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A B I L L

To amend sections 1309.613, 1309.625, 2716.03, 1
2716.11, and 4710.01, to enact new sections 2
4710.02, 4710.03, and 4710.99 and section 4710.04, 3
and to repeal sections 4710.02, 4710.03, and 4
4710.99 of the Revised Code to modify the Secured 5
Transactions Law relating to notice of the 6
location for the disposition of collateral that is 7
given to certain persons and to reduce the amount 8
of damages recoverable by a debtor or secondary 9
obligor in an action against a person found in 10
violation of the Secured Transactions Law; 11
relative to property subject to garnishment held 12
by a judgment debtor's employer or another person; 13
relative to engaging in the business of debt 14
adjusting for debtors, to specify contribution 15
limits and auditing and insurance coverage duties, 16
to require timely disbursement of debtor funds, 17
and to provide penalties, including a criminal 18
penalty, for a violation; and to eliminate 19

previous provisions regulating entities engaging 20
in the business of debt pooling. 21

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

Section 1. That sections 1309.613, 1309.625, 2716.03, 22
2716.11, and 4710.01 be amended and new sections 4710.02, 4710.03, 23
and 4710.99 and section 4710.04 of the Revised Code be enacted to 24
read as follows: 25

Sec. 1309.613. (A) Except in a consumer-goods transaction, 26
all of the following rules apply to a notification of disposition 27
of collateral and to a disposition of collateral: 28

(1) The contents of a notification of disposition are 29
sufficient if the notification: 30

(a) Describes the debtor and the secured party; 31

(b) Describes the collateral that is the subject of the 32
intended disposition; 33

(c) States the method of intended disposition; 34

(d) States that the debtor is entitled to an accounting of 35
the unpaid indebtedness and states the charge, if any, for an 36
accounting; and 37

(e) States the time and place, by identifying the place of 38
business or address or by providing other information that, in 39
each case, reasonably describes the location, of a public 40
disposition or the time after which any other disposition is to be 41
made. 42

(2) Whether the contents of a notification that lacks any of 43
the information specified in division (A)(1) of this section are 44
nevertheless sufficient is a question of fact. 45

(3) The contents of a notification providing substantially the information specified in division (A)(1) of this section are sufficient, even if the notification includes:

(a) Information not specified by that division; or

(b) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(B) The following form of notification and the form appearing in division (B) of section 1309.614 of the Revised Code, when completed, each provides sufficient information:

"NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to whom the notification is sent)

From: (Name, address, and telephone number of secured party)

Name of Debtor(s): (Include only if debtor(s) are not an addressee)

(FOR A PUBLIC DISPOSITION:)

We will sell (or lease or license, as applicable) the (describe collateral) to the highest qualified bidder in public as follows:

Day and Date:.....

Time:.....

Place:.....

(FOR A PRIVATE DISPOSITION:)

We will sell (or lease or license, as applicable) the (describe collateral) privately sometime after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or

license, as applicable) (for a charge of \$.....). You may 74
request an accounting by calling us at (telephone number)." 75

Sec. 1309.625. (A) If it is established that a secured party 76
is not proceeding in accordance with this chapter, a court may 77
order or restrain collection, enforcement, or disposition of 78
collateral on appropriate terms and conditions. 79

(B) Subject to divisions (C), (D), and (F) of this section, a 80
person is liable for damages in the amount of any loss caused by a 81
failure to comply with this chapter. Loss caused by a failure to 82
comply may include loss resulting from the debtor's inability to 83
obtain, or increased costs of, alternative financing. 84

(C) Except as provided in section 1309.628 of the Revised 85
Code: 86

(1) A person who, at the time of the failure, was a debtor, 87
was an obligor, or held a security interest in or other lien on 88
the collateral may recover damages under division (B) of this 89
section for its loss; and 90

(2) If the collateral is consumer goods, a person who was a 91
debtor or a secondary obligor at the time a secured party failed 92
to comply with sections 1309.601 to 1309.628 of the Revised Code 93
may recover for that failure in any event an amount not less than 94
the credit service charge plus ten per cent of the principal 95
amount of the obligation or the time-price differential plus ten 96
per cent of the cash price+ 97

