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Sub. H. B. No. 420

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Miller, Hughes, Barrett, Beatty, Blasdel, Brown, Carmichael, Cates, Chandler,
Cirelli, Clancy, Collier, Core, Daniels, DeGeeter, Domenick, Driehaus,
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Senators Harris, Carey, Hottinger, Spada, Armbruster, Brady, DiDonato,
Randy Gardner, Robert Gardner, Goodman, Miller, Mumper, Padgett,
Roberts, Schuler, Austria**

A BILL

To amend sections 1309.613, 1309.625, 1349.99, 1
2716.03, 2716.11, and 4710.01, to enact new 2
sections 4710.02, 4710.03, and 4710.99 and 3
sections 1329.71, 1349.45, and 4710.04, and to 4
repeal sections 4710.02, 4710.03, and 4710.99 of 5
the Revised Code to modify the Secured 6
Transactions Law relating to notice of the 7
location for the disposition of collateral that is 8
given to certain persons and to reduce the amount 9
of damages recoverable by a debtor or secondary 10
obligor in an action against a person found in 11
violation of the Secured Transactions Law; 12
relative to property subject to garnishment held 13
by a judgment debtor's employer or another person; 14
relative to engaging in the business of debt 15
adjusting for debtors, to specify contribution 16

limits and auditing and insurance coverage duties, 17
to require timely disbursement of debtor funds, 18
and to provide penalties, including a criminal 19
penalty, for a violation; to eliminate previous 20
provisions regulating entities engaging in the 21
business of debt pooling; and to prohibit the 22
unauthorized use of the name or logo of a 23
financial institution in connection with the sale 24
or advertising of any product or service if such 25
use is misleading or deceptive. 26

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

Section 1. That sections 1309.613, 1309.625, 1349.99, 27
2716.03, 2716.11, and 4710.01 be amended and new sections 4710.02, 28
4710.03, and 4710.99 and sections 1329.71, 1349.45, and 4710.04 of 29
the Revised Code be enacted to read as follows: 30

Sec. 1309.613. (A) Except in a consumer-goods transaction, 31
all of the following rules apply to a notification of disposition 32
of collateral and to a disposition of collateral: 33

(1) The contents of a notification of disposition are 34
sufficient if the notification: 35

(a) Describes the debtor and the secured party; 36

(b) Describes the collateral that is the subject of the 37
intended disposition; 38

(c) States the method of intended disposition; 39

(d) States that the debtor is entitled to an accounting of 40
the unpaid indebtedness and states the charge, if any, for an 41
accounting; and 42

(e) States the time and place, by identifying the place of 43

business or address or by providing other information that, in 44
each case, reasonably describes the location, of a public 45
disposition or the time after which any other disposition is to be 46
made. 47

(2) Whether the contents of a notification that lacks any of 48
the information specified in division (A)(1) of this section are 49
nevertheless sufficient is a question of fact. 50

(3) The contents of a notification providing substantially 51
the information specified in division (A)(1) of this section are 52
sufficient, even if the notification includes: 53

(a) Information not specified by that division; or 54

(b) Minor errors that are not seriously misleading. 55

(4) A particular phrasing of the notification is not 56
required. 57

(B) The following form of notification and the form appearing 58
in division (B) of section 1309.614 of the Revised Code, when 59
completed, each provides sufficient information: 60

"NOTIFICATION OF DISPOSITION OF COLLATERAL 61

To: (Name of debtor, obligor, or other person to whom the 62
notification is sent) 63

From: (Name, address, and telephone number of secured party) 64

Name of Debtor(s): (Include only if debtor(s) are not an 65
addressee) 66

(FOR A PUBLIC DISPOSITION:) 67

We will sell (or lease or license, as applicable) the 68
(describe collateral) to the highest qualified bidder in public as 69
follows: 70

