

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**H. B. No. 549**

**Representative Dyer**

**Cosponsors: Representatives Harris, Murray**

—

**A B I L L**

To amend section 4710.01 and to enact sections 1  
4710.20 to 4710.43 of the Revised Code to 2  
establish licensing and regulation of debt 3  
settlement services. 4

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

**Section 1.** That section 4710.01 be amended and sections 5  
4710.20, 4710.21, 4710.22, 4710.23, 4710.24, 4710.25, 4710.26, 6  
4710.27, 4710.28, 4710.29, 4710.30, 4710.31, 4710.32, 4710.33, 7  
4710.34, 4710.35, 4710.36, 4710.37, 4710.38, 4710.39, 4710.40, 8  
4710.41, 4710.42, and 4710.43 of the Revised Code be enacted to 9  
read as follows: 10

**Sec. 4710.01.** As used in this chapter: 11

(A) "Person" includes individuals, partnerships, 12  
associations, corporations, trusts, and other legal entities. 13

(B) "Debt adjusting" means doing business in debt adjusting, 14  
budget counseling, debt management, or debt pooling service, or 15  
holding oneself out, by words of similar import, as providing 16  
services to debtors in the management of their debts, to do either 17  
of the following: 18

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

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

"Debt adjusting" does not include debt settlement service as defined in section 4710.20 of the Revised Code.

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

**Sec. 4710.20.** As used in sections 4710.20 to 4710.43 of the Revised Code:

(A) "Affiliate" means a person that controls, is controlled by, or is under common control with the licensee.

(B) "Agreement" means an agreement between a provider and an individual for the performance of debt settlement services.

(C) "Business address" means the physical location of a business, including the name and number of a street.

(D) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(E) "Day" means a calendar day.

(F) "Debt settlement services" means the services as an intermediary between an individual and one or more unsecured creditors of the individual for the purpose of obtaining concessions and without receiving money from the individual for distribution of that money to the individual's creditor, but does not include any of the following:

(1) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;

(2) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state; or 48  
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(3) Financial planning services provided in a financial planner-client relationship by a member of a financial planning profession who holds current certification by the certified financial planner board of standards, inc. 51  
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(G) "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 of the United States, 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 of the United States, or any credit union regulated by a state or federal regulatory authority. 55  
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(H) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing. 63  
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(I) "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. 65  
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(J) "Program" means a program or strategy in which a provider furnishes debt settlement services, which contemplate that creditors will settle debts for less than the full amount of debt owed by an individual, and in which the individual makes payments directly to the creditors. 71  
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(K) "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. 76  
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(L) "Sign" means, with present intent to authenticate or 79  
adopt a record: 80

(1) To execute or adopt a tangible symbol; or 81

(2) To attach to or logically associate with the record an 82  
electronic sound, symbol, or process. 83

(M) "State" means, except when the context indicates the term 84  
is referring to the state of Ohio, a state of the United States, 85  
the District of Columbia, Puerto Rico, the United States Virgin 86  
Islands, or any territory or insular possession subject to the 87  
jurisdiction of the United States. 88

(N) "Settlement" means an arrangement under which a creditor 89  
accepts concessions on an individual's account resulting from 90  
negotiations conducted by a provider of debt settlement services 91  
and money is paid to the creditor. 92

**Sec. 4710.21. (A) No person shall provide debt settlement** 93  
**services for compensation without first having obtained a license,** 94  
**from the director of commerce under sections 4710.20 to 4710.43 of** 95  
**the Revised Code, for each business location to be maintained by** 96  
**the person for the transaction of business in this state.** 97

(B) Sections 4710.20 to 4710.43 of the Revised Code do not 98  
apply to the following persons or their employees when the person 99  
or the employee is engaged in the regular course of the person's 100  
business or profession: 101

(1) A judicial officer, a person acting under an order of a 102  
court or an administrative agency, or an assignee for the benefit 103  
of creditors; 104

(2) A financial institution, bank holding company, or the 105  
subsidiary, agent, or affiliate of either; 106

(3) A title insurer, escrow company, or other person that 107  
provides bill-paying services if the provision of debt settlement 108

services is incidental to the bill-paying services; 109

(4) An employee of a licensee who is working under the 110  
supervision of the licensee at the place of business maintained 111  
under a license issued pursuant to sections 4710.20 to 4710.43 of 112  
the Revised Code. 113

**Sec. 4710.22.** (A) Application for an original or renewal 114  
license to provide debt settlement services shall be in writing, 115  
signed under oath, and in the form prescribed by the director of 116  
commerce. The application form shall contain a statement informing 117  
the applicant that a false or dishonest answer to a question may 118  
be grounds for denial or subsequent suspension or revocation of 119  
the applicant's license. The application for an original or 120  
renewal license shall be accompanied by a license fee as 121  
determined by the director by rule, and shall contain all of the 122  
following: 123

(1) The applicant's name, principal business address and 124  
telephone number, and all of the applicant's other business 125  
addresses in this state, electronic mail addresses, and internet 126  
web site addresses; 127