(D) A debtor whose deficiency is eliminated under section 98
1309.626 of the Revised Code may recover damages for the loss of 99
any surplus. However, a debtor or secondary obligor whose 100
deficiency is eliminated or reduced under section 1309.626 of the 101
Revised Code may not recover otherwise under division (B) of this 102
section for noncompliance with sections 1309.601 to 1309.628 of 103

the Revised Code relating to collection, enforcement, disposition, 104
or acceptance. Regardless of whether the debtor's or secondary 105
obligor's deficiency is eliminated or reduced under section 106
1309.626 of the Revised Code, any damages recovered by the debtor 107
or secondary obligor under division (C) of this section shall be 108
reduced by the amount that the sum of the secured obligation, 109
expenses, and attorney's fees exceeds the proceeds of collection, 110
enforcement, disposition, or acceptance. 111

(E) In addition to any damages recoverable under division (B) 112
of this section, the debtor, consumer obligor, or person named as 113
a debtor in a filed record, as applicable, may recover five 114
hundred dollars in each case from a person that: 115

(1) Fails to comply with section 1309.208 of the Revised 116
Code; 117

(2) Fails to comply with section 1309.209 of the Revised 118
Code; 119

(3) Files a record that the person is not entitled to file 120
under division (A) of section 1309.509 of the Revised Code; 121

(4) Fails to cause the secured party of record to file or 122
send a termination statement as required by division (A) or (C) of 123
section 1309.513 of the Revised Code; 124

(5) Fails to comply with division (B)(1) of section 1309.616 125
of the Revised Code and whose failure is part of a pattern, or 126
consistent with a practice, of noncompliance; or 127

(6) Fails to comply with division (B)(2) of section 1309.616 128
of the Revised Code. 129

(F) A debtor or consumer obligor may recover damages under 130
division (B) of this section and, in addition, five hundred 131
dollars in each case from a person who, without reasonable cause, 132
fails to comply with a request under section 1309.210 of the 133

Revised Code. A recipient of a request under section 1309.210 of 134
the Revised Code who never claimed an interest in the collateral 135
or obligations that are the subject of a request under that 136
section has a reasonable excuse for failure to comply with the 137
request within the meaning of this division. 138

(G) If a secured party fails to comply with a request 139
regarding a list of collateral or a statement of account under 140
section 1309.210 of the Revised Code, the secured party may claim 141
a security interest only as shown in the list or statement 142
included in the request as against a person who is reasonably 143
misled by the failure. 144

Sec. 2716.03. (A) Subject to the limitation on the 145
commencement of proceedings contained in division (B) of section 146
124.10 of the Revised Code, a proceeding in garnishment of 147
personal earnings may be commenced after a judgment has been 148
obtained by a judgment creditor by the filing of an affidavit in 149
writing made by the judgment creditor or the judgment creditor's 150
attorney setting forth all of the following: 151

(1) The name of the judgment debtor whose personal earnings 152
the judgment creditor seeks to garnish; 153

(2) That the affiant has good reason to believe and does 154
believe that the person, partnership, limited liability company, 155
or corporation named in the affidavit as the garnishee is an 156
employer of the judgment debtor who ~~has~~ may have personal earnings 157
of the judgment debtor that are not exempt under section 2329.66 158
of the Revised Code; 159

(3) That the demand in writing, as required by section 160
2716.02 of the Revised Code, has been made; 161

(4) That the payment demanded in the notice required by 162
section 2716.02 of the Revised Code has not been made, and a 163

sufficient portion of the payment demanded has not been made to 164
prevent the garnishment of personal earnings as described in 165
section 2716.02 of the Revised Code; 166

(5) That the affiant has no knowledge of any application by 167
the judgment debtor for the appointment of a trustee so as to 168
preclude the garnishment of the judgment debtor's personal 169
earnings; 170

(6) That the affiant has no knowledge that the debt to which 171
the affidavit pertains is the subject of a debt scheduling 172
agreement of a nature that precludes the garnishment of the 173
personal earnings of the judgment debtor under division (B) of 174
this section. 175

(B) No proceeding in garnishment of personal earnings shall 176
be brought against a judgment debtor for the collection of a debt 177
that is the subject of an agreement for debt scheduling between 178
the judgment debtor and a budget and debt counseling service, 179
unless any payment to be made by the judgment debtor, or by a 180
budget and debt counseling service to the judgment creditor under 181
the agreement for debt scheduling between the judgment debtor and 182
the budget and debt counseling service, is due and unpaid for more 183
than forty-five days after the date on which the payment became 184
due, or unless the judgment creditor previously was notified by 185
the service that the debt scheduling agreement between the 186
judgment debtor and the service was terminated. 187

(C) Upon a court's issuance of an order of garnishment of 188
personal earnings following a judgment creditor's filing of an 189
affidavit under this section and compliance with section 2716.04 190
of the Revised Code, the garnishee and the judgment debtor shall 191
be notified of the proceeding in garnishment of personal earnings 192
in accordance with sections 2716.05 and 2716.06 of the Revised 193
Code. 194

(D) As used in this chapter:	195
(1) A "budget and debt counseling service" or "service" means a corporation organized under Chapter 1702. of the Revised Code for the purpose of counseling consumers with respect to their financial obligations and assisting them in dealing with their creditors.	196 197 198 199 200
(2) "Debt scheduling" means counseling and assistance provided to a consumer by a budget and debt counseling service under all of the following circumstances:	201 202 203
(a) The counseling and assistance is manifested in an agreement between the consumer and the service under which the consumer regularly pays that portion of the consumer's income to the service that has been determined not to be required for the maintenance of health or the essentials of life.	204 205 206 207 208
(b) The payments are made to the service until the debts of the consumer that are the subject of the agreement are fully retired.	209 210 211
(c) The service has sent written notice, by certified mail, return receipt requested, or by regular mail evidenced by a properly completed and stamped certificate of mailing by regular mail, to the creditors of the consumer that are disclosed by the consumer to the service. The notice shall contain all of the following:	212 213 214 215 216 217
(i) A statement of the consumer's intent to participate in debt scheduling;	218 219
(ii) A summary of the consumer's income, proposed itemized budget, schedule of creditors, and proposed debt retirement plan;	220 221
(iii) A statement of the particular creditor's duty to respond, in writing, to the service regarding the consumer's participation in debt scheduling within fifteen days after	222 223 224

receiving the notice. 225

(d) The debts of the consumer that are the subject of the 226
agreement for debt scheduling are determined as follows: 227

(i) Any debt owed to a creditor that was notified of the 228
consumer's intent to participate is a subject of the agreement if 229
the creditor responds to the service and enters into an agreement 230
with the service, pursuant to which the creditor agrees not to 231
attempt to collect the debts of the consumer as long as the 232
consumer regularly pays to the service the amount previously 233
agreed upon by the service and the consumer, and no payment to be 234
made by the judgment debtor to the service or by the service to 235
the creditor is due and unpaid for more than forty-five days after 236
the date on which the payment became due, as long as the debt 237
scheduling agreement between the consumer and the service has not 238
been terminated, and as long as the service regularly pays to the 239
creditor a mutually acceptable amount that is either the amount 240
agreed upon by the service and the creditor on the date they 241
entered into their original agreement or an amount agreed upon by 242
both the service and the creditor on a date after the date of the 243
original agreement. 244

(ii) Any debt owed to a creditor that was notified of the 245
consumer's intent to participate is a subject of the agreement if 246
the creditor does not respond to the service and state the 247
creditor's objection, in writing, to the consumer's participation 248
in debt scheduling within fifteen days after receiving notice of 249
the consumer's intention to do so; however, no debt that is 250
subject to a lien or security interest of any type, other than a 251
judgment lien or execution lien, shall be a subject of the 252
agreement unless the creditor specifically assents, in writing, to 253
the debt being a subject of the agreement. The creditor shall be 254
considered to have entered into an agreement of the type described 255
in division (D)(2)(d)(i) of this section, and the amount to be 256

regularly paid by the service to the creditor shall be an amount 257
determined to be reasonable by the service or an amount agreed 258
upon by both the service and the creditor on a date after the 259
expiration of the fifteen-day period. 260