Day and Date:..... 71

Time:..... 72

Place:.....	73
(FOR A PRIVATE DISPOSITION:)	74
We will sell (or lease or license, as applicable) the (describe collateral) privately sometime after (day and date).	75 76
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 request an accounting by calling us at (telephone number)."	77 78 79 80
Sec. 1309.625. (A) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.	81 82 83 84
(B) Subject to divisions (C), (D), and (F) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.	85 86 87 88 89
(C) Except as provided in section 1309.628 of the Revised Code:	90 91
(1) A person who, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under division (B) of this section for its loss; and	92 93 94 95
(2) If the collateral is consumer goods, a person who was a debtor or a secondary obligor at the time a secured party failed to comply with sections 1309.601 to 1309.628 of the Revised Code may recover for that failure in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the obligation or the time-price differential plus ten per cent of the cash price+.	96 97 98 99 100 101 102

(D) A debtor whose deficiency is eliminated under section 1309.626 of the Revised Code may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 1309.626 of the Revised Code may not recover otherwise under division (B) of this section for noncompliance with sections 1309.601 to 1309.628 of the Revised Code relating to collection, enforcement, disposition, or acceptance. Regardless of whether the debtor's or secondary obligor's deficiency is eliminated or reduced under section 1309.626 of the Revised Code, any damages recovered by the debtor or secondary obligor under division (C) of this section shall be reduced by the amount that the sum of the secured obligation, expenses, and attorney's fees exceeds the proceeds of collection, enforcement, disposition, or acceptance.

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

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

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

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

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

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

(6) Fails to comply with division (B)(2) of section 1309.616

of the Revised Code. 134

(F) A debtor or consumer obligor may recover damages under 135
division (B) of this section and, in addition, five hundred 136
dollars in each case from a person who, without reasonable cause, 137
fails to comply with a request under section 1309.210 of the 138
Revised Code. A recipient of a request under section 1309.210 of 139
the Revised Code who never claimed an interest in the collateral 140
or obligations that are the subject of a request under that 141
section has a reasonable excuse for failure to comply with the 142
request within the meaning of this division. 143

(G) If a secured party fails to comply with a request 144
regarding a list of collateral or a statement of account under 145
section 1309.210 of the Revised Code, the secured party may claim 146
a security interest only as shown in the list or statement 147
included in the request as against a person who is reasonably 148
misled by the failure. 149

Sec. 1329.71. (A) As used in this section, "financial 150
institution" means any bank, savings and loan association, savings 151
bank, or credit union; any affiliate or subsidiary of a bank, 152
savings and loan association, savings bank, or credit union; or 153
any registrant as defined in section 1321.51 of the Revised Code. 154

(B) Any financial institution may proceed by suit to enjoin 155
the use of the financial institution's name or logo in connection 156
with the sale, offering for sale, distribution, or advertising of 157
any product or service without the express written consent of the 158
financial institution, if such use is misleading or deceptive as 159
to the source of origin or sponsorship of, or the affiliation 160
with, the product or service. Any court of competent jurisdiction 161
may grant injunctions to restrain such use as the court considers 162
just and reasonable and may require the defendants to pay to the 163
financial institution all profits derived from and all damages 164

suffered by reason of the wrongful use of the name or logo. 165

(C) Notwithstanding division (B) of this section, the only 166
remedies that are available for the wrongful use of a financial 167
institution's name or logo by a registrant or licensee under 168
sections 1322.01 to 1322.12 of the Revised Code are those set 169
forth in section 1322.10 of the Revised Code or otherwise provided 170
by statute or common law. 171

(D) The provisions of this section are not intended to be 172
exclusive remedies and do not preclude the use of any other remedy 173
provided by law. 174

Sec. 1349.45. (A) As used in this section, "financial 175
institution" means any bank, savings and loan association, savings 176
bank, or credit union; any affiliate or subsidiary of a bank, 177
savings and loan association, savings bank, or credit union; or 178
any registrant as defined in section 1321.51 of the Revised Code. 179

(B) No person shall use the name or logo of any financial 180
institution in connection with the sale, offering for sale, 181
distribution, or advertising of any product or service without the 182
express written consent of the financial institution, if such use 183
is misleading or deceptive as to the source of origin or 184
sponsorship of, or the affiliation with, the product or service. 185

Sec. 1349.99. (A) Whoever violates section 1349.06 or 1349.17 186
of the Revised Code is guilty of a minor misdemeanor. 187

(B)(1) Whoever violates section 1349.45 of the Revised Code 188
is guilty of a misdemeanor of the first degree. 189

