

**As Reported by the House Financial Institutions, Real Estate and  
Securities Committee**

**127th General Assembly  
Regular Session  
2007-2008**

**Am. H. B. No. 367**

**Representative Blessing**

**Cosponsors: Representatives Flowers, McGregor, J., Fessler, Webster**

—

**A B I L L**

To amend section 4710.01 and to enact section 4710.05 1  
of the Revised Code relative to the practice of 2  
debt settlement regulation. 3

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

**Section 1.** That section 4710.01 be amended and section 4  
4710.05 of the Revised Code be enacted to read as follows: 5

**Sec. 4710.01.** As used in this chapter: 6

(A) "Person" includes individuals, partnerships, 7  
associations, corporations, trusts, and other legal entities. 8

(B) "Debt adjusting" means doing business in debt adjusting, 9  
budget counseling, debt management, or debt pooling service, or 10  
holding oneself out, by words of similar import, as providing 11  
services to debtors in the management of their debts, to do either 12  
of the following: 13

(1) To effect the adjustment, compromise, or discharge of any 14  
account, note, or other indebtedness of the debtor; 15

(2) To receive from the debtor and disburse to the debtor's 16  
creditors any money or other thing of value. 17

Debt adjusting does not include debt settlement service. 18

(C) "Resides" means to live in a particular place on a 19  
temporary or a permanent basis. 20

(D) "Debt settlement service" means the negotiation, 21  
adjustment, or settlement of a consumer's debt without holding, 22  
receiving, or disbursing the debtor's funds. 23

(E) "Debt settlement provider" means any person engaging in 24  
or holding oneself out as engaging in the business of debt 25  
settlement for compensation that does not in the usual, customary 26  
and regular course of business hold, receive and disburse the 27  
debtor's funds in connection with debt settlement service, but 28  
shall not include any of the following: 29

(1) Attorneys, escrow agents, accountants, broker-dealers in 30  
securities, or investment advisors in securities, when acting in 31  
the ordinary practice of their professions; 32

(2) Any bank, trust company, savings and loan association, 33  
savings bank, credit union, crop credit association, development 34  
credit corporation, industrial development corporation, title 35  
insurance company, or insurance company, operating or organized 36  
under the laws of this state, another state, or the United States, 37  
or any person registered to make loans pursuant to sections 38  
1321.51 to 1321.60 of the Revised Code; 39

(3) Persons who perform credit services for their employer 40  
while receiving a regular salary or wage of an employer not 41  
engaged in the business of debt settlement; 42

(4) Public officers while acting in their official capacities 43  
and persons acting under court order; 44

(5) Any person while performing services incidental to the 45  
dissolution, winding up, or liquidating of a partnership, 46  
corporation, or other business enterprise. 47

Sec. 4710.05. (A) A debt settlement provider shall obtain and 48  
maintain at all times insurance coverage for dishonesty, fraud, 49  
theft, and other misconduct on the part of a director, employee, 50  
or agent of the person. The insurance coverage shall meet all of 51  
the following requirements: 52

(1) Be for a minimum amount of coverage of not less than one 53  
hundred thousand dollars; 54

(2) Include a deductible that does not exceed ten thousand 55  
dollars; 56

(3) Be issued by an insurer rated at least A- or its 57  
equivalent by a nationally recognized rating organization; 58

(4) Require that thirty days advance written notice be given 59  
by the debt settlement provider to the consumer protection 60  
division of the attorney general before coverage is terminated if 61  
that coverage is not being replaced by another insurance policy 62  
that meets the requirements of this section. 63

(B) A debt settlement provider shall maintain books and 64  
records according to generally accepted accounting principles and 65  
file a financial statement annually with the consumer protection 66  
division of the attorney general. The attorney general may require 67  
an audit or review of the financial statement by an independent 68  
certified public accountant. 69