(iii) Any debt owed to a creditor that was not notified of 261
the consumer's intent to participate, or a debt owed to a creditor 262
that was notified of the consumer's intent to participate and that 263
responded to the service and stated its objection, in writing, to 264
the consumer's participation in debt scheduling within fifteen 265
days after receiving notice of the consumer's intention to do so, 266
is not a subject of the agreement. 267

(e) The service agrees that, if the consumer fails to make a 268
payment under the agreement within forty-five days of its due date 269
or if the agreement is terminated, the service will notify each 270
creditor that is owed a debt that is subject to the agreement of 271
the failure or termination by regular mail within two business 272
days of the failure or termination, and the service provides that 273
notice in accordance with the agreement. 274

Sec. 2716.11. A proceeding for garnishment of property, other 275
than personal earnings, may be commenced after a judgment has been 276
obtained by a judgment creditor by the filing of an affidavit in 277
writing made by the judgment creditor or the judgment creditor's 278
attorney setting forth all of the following: 279

(A) The name of the judgment debtor whose property, other 280
than personal earnings, the judgment creditor seeks to garnish; 281

(B) That the affiant has good reason to believe and does 282
believe that the person named in the affidavit as the garnishee 283
~~has~~ may have property, other than personal earnings, of the 284
judgment debtor that is not exempt under the law of this state or 285
the United States; 286

(C) A description of the property. 287

Sec. 4710.01. As used in ~~sections 4710.01, 4710.02, and~~ 288
~~4710.99~~ of the Revised Code this chapter: 289

(A) "Person" includes individuals, partnerships, 290
associations, ~~and~~ corporations, trusts, and other legal entities. 291

(B) "~~Debt pooling company adjusting~~" means ~~any person~~ doing 292
business ~~as a~~ in debt adjusting, budget counseling, debt 293
management, ~~providing,~~ or debt pooling service, or holding ~~itself~~ 294
oneself out, by words of similar import, as providing services to 295
debtors in the management of their debts, ~~and contracting with a~~ 296
~~debtor for a fee or other thing of value;~~ to do either of the 297
following: 298

(1) To effect the adjustment, compromise, or discharge of any 299
account, note, or other indebtedness of the debtor; 300

(2) To receive from the debtor and disburse to ~~his~~ the 301
debtor's creditors any money or other thing of value. 302

(C) "Resides" means to live in a particular place on a 303
temporary or a permanent basis. 304

Sec. 4710.02. (A) Subject to division (C) of this section, a 305
person engaged in debt adjusting shall do both of the following: 306

(1) Unless specifically instructed otherwise by a debtor, 307
disburse to the appropriate creditors all funds received from the 308
debtor, less any contributions not prohibited by division (B) of 309
this section, within thirty days of receipt of the funds from the 310
debtor; 311

(2) Maintain a separate trust account for the receipt of any 312
funds from debtors and the disbursement of the funds to creditors 313
on behalf of the debtors. 314

(B) If contributions for engaging in debt adjusting are 315
accepted, directly or indirectly, no person engaged in debt 316
adjusting shall do any of the following: 317

(1) Accept a contribution exceeding seventy-five dollars from 318
a debtor residing in this state for an initial consultation or 319
initial set up; 320

(2) Accept a consultation contribution exceeding one hundred 321
dollars per calendar year from a debtor residing in this state; 322

(3) Accept a periodic contribution from a debtor residing in 323
this state, which contribution exceeds eight and one-half per cent 324
of the amount paid by the debtor each month for distribution to 325
the debtor's creditors or thirty dollars, whichever is greater. 326

(C) Division (A) or (B) of this section does not prohibit a 327
person engaged in debt adjusting for a debtor who is residing in 328
this state from charging the debtor a reasonable fee for 329
insufficient funds transactions that is in addition to 330
contributions not prohibited by division (B) of this section. 331

(D) Any person that engages in debt adjusting, annually, 332
shall arrange for and undergo an audit conducted by an 333
independent, third party, certified public accountant of the 334
person's business, including any trust funds deposited and 335
distributed to creditors on behalf of debtors. Both of the 336
following apply to an audit described in this division: 337

