

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**H. B. No. 420**

**Representative T. Patton**

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**A BILL**

To amend section 4710.01, to enact new sections 1  
4710.02, 4710.03, and 4710.99 and section 4710.04, 2  
and to repeal sections 4710.02, 4710.03, and 3  
4710.99 of the Revised Code, relative to engaging 4  
in the business of debt adjusting for debtors, to 5  
specify contribution limits and auditing and 6  
insurance coverage duties, to require timely 7  
disbursement of debtor funds, and to provide 8  
penalties, including a criminal penalty, for a 9  
violation; and to eliminate previous provisions 10  
regulating entities engaging in the business of 11  
debt pooling. 12

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

**Section 1.** That section 4710.01 be amended and new sections 13  
4710.02, 4710.03, and 4710.99 and section 4710.04 of the Revised 14  
Code be enacted to read as follows: 15

**Sec. 4710.01.** As used in ~~sections 4710.01, 4710.02, and~~ 16  
~~4710.99 of the Revised Code~~ this chapter: 17

(A) "Person" includes individuals, partnerships, 18  
associations, ~~and corporations, trusts, and other legal entities.~~ 19

(B) "Debt ~~pooling company~~ adjusting" means ~~any person~~ doing 20

business ~~as a~~ in debt adjusting, budget counseling, debt 21  
management, prorating, or debt pooling service, or holding itself 22  
oneself out, by words of similar import, as providing services to 23  
debtors in the management of their debts, ~~and contracting with a~~ 24  
~~debtor for a fee or other thing of value;~~ to do either of the 25  
following: 26

(1) To effect the adjustment, compromise, or discharge of any 27  
account, note, or other indebtedness of the debtor; 28

(2) To receive from the debtor and disburse to ~~his~~ the 29  
debtor's creditors any money or other thing of value. 30

(C) "Resides" means to live in a particular place on a 31  
temporary or a permanent basis. 32

**Sec. 4710.02.** (A) Subject to division (C) of this section, a 33  
person engaged in debt adjusting shall do both of the following: 34

(1) Unless specifically instructed otherwise by a debtor, 35  
disburse to the appropriate creditors all funds received from the 36  
debtor, less any contributions not prohibited by division (B) of 37  
this section, within thirty days of receipt of the funds from the 38  
debtor; 39

(2) Maintain a separate trust account for the receipt of any 40  
funds from debtors and the disbursement of the funds to creditors 41  
on behalf of the debtors. 42

(B) If contributions for engaging in debt adjusting are 43  
accepted, directly or indirectly, no person engaged in debt 44  
adjusting shall do any of the following: 45

(1) Accept a contribution exceeding seventy-five dollars from 46  
a debtor residing in this state for an initial consultation or 47  
initial set up; 48

(2) Accept a consultation contribution exceeding one hundred 49  
dollars per calendar year from a debtor residing in this state; 50

(3) Accept a periodic contribution from a debtor residing in this state, which contribution exceeds eight and one-half per cent of the amount paid by the debtor each month for distribution to the debtor's creditors or thirty dollars, whichever is greater.

(C) Division (A) or (B) of this section does not prohibit a person engaged in debt adjusting for a debtor who is residing in this state from charging the debtor a reasonable fee for insufficient funds transactions that is in addition to contributions not prohibited by division (B) of this section.

(D) Any person that engages in debt adjusting, annually, shall arrange for and undergo an audit conducted by an independent, third party, certified public accountant of the person's business, including any trust funds deposited and distributed to creditors on behalf of debtors. Both of the following apply to an audit described in this division:

(1) The person shall file the results of the audit and the auditor's opinion with the consumer protection division of the attorney general.

(2) The attorney general shall make available a summary of the results of the audit and the auditor's opinion upon written request of a person and payment of a fee not exceeding the cost of copying the summary and opinion.

(E) A person engaged in debt adjusting shall obtain and maintain at all times insurance coverage for employee dishonesty, depositor's forgery, and computer fraud in the amount of ten per cent of the monthly average for the immediate preceding six months of the aggregate amount of all deposits made with the person by all debtors. The insurance coverage shall comply with all of the following:

(1) The insurance coverage is not less than one hundred thousand dollars nor more than five hundred thousand dollars.

(2) The insurance coverage includes a deductible that does not exceed ten per cent of the face amount of the policy coverage. 82  
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(3) The insurance coverage is issued by an insurer rated at least A- or its equivalent by a nationally recognized rating organization. 84  
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(4) The insurance coverage provides that thirty days advance written notice be given to the consumer protection division of the attorney general before coverage is terminated. 87  
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(F)(1) No person engaged in debt adjusting shall fail to comply with division (A) of this section. 90  
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(2) No person engaged in debt adjusting shall fail to comply with divisions (D) and (E) of this section. 92  
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**Sec. 4710.03.** Nothing in this chapter applies to any of the following: 94  
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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; 96  
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(B) Debt adjusting incurred in the practice of law in this state; 104  
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(C) A person that incidentally engages in debt adjusting to adjust the indebtedness owed to that person. 106  
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**Sec. 4710.04.** (A) Any violation of division (B) or (F)(1) of section 4710.02 of the Revised Code is deemed an unfair or deceptive act or practice in violation of section 1345.02 of the 108  
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Revised Code. A person injured by a violation of either division 111  
has a cause of action and is entitled to the same relief available 112  
to a consumer under section 1345.09 of the Revised Code, and all 113  
the powers and remedies available to the attorney general to 114  
enforce sections 1345.01 to 1345.13 of the Revised Code are 115  
available to the attorney general to enforce divisions (B) and 116  
(F)(1) of section 4710.02 of the Revised Code. 117

(B) Any person who violates division (F)(2) of section 118  
4710.02 of the Revised Code, in addition to the penalties imposed 119  
by section 4710.99 of the Revised Code, shall be fined not more 120  
than ten thousand dollars for each violation. 121

**Sec. 4710.99.** Whoever violates division (F) of section 122  
4710.02 of the Revised Code is guilty of a misdemeanor of the 123  
third degree for a first offense and a misdemeanor of the second 124  
degree for any subsequent offense. 125

**Section 2.** That existing section 4710.01 and sections 126  
4710.02, 4710.03, and 4710.99 of the Revised Code are hereby 127  
repealed. 128