which a provider furnishes debt settlement services.</u>	97 98
<u>(M) "Provider" means a person that furnishes, offers to furnish, or agrees to furnish debt settlement services.</u>	99 100
<u>(N) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.</u>	101 102 103
<u>(O) "State" means the state of Ohio, except when the context indicates the term is referring to another state of the United States, the District of Columbia, Puerto Rico, the United States</u>	104 105 106

Virgin Islands, or any territory or insular possession subject to 107
the jurisdiction of the United States. 108

(P) "Superintendent of financial institutions" includes the 109
deputy superintendent for consumer finance as provided in section 110
1181.21 of the Revised Code. 111

Sec. 4710.21. (A) A provider shall not furnish debt 112
settlement services to a debtor who the provider reasonably should 113
know resides in this state at the time the debt settlement 114
services agreement is entered into, except as provided in sections 115
4710.20 to 4710.32 of the Revised Code. 116

(B) Sections 4710.20 to 4710.32 of the Revised Code do not 117
apply to the following persons or their employees when the person 118
or the employee is engaged in the regular course of the person's 119
business or profession: 120

(1) A judicial officer, a person acting under an order of a 121
court or an administrative agency, or an assignee for the benefit 122
of creditors; 123

(2) A financial institution or an affiliate or agency of a 124
financial institution if the affiliate or agent is subject to 125
examination by a federal or state banking regulatory authority; 126

(3) A title insurer, escrow company, or other person that 127
provides bill-paying services if the furnishing of debt settlement 128
services is incidental to the bill-paying services; 129

(4) An attorney licensed or otherwise authorized to practice 130
law in this state who furnishes debt settlement services directly 131
to a client as part of a lawyer-client relationship and does not 132
have a business relationship with a provider that is in any way 133
related to the furnishing of debt settlement services. 134

Sec. 4710.22. A provider, prior to offering to furnish or 135

furnishing debt settlement services to a debtor who the provider 136
reasonably should know resides in this state at the time the debt 137
settlement services agreement is entered into, shall submit all of 138
the following to the department of commerce: 139

(A) Evidence that the provider has a resident agent in this 140
state recorded with the secretary of state; 141

(B) Proof of a bond in effect meeting the requirements of 142
section 4710.23 of the Revised Code; 143

(C) Proof that the provider is authorized by the laws of this 144
state to conduct business in this state. 145

Sec. 4710.23. (A) A provider shall obtain and maintain in 146
effect at all times a corporate surety bond issued by a bonding 147
company or insurance company authorized to do business in this 148
state that meets all of the following conditions: 149

(1) The bond is in favor of the superintendent of financial 150
institutions. 151

(2) The bond is for the exclusive benefit of any debtor 152
located in this state, and of the state for the benefit of any 153
debtor, who is injured by a failure to comply with any provision 154
of sections 4710.20 to 4170.32 of the Revised Code. 155

(3) The bond is in the amount of fifty thousand dollars. 156

(B) Any debtor claiming against the bond for a failure to 157
comply with any provision of sections 4710.20 to 4710.32 of the 158
Revised Code may maintain an action at law against the provider 159
and against the corporate surety. The aggregate liability of the 160
corporate surety for any and all breaches of the conditions of the 161
bond shall not exceed the penal sum of the bond. 162

(C) Whenever the penal sum of the bond is reduced by one or 163
more recoveries or payments, the provider shall furnish a new or 164

additional bond under this section, so that the total or aggregate 165
penal sum of the bond or bonds equals the sum required by this 166
section, or shall furnish an endorsement executed by the corporate 167
surety reinstating the bond to the required penal sum. 168

(D) The bond shall not be canceled by the provider or by the 169
corporate surety, except upon notice to the superintendent by 170
certified mail, return receipt requested. The cancellation shall 171
not be effective prior to thirty days after the superintendent 172
receives the notice. 173

Sec. 4710.24. A provider shall do all of the following: 174

(A) Act in good faith in all matters relating to the 175
furnishing of debt settlement services; 176