(2) Notwithstanding division (B)(1) of this section, the only 190
remedies that are available for a violation of section 1349.45 of 191
the Revised Code by a registrant or licensee under sections 192
1322.01 to 1322.12 of the Revised Code are those set forth in 193
section 1322.10 of the Revised Code or otherwise provided by 194

statute or common law. 195

(3) The provisions of division (B) of this section are not 196
intended to be exclusive remedies and do not preclude the use of 197
any other remedy provided by law. 198

Sec. 2716.03. (A) Subject to the limitation on the 199
commencement of proceedings contained in division (B) of section 200
124.10 of the Revised Code, a proceeding in garnishment of 201
personal earnings may be commenced after a judgment has been 202
obtained by a judgment creditor by the filing of an affidavit in 203
writing made by the judgment creditor or the judgment creditor's 204
attorney setting forth all of the following: 205

(1) The name of the judgment debtor whose personal earnings 206
the judgment creditor seeks to garnish; 207

(2) That the affiant has good reason to believe and does 208
believe that the person, partnership, limited liability company, 209
or corporation named in the affidavit as the garnishee is an 210
employer of the judgment debtor who ~~has~~ may have personal earnings 211
of the judgment debtor that are not exempt under section 2329.66 212
of the Revised Code; 213

(3) That the demand in writing, as required by section 214
2716.02 of the Revised Code, has been made; 215

(4) That the payment demanded in the notice required by 216
section 2716.02 of the Revised Code has not been made, and a 217
sufficient portion of the payment demanded has not been made to 218
prevent the garnishment of personal earnings as described in 219
section 2716.02 of the Revised Code; 220

(5) That the affiant has no knowledge of any application by 221
the judgment debtor for the appointment of a trustee so as to 222
preclude the garnishment of the judgment debtor's personal 223
earnings; 224

(6) That the affiant has no knowledge that the debt to which 225
the affidavit pertains is the subject of a debt scheduling 226
agreement of a nature that precludes the garnishment of the 227
personal earnings of the judgment debtor under division (B) of 228
this section. 229

(B) No proceeding in garnishment of personal earnings shall 230
be brought against a judgment debtor for the collection of a debt 231
that is the subject of an agreement for debt scheduling between 232
the judgment debtor and a budget and debt counseling service, 233
unless any payment to be made by the judgment debtor, or by a 234
budget and debt counseling service to the judgment creditor under 235
the agreement for debt scheduling between the judgment debtor and 236
the budget and debt counseling service, is due and unpaid for more 237
than forty-five days after the date on which the payment became 238
due, or unless the judgment creditor previously was notified by 239
the service that the debt scheduling agreement between the 240
judgment debtor and the service was terminated. 241

(C) Upon a court's issuance of an order of garnishment of 242
personal earnings following a judgment creditor's filing of an 243
affidavit under this section and compliance with section 2716.04 244
of the Revised Code, the garnishee and the judgment debtor shall 245
be notified of the proceeding in garnishment of personal earnings 246
in accordance with sections 2716.05 and 2716.06 of the Revised 247
Code. 248

(D) As used in this chapter: 249

(1) A "budget and debt counseling service" or "service" means 250
a corporation organized under Chapter 1702. of the Revised Code 251
for the purpose of counseling consumers with respect to their 252
financial obligations and assisting them in dealing with their 253
creditors. 254

(2) "Debt scheduling" means counseling and assistance 255

provided to a consumer by a budget and debt counseling service 256
under all of the following circumstances: 257

(a) The counseling and assistance is manifested in an 258
agreement between the consumer and the service under which the 259
consumer regularly pays that portion of the consumer's income to 260
the service that has been determined not to be required for the 261
maintenance of health or the essentials of life. 262

(b) The payments are made to the service until the debts of 263
the consumer that are the subject of the agreement are fully 264
retired. 265

(c) The service has sent written notice, by certified mail, 266
return receipt requested, or by regular mail evidenced by a 267
properly completed and stamped certificate of mailing by regular 268
mail, to the creditors of the consumer that are disclosed by the 269
consumer to the service. The notice shall contain all of the 270
following: 271

(i) A statement of the consumer's intent to participate in 272
debt scheduling; 273

(ii) A summary of the consumer's income, proposed itemized 274
budget, schedule of creditors, and proposed debt retirement plan; 275

(iii) A statement of the particular creditor's duty to 276
respond, in writing, to the service regarding the consumer's 277
participation in debt scheduling within fifteen days after 278
receiving the notice. 279

(d) The debts of the consumer that are the subject of the 280
agreement for debt scheduling are determined as follows: 281

(i) Any debt owed to a creditor that was notified of the 282
consumer's intent to participate is a subject of the agreement if 283
the creditor responds to the service and enters into an agreement 284
with the service, pursuant to which the creditor agrees not to 285

attempt to collect the debts of the consumer as long as the 286
consumer regularly pays to the service the amount previously 287
agreed upon by the service and the consumer, and no payment to be 288
made by the judgment debtor to the service or by the service to 289
the creditor is due and unpaid for more than forty-five days after 290
the date on which the payment became due, as long as the debt 291
scheduling agreement between the consumer and the service has not 292
been terminated, and as long as the service regularly pays to the 293
creditor a mutually acceptable amount that is either the amount 294
agreed upon by the service and the creditor on the date they 295
entered into their original agreement or an amount agreed upon by 296
both the service and the creditor on a date after the date of the 297
original agreement. 298

(ii) Any debt owed to a creditor that was notified of the 299
consumer's intent to participate is a subject of the agreement if 300
the creditor does not respond to the service and state the 301
creditor's objection, in writing, to the consumer's participation 302
in debt scheduling within fifteen days after receiving notice of 303
the consumer's intention to do so; however, no debt that is 304
subject to a lien or security interest of any type, other than a 305
judgment lien or execution lien, shall be a subject of the 306
agreement unless the creditor specifically assents, in writing, to 307
the debt being a subject of the agreement. The creditor shall be 308
considered to have entered into an agreement of the type described 309
in division (D)(2)(d)(i) of this section, and the amount to be 310
regularly paid by the service to the creditor shall be an amount 311
determined to be reasonable by the service or an amount agreed 312
upon by both the service and the creditor on a date after the 313
expiration of the fifteen-day period. 314

(iii) Any debt owed to a creditor that was not notified of 315
the consumer's intent to participate, or a debt owed to a creditor 316
that was notified of the consumer's intent to participate and that 317

responded to the service and stated its objection, in writing, to 318
the consumer's participation in debt scheduling within fifteen 319
days after receiving notice of the consumer's intention to do so, 320
is not a subject of the agreement. 321

(e) The service agrees that, if the consumer fails to make a 322
payment under the agreement within forty-five days of its due date 323
or if the agreement is terminated, the service will notify each 324
creditor that is owed a debt that is subject to the agreement of 325
the failure or termination by regular mail within two business 326
days of the failure or termination, and the service provides that 327
notice in accordance with the agreement. 328

Sec. 2716.11. A proceeding for garnishment of property, other 329
than personal earnings, may be commenced after a judgment has been 330
obtained by a judgment creditor by the filing of an affidavit in 331
writing made by the judgment creditor or the judgment creditor's 332
attorney setting forth all of the following: 333

(A) The name of the judgment debtor whose property, other 334
than personal earnings, the judgment creditor seeks to garnish; 335

(B) That the affiant has good reason to believe and does 336
believe that the person named in the affidavit as the garnishee 337
~~has~~ may have property, other than personal earnings, of the 338
judgment debtor that is not exempt under the law of this state or 339
the United States; 340

(C) A description of the property. 341

Sec. 4710.01. As used in ~~sections 4710.01, 4710.02, and~~ 342
~~4710.99 of the Revised Code~~ this chapter: 343

(A) "Person" includes individuals, partnerships, 344
associations, ~~and~~ corporations, trusts, and other legal entities. 345

(B) "Debt ~~pooling company~~ adjusting" means ~~any person~~ doing 346

business ~~as a~~ in debt adjusting, budget counseling, debt 347
management, ~~providing~~, or debt pooling service, or holding itself 348
oneself out, by words of similar import, as providing services to 349
debtors in the management of their debts, ~~and contracting with a~~ 350
~~debtor for a fee or other thing of value;~~ to do either of the 351
following: 352

(1) To effect the adjustment, compromise, or discharge of any 353
account, note, or other indebtedness of the debtor; 354

(2) To receive from the debtor and disburse to ~~his~~ the 355
debtor's creditors any money or other thing of value. 356

(C) "Resides" means to live in a particular place on a 357
temporary or a permanent basis. 358

Sec. 4710.02. (A) Subject to division (C) of this section, a 359
person engaged in debt adjusting shall do both of the following: 360

(1) Unless specifically instructed otherwise by a debtor, 361
disburse to the appropriate creditors all funds received from the 362
debtor, less any contributions not prohibited by division (B) of 363
this section, within thirty days of receipt of the funds from the 364
debtor; 365

(2) Maintain a separate trust account for the receipt of any 366
funds from debtors and the disbursement of the funds to creditors 367
on behalf of the debtors. 368

(B) If contributions for engaging in debt adjusting are 369
accepted, directly or indirectly, no person engaged in debt 370
adjusting shall do any of the following: 371

(1) Accept a contribution exceeding seventy-five dollars from 372
a debtor residing in this state for an initial consultation or 373
initial set up; 374

(2) Accept a consultation contribution exceeding one hundred 375
dollars per calendar year from a debtor residing in this state; 376

(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. 377
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(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. 381
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(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: 386
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(1) The person shall file the results of the audit and the auditor's opinion with the consumer protection division of the attorney general. 392
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(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. 395
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(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: 399
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(1) The insurance coverage is not less than one hundred thousand dollars. 406
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(2) The insurance coverage includes a deductible that does 408
not exceed ten per cent of the face amount of the policy coverage. 409

(3) The insurance coverage is issued by an insurer rated at 410
least A- or its equivalent by a nationally recognized rating 411
organization. 412

(4) The insurance coverage provides that thirty days advance 413
written notice be given to the consumer protection division of the 414
attorney general before coverage is terminated. 415

(F)(1) No person engaged in debt adjusting shall fail to 416
comply with division (A) of this section or shall violate division 417
(B) of this section. 418

(2) No person engaged in debt adjusting shall fail to comply 419
with divisions (D) and (E) of this section. 420

Sec. 4710.03. Nothing in this chapter applies to any of the 421
following: 422

(A) The federal national mortgage association; the federal 423
home loan mortgage corporation; a bank, bank holding company, 424
trust company, savings and loan association, credit union, savings 425
bank, or credit card bank, that is regulated by the office of the 426
comptroller of currency, office of thrift supervision, federal 427
reserve, federal deposit insurance corporation, national credit 428
union administration, or division of financial institutions; or to 429
subsidiaries of any of these entities; 430

(B) Debt adjusting incurred in the practice of law in this 431
state; 432

(C) A person that incidentally engages in debt adjusting to 433
adjust the indebtedness owed to that person; 434

(D) A registrant as defined in section 1321.51 of the Revised 435
Code; 436

(E) A registrant or licensee as both are defined in section 1322.01 of the Revised Code. 437
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Sec. 4710.04. (A) Any violation of division (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 Revised Code. A person injured by a violation of that division has a cause of action and is entitled to the same relief available to a consumer under section 1345.09 of the Revised Code, and all the powers and remedies available to the attorney general to enforce sections 1345.01 to 1345.13 of the Revised Code are available to the attorney general to enforce division (F)(1) of section 4710.02 of the Revised Code. 439
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(B) Any person who violates division (F)(2) of section 4710.02 of the Revised Code, in addition to the penalties imposed by section 4710.99 of the Revised Code, shall be fined not more than ten thousand dollars for each violation. 449
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Sec. 4710.99. Whoever violates division (F) of section 4710.02 of the Revised Code is guilty of a misdemeanor of the third degree for a first offense and a misdemeanor of the second degree for any subsequent offense. 453
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Section 2. That existing sections 1309.613, 1309.625, 1349.99, 2716.03, 2716.11, and 4710.01 and sections 4710.02, 4710.03, and 4710.99 of the Revised Code are hereby repealed. 457
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Section 3. Section 2716.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 144 and Am. Sub. S.B. 170 of the 122nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in 460
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effect prior to the effective date of the section as presented in 467
this act. 468