(1) The person shall file the results of the audit and the 338
auditor's opinion with the consumer protection division of the 339
attorney general. 340

(2) The attorney general shall make available a summary of 341
the results of the audit and the auditor's opinion upon written 342
request of a person and payment of a fee not exceeding the cost of 343
copying the summary and opinion. 344

(E) A person engaged in debt adjusting shall obtain and 345
maintain at all times insurance coverage for employee dishonesty, 346
depositor's forgery, and computer fraud in the amount of ten per 347
cent of the monthly average for the immediate preceding six months 348
of the aggregate amount of all deposits made with the person by 349
all debtors. The insurance coverage shall comply with all of the 350
following: 351

(1) The insurance coverage is not less than one hundred 352
thousand dollars. 353

(2) The insurance coverage includes a deductible that does 354
not exceed ten per cent of the face amount of the policy coverage. 355

(3) The insurance coverage is issued by an insurer rated at 356
least A- or its equivalent by a nationally recognized rating 357
organization. 358

(4) The insurance coverage provides that thirty days advance 359
written notice be given to the consumer protection division of the 360
attorney general before coverage is terminated. 361

(F)(1) No person engaged in debt adjusting shall fail to 362
comply with division (A) of this section or shall violate division 363
(B) of this section. 364

(2) No person engaged in debt adjusting shall fail to comply 365
with divisions (D) and (E) of this section. 366

Sec. 4710.03. Nothing in this chapter applies to any of the 367
following: 368

(A) The federal national mortgage association; the federal 369
home loan mortgage corporation; a bank, bank holding company, 370
trust company, savings and loan association, credit union, savings 371
bank, or credit card bank, that is regulated by the office of the 372
comptroller of currency, office of thrift supervision, federal 373
reserve, federal deposit insurance corporation, national credit 374

union administration, or division of financial institutions; or to 375
subsidiaries of any of these entities; 376

(B) Debt adjusting incurred in the practice of law in this 377
state; 378

(C) A person that incidentally engages in debt adjusting to 379
adjust the indebtedness owed to that person; 380

(D) A registrant as defined in section 1321.51 of the Revised 381
Code; 382

(E) A registrant or licensee as both are defined in section 383
1322.01 of the Revised Code. 384

Sec. 4710.04. (A) Any violation of division (F)(1) of section 385
4710.02 of the Revised Code is deemed an unfair or deceptive act 386
or practice in violation of section 1345.02 of the Revised Code. A 387
person injured by a violation of that division has a cause of 388
action and is entitled to the same relief available to a consumer 389
under section 1345.09 of the Revised Code, and all the powers and 390
remedies available to the attorney general to enforce sections 391
1345.01 to 1345.13 of the Revised Code are available to the 392
attorney general to enforce division (F)(1) of section 4710.02 of 393
the Revised Code. 394

(B) Any person who violates division (F)(2) of section 395
4710.02 of the Revised Code, in addition to the penalties imposed 396
by section 4710.99 of the Revised Code, shall be fined not more 397
than ten thousand dollars for each violation. 398

Sec. 4710.99. Whoever violates division (F) of section 399
4710.02 of the Revised Code is guilty of a misdemeanor of the 400
third degree for a first offense and a misdemeanor of the second 401
degree for any subsequent offense. 402

Section 2. That existing sections 1309.613, 1309.625, 403
2716.03, 2716.11, and 4710.01 and sections 4710.02, 4710.03, and 404
4710.99 of the Revised Code are hereby repealed. 405

Section 3. Section 2716.03 of the Revised Code is presented 406
in this act as a composite of the section as amended by both Am. 407
Sub. S.B. 144 and Am. Sub. S.B. 170 of the 122nd General Assembly. 408
The General Assembly, applying the principle stated in division 409
(B) of section 1.52 of the Revised Code that amendments are to be 410
harmonized if reasonably capable of simultaneous operation, finds 411
that the composite is the resulting version of the section in 412
effect prior to the effective date of the section as presented in 413
this act. 414