(B) Maintain a toll-free communication system, staffed at a 177
level that reasonably permits a debtor to speak to a customer 178
service representative, as appropriate, during ordinary business 179
hours; 180

(C) Provide all disclosures required by sections 4710.20 to 181
4710.32 of the Revised Code in English and in any other language 182
the provider will use primarily to communicate with a debtor. 183

Sec. 4710.25. (A) Before a debtor consents to pay the fees 184
for the goods and services offered by the provider, the provider 185
shall disclose, in a clear and conspicuous manner, all of the 186
following material information: 187

(1) A good faith estimate of the amount of time necessary to 188
achieve the represented results and, to the extent that the debt 189
settlement services may include a settlement offer to any of the 190
debtor's creditors, a good faith estimate of the time by which the 191
provider will start to make bona fide settlement offers to the 192
debtor's creditors, and the cost to the debtor for furnishing the 193
debt settlement services; 194

(2) To the extent that the debt settlement services may include a settlement offer to any of the debtor's creditors, a good faith estimate of the amount of money, or the percentage of each outstanding debt, that the debtor will be required to accumulate before the provider makes a bona fide settlement offer; 195
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(3) To the extent that any aspect of the debt settlement services relies upon or results in the debtor's failure to make timely payments to creditors, that the use of the debt settlement services will likely adversely affect the debtor's creditworthiness, may result in the debtor being subject to collection actions or sued by creditors, may result in the creation of taxable income to the debtor, and may increase the amount of money the debtor owes due to the accrual of fees and interest; 200
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(4) To the extent that the provider requests or requires the debtor to place funds in an account at a financial institution, that the debtor owns the funds held in the account; 209
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(5) That the debtor may withdraw from the debt settlement services agreement at any time without penalty. 212
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(B) A provider shall not misrepresent, directly or by implication, any material aspect of the debt settlement services, including, but not limited to, any of the following: 214
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(1) The amount of money or the percentage of the debt amount that a debtor may save by entering into the debt settlement services agreement; 217
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(2) The effect of debt settlement services on the debtor's creditworthiness and on the collection efforts of the debtor's creditors; 220
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(3) The percentage or number of debtors who attain the represented results; 223
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(4) Whether debt settlement services are being offered or furnished by a nonprofit entity. 225
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(C) Prior to entering into a debt settlement services agreement, a provider shall prepare a financial analysis with respect to the income and debts of the debtor seeking the debt settlement services and provide the debtor with a copy of the financial analysis. 227
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Sec. 4710.26. A provider shall not impose fees or receive payment for debt settlement services unless all of the following conditions are met: 232
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(A) The provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt under a debt settlement program. 235
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(B) The debtor has made at least one payment to a creditor in furtherance of a settlement with that creditor; 238
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(C) The fee for settling each individual debt enrolled in a debt settlement program shall do either of the following: 240
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(1) Bear the same proportional relationship to the total fees for settling the entire debt balance as the individual debt amount bears to the entire debt amount. For purposes of division (C)(1) of this section, "individual debt amount" and "entire debt amount" mean the amounts owed at the time the debt was enrolled in the program. 242
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(2) Represent a percentage of the amount saved as a result of the settlement. The percentage charged shall not change from one individual debt to another. For purposes of division (C)(2) of this section, the "amount saved" means the difference between the amount owed at the time the debt was enrolled in the program and the amount actually paid to satisfy the debt. 248
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Sec. 4710.27. (A) A provider shall not hold a debtor's funds 254
intended for distribution to creditors. 255

(B) Nothing in this section prohibits a provider from 256
requesting or requiring the debtor to place funds in an account to 257
be used for payment of the provider's fees and for payments to 258
creditors in connection with a renegotiation, settlement, 259
reduction, or other alteration of the terms of payment or other 260
terms of debt, provided that all of the following conditions are 261
met: 262

(1) The funds are held in a specifically designated account 263
at a financial institution. 264

(2) The debtor owns and controls the funds held in the 265
account and is paid accrued interest on the account, if any. 266

(3) The entity administering the account is not owned or 267
controlled by, or an affiliate of, the provider. 268

(4) The entity administering the account does not give or 269
accept any money or other compensation in exchange for referrals 270
of business by the provider. 271

(5) The debtor may terminate the debt settlement services 272
agreement at any time without penalty, and must receive all funds 273
in the account, other than funds earned by the provider in 274
accordance with sections 4710.20 to 4710.32 of the Revised Code, 275
within seven business days after the debtor's request. 276

Sec. 4710.28. If a provider enters into a debt settlement 277
services agreement without complying with sections 4710.20 to 278
4710.32 of the Revised Code, the debtor may void the agreement. 279

Sec. 4710.29. (A) The superintendent of financial 280
institutions may investigate an alleged failure to comply with any 281
provision of sections 4710.20 to 4710.32 of the Revised Code or 282

any complaints concerning such a failure. 283

(B) As often as the superintendent considers it necessary, 284
the superintendent may investigate and examine, in or outside this 285
state, the activities and the books, accounts, papers, records, 286
and other documents of a provider or of any person to which a 287
provider has delegated its obligations under an agreement or under 288
sections 4710.20 to 4710.32 of the Revised Code. In connection 289
with the investigation, the superintendent may charge the provider 290
the reasonable expenses necessarily incurred to conduct the 291
examination. 292

(C) In conducting any investigation pursuant to this section, 293
the superintendent may compel, by subpoena, witnesses to testify 294
in relation to any matter over which the superintendent has 295
jurisdiction and may require the production of any book, account, 296
paper, record, or other document pertaining to that matter. If a 297
person fails to file any statement or report, obey any subpoena, 298
give testimony, produce any book, account, paper, record, or other 299
document as required by a subpoena, or permit photocopying of any 300
book, account, paper, record, or other document subpoenaed, the 301
court of common pleas of any county in this state, upon 302
application made to it by the superintendent, shall compel 303
obedience by attachment proceedings for contempt, as in the case 304
of disobedience of the requirements of a subpoena issued from the 305
court or a refusal to testify therein. 306

(D) Examination or investigation information that identifies 307
debtors who have debt settlement services agreements with a 308
provider shall not be disclosed to the public. 309

Sec. 4710.30. If the superintendent of financial institutions 310
determines that a person is engaged in or is believed to be 311
engaged in activities that may constitute a failure to comply with 312

any provision of sections 4710.20 to 4710.32 of the Revised Code, 313
the superintendent, after notice and a hearing conducted in 314
accordance with Chapter 119. of the Revised Code, may do any of 315
the following: 316

(A) Issue a cease and desist order. Such an order shall be 317
enforceable in the court of common pleas. 318

(B) Seek and obtain civil penalties in an amount not to 319
exceed one thousand dollars for each failure to comply. 320

(C) Order the person to correct or remedy the conditions 321
resulting from the failure to comply, including by making 322
restitution. Such an order shall be enforceable in the court of 323
common pleas. 324

Sec. 4710.31. Any material, nontechnical failure to comply 325
with any provision of sections 4710.20 to 4710.32 of the Revised 326
Code is deemed an unfair or deceptive act or practice in violation 327
of section 1345.02 of the Revised Code. A debtor injured by such a 328
failure has a cause of action and is entitled to the same relief 329
available to a consumer under section 1345.09 of the Revised Code. 330

Sec. 4710.32. Sections 4710.20 to 4710.31 of the Revised Code 331
modify, limit, and supersede the federal "Electronic Signatures in 332
Global and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001 333
et seq., as amended, but do not modify, limit, or supersede 334
section 101(c) of that act or authorize electronic delivery of any 335
of the notices described in section 103(b) of that act. 336

Section 2. That existing sections 4710.01 and 4710.03 of the 338
Revised Code are hereby repealed. 339