(2) All names under which the applicant conducts business; 128

(3) The address of each location in this state at which the 129  
applicant will provide debt settlement services or a statement 130  
that the applicant does not maintain a physical location in the 131  
state; 132

(4) The name and home address of each officer and director of 133  
the applicant and each person that owns at least ten per cent of 134  
the applicant's business; 135

(5) A statement describing, to the extent it is known or 136  
should be known by the applicant, any material civil or criminal 137  
judgment relating to financial fraud or misuse, any material 138

violation of state or federal securities laws, and any material 139  
administrative or enforcement action relating to financial fraud 140  
or misuse by a governmental agency in any jurisdiction against the 141  
applicant, any of its officers, directors, owners, or agents; 142

(6) A copy of each form of agreement that the applicant will 143  
use with individuals who reside in this state; 144

(7) The schedule of fees and charges that the applicant will 145  
use with individuals who reside in this state; 146

(8) A copy or description of any ownership interest of at 147  
least ten per cent by a director, owner, or employee of the 148  
applicant's debt settlement services; 149

(9) A description of any ownership interest of at least ten 150  
per cent by a director, owner, or employee of the applicant in: 151

(a) Any affiliate of the applicant; or 152

(b) Any entity that provides products or services to the 153  
applicant or any individual relating to the applicant's debt 154  
settlement services. 155

(10) The identity of each director who is an affiliate of the 156  
applicant; 157

(11) Evidence that the applicant has a resident agent in the 158  
state recorded with the secretary of state; 159

(12) Any other information that the director reasonably 160  
requires to perform the director's duties, which the director may 161  
require by rule. 162

(B) The director may, upon receipt and review of an 163  
application, request additional information that the director 164  
reasonably requires to perform the director's duties. 165

(C) The term of any license issued pursuant to sections 166  
4710.20 to 4710.43 of the Revised Code shall not be more than one 167  
year. Licensees who wish to renew their license must submit an 168

application for renewal at least thirty days, but not more than 169  
sixty days, before the license expiration date. 170

(D) If a person who provides debt settlement services holds a 171  
license or certificate of registration in another state 172  
authorizing it to provide debt settlement services, the person may 173  
submit a copy of that license or certificate and the application 174  
for it instead of the application in the form prescribed by this 175  
section if all of the following apply: 176

(1) The application in the other state contains information 177  
substantially similar to or more comprehensive than that required 178  
in an application submitted in this state. 179

(2) The applicant provides the information required by 180  
divisions (A)(1), (3), (6), and (7) of this section. 181

(3) The applicant certifies that the information contained in 182  
the application is current, and to the extent it is not current, 183  
supplements the application to make the information current. 184

**Sec. 4710.23.** (A) The director of commerce shall issue an 185  
original or renewal certificate of licensure to the applicant 186  
unless the director finds any of the following: 187

(1) The applicant has not complied with the requirements of 188  
section 4710.22 of the Revised Code. 189

(2) The application contains information that is materially 190  
erroneous or incomplete. 191

(3) An officer, director, or owner of the applicant has been 192  
convicted of a crime, or suffered a civil judgment, involving 193  
dishonesty or the violation of state or federal securities laws. 194

(4) The application is not accompanied by the fee established 195  
by the director. 196

(5) There is reasonable evidence to support the director's 197

opinion that the applicant will not provide debt settlement 198  
services in a lawful, honest, and fair manner. 199

(B) The director shall approve or deny an initial license 200  
within sixty days after an application is filed. In connection 201  
with a request pursuant to division (B) of section 4710.22 of the 202  
Revised Code for additional information, the director may extend 203  
the sixty-day period for not more than forty-five days. 204

(C) If a licensee has filed a timely and complete application 205  
for license renewal, the license remains in effect until the 206  
director notifies the applicant of a denial. 207

(D) Within seven days after issuing an order denying an 208  
application the director shall notify the applicant of the denial, 209  
the grounds for the denial, and the applicant's opportunity for a 210  
hearing pursuant to Chapter 119. of the Revised Code. If the 211  
application is denied, the superintendent shall return the annual 212  
license fee. 213

(E) If the director has denied an application for a renewal 214  
license, the licensee, within thirty days after receiving notice 215  
of the denial, may appeal and request a hearing in accordance with 216  
Chapter 119. of the Revised Code. While an appeal is pending, the 217  
licensee shall continue to provide debt settlement services to 218  
individuals with whom the licensee has agreements. If the 219  
licensee's appeal fails, the licensee may, with the approval of 220  
the director, continue to provide debt settlement services to 221  
individuals with whom it has agreements until the licensee 222  
transfers the agreements to another licensee. 223

**Sec. 4710.24.** Not more than one license shall be issued under 224  
sections 4710.20 to 4710.43 of the Revised Code per single place 225  
of business, but the director of commerce may issue additional 226  
licenses for other places of business to the same licensee upon 227  
compliance with those sections. 228



No change in the place of business of a licensee shall be 229  
permitted under the same license. When a licensee wishes to change 230  
the licensee's place of business the licensee shall give written 231  
notice thereof in advance to the director who shall provide a 232  
license for the new address, without cost. 233