(C) In the event of cancellation of the contract by the 70  
debtor prior to its successful completion, a debt settlement 71  
provider shall refund fifty per cent of any collected fees, 72  
excluding enrollment fees, set-up fees, and fees earned on debt 73  
settled at the time of the termination of the contract, as long as 74  
the consumer has fulfilled the consumer's obligations under the 75  
debt settlement service contract. 76

(D) A debt settlement provider shall not do any of the 77

<u>following:</u>	78
<u>(1) Provide debt settlement service without a written contract, or take any contract or other written instrument that has incomplete or blank sections when the contract or written instrument is signed by the debtor;</u>	79 80 81 82
<u>(2) Receive or charge fees in an aggregate amount in excess of twenty per cent of the principal amount of the debt;</u>	83 84
<u>(3) Make loans or offer credit;</u>	85
<u>(4) Take any confession of the judgment or power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceedings;</u>	86 87 88
<u>(5) Take as part of any agreement to provide debt settlement services a release of any obligation to be performed on the part of the debt settlement provider;</u>	89 90 91
<u>(6) Advertise, display, distribute, or broadcast or televise services, or permit services to be displayed, advertised, distributed, broadcasted or televised, in any manner whatsoever in which is made any false, misleading, or deceptive statement or representation with regard to the services to be performed or the fees to be charged by the debt settlement provider;</u>	92 93 94 95 96 97
<u>(7) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf in connection with the debt settlement provider's activities;</u>	98 99 100 101
<u>(8) Disclose to anyone the name or any personal information of a debtor for whom the debt settlement provider has or is providing debt settlement service other than a debtor's own creditors or the provider's agents. The debt settlement provider shall not disclose the name of a debtor's creditor to anyone other than the debtor or another creditor of the debtor and then only to</u>	102 103 104 105 106 107

the extent necessary to secure the cooperation of a creditor in a 108  
debt settlement plan. 109

(E) The attorney general or the prosecuting attorney of any 110  
county may bring an action to enforce this section. Upon a finding 111  
that any person has engaged or is engaging in any act or practice 112  
in violation of this section, a court may make any necessary order 113  
or enter a judgment including, but not limited to, an injunction, 114  
restitution, or an award of reasonable attorney's fees and costs 115  
of investigation and litigation for each violation of this 116  
section. In seeking injunctive relief, the attorney general or 117  
prosecuting attorney is not required to establish irreparable harm 118  
but, in the alternative, shall establish either a violation of 119  
this section or that the requested order will enjoin an act of 120  
fraud, deception, willful misrepresentation, or other intentional 121  
wrongdoing. 122

(F) In any case in which the attorney general or prosecuting 123  
attorney has authority to institute an action or proceeding under 124  
this section, the attorney general or prosecuting attorney may 125  
accept an assurance of discontinuance of any method, act, or 126  
practice that is in violation of this section from any person 127  
alleged to be engaged in or to have engaged in the unlawful 128  
method, act, or practice. The assurance may include a stipulation 129  
for the voluntary payment by the person of the costs of 130  
investigation, or of an amount to be held in escrow pending the 131  
outcome of any action or as restitution to any aggrieved person or 132  
both. The alleged violator shall give the assurance of 133  
discontinuance in writing and the attorney general or prosecuting 134  
attorney shall file the document with the court of common pleas in 135  
the county in which the alleged violator resides or has principal 136  
place of business if received by the prosecuting attorney, or in 137  
Franklin county if received by the attorney general. Any evidence 138  
of a violation of the assurance of discontinuance is prima-facie 139

evidence of a violation of this section in any subsequent action 140  
or proceeding brought by the attorney general or prosecuting 141  
attorney, and the court may award to the state a civil penalty of 142  
not more than ten thousand dollars for each violation. The 143  
attorney general or prosecuting attorney may reopen any matter 144  
that has been closed by the acceptance of an assurance of 145  
discontinuance at any time for further proceedings in the public 146  
interest. 147

**Section 2.** That existing section 4710.01 of the Revised Code 148  
is hereby repealed. 149