**Sec. 4710.25.** No person licensed under sections 4710.20 to 234  
4710.43 of the Revised Code shall conduct business in this state 235  
unless the licensee has obtained and maintains in effect at all 236  
times a corporate surety bond issued by a bonding company or 237  
insurance company authorized to do business in this state. The 238  
bond shall be in favor of the director of commerce and in a penal 239  
sum the director determines is warranted by the financial 240  
condition and business experience of the licensee, the history of 241  
the licensee in performing debt settlement services, the risk to 242  
individuals, and any other factor the director considers 243  
appropriate. The penal sum shall be at least ten thousand dollars 244  
and not more than fifty thousand dollars. 245

The term of the bond shall coincide with the term of the 246  
license. The licensee shall file a copy of the bond with the 247  
superintendent. The bond shall be for the exclusive benefit of any 248  
individual injured by a violation of or failure to comply with any 249  
provision of sections 4710.20 to 4710.43 of the Revised Code by a 250  
licensee or an employee of a licensee. 251

**Sec. 4710.26.** A licensee shall do all of the following: 252

(A) Act in good faith when engaging in the business of debt 253  
settlement services; 254

(B) Maintain a toll-free communication system, staffed at a 255  
level that reasonably permits an individual to speak to a customer 256  
service representative, as appropriate, during ordinary business 257  
hours; 258

(C) Establish an internal formal complaint policy that 259  
creates a process for the licensee to receive, review, and address 260  
or resolve formal complaints internally. The availability of this 261  
process shall be communicated in writing to individuals enrolled 262  
in the licensee's program. This policy shall include a provision 263  
that all consumers who file a formal complaint shall receive a 264  
response from the licensee within a reasonable time from the 265  
licensee's receipt of such complaint. The licensee shall maintain 266  
a file for each such formal complaint that documents the 267  
complaint, the licensee's actions in response to the complaint, 268  
and if and how the complaint was resolved. 269

(D) Provide all disclosures and documents required by 270  
sections 4710.20 to 4710.43 of the Revised Code in English and in 271  
any other language the licensee has or will use primarily to 272  
communicate with the individual. 273

**Sec. 4710.27.** (A) Before providing debt settlement services, 274  
a licensee shall give the individual an itemized list of goods and 275  
services and the charges for each. The list must be clear and 276  
conspicuous. 277

(B) A licensee may not furnish debt settlement services 278  
unless the licensee has prepared a financial analysis with respect 279  
to the income and debts of the individual seeking service. 280

(C) Before an individual assents to an agreement to engage in 281  
a program, a licensee shall do the following: 282

(1) Provide the individual with a copy of the financial 283  
analysis required by division (B) of this section in a record that 284  
identifies the licensee and that the individual may keep whether 285  
or not the individual assents to the agreement; 286

(2) Inform the individual of the availability, at the 287  
individual's option, of assistance by a toll-free communication 288

<u>system or in person to discuss the financial analysis required by</u>	289
<u>division (B) of this section.</u>	290
<u>(D) Before an individual assents to an agreement to engage in</u>	291
<u>a program, the licensee shall inform the individual of the</u>	292
<u>following:</u>	293
<u>(1) Programs are not suitable for all individuals.</u>	294
<u>(2) Participation in a program may adversely affect the</u>	295
<u>individual's credit rating or credit scores.</u>	296
<u>(3) Nonpayment of debt may lead creditors to increase finance</u>	297
<u>and other charges or undertake collection activity, including</u>	298
<u>litigation.</u>	299
<u>(4) If a creditor settles for less than the full amount of</u>	300
<u>the debt, the program may result in the creation of taxable income</u>	301
<u>to the individual, even if the individual does not receive any</u>	302
<u>money.</u>	303
<u>(5) Specific results cannot be predicted or guaranteed and</u>	304
<u>the licensee cannot force negotiations or settlements with</u>	305
<u>creditors but will advocate solely on behalf of the individual.</u>	306
<u>(6) Programs require that individuals meet a certain savings</u>	307
<u>goal in order to maximize settlement results.</u>	308
<u>(7) The licensee does not provide accounting or legal advice</u>	309
<u>to individuals, unless the licensee is professionally licensed to</u>	310
<u>provide such advice.</u>	311
<u>(8) The licensee is the individual's advocate and may not</u>	312
<u>receive compensation from creditors, financial institutions, or</u>	313
<u>third-party collection agencies.</u>	314
<u>(9) The licensee does not make payments to the individual's</u>	315
<u>creditors.</u>	316
<u>(10) The name and business address of the licensee.</u>	317

Sec. 4710.28. (A) As used in this section: 318

(1) "Federal act" means the "Electronic Signatures in Global and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001 et seq., as amended. 319  
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(2) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes. 322  
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(B) A licensee may satisfy the requirements of sections 4710.27, 4710.29, and 4710.35 of the Revised Code by utilizing the internet or other electronic means if the licensee obtains a consumer's consent in the manner provided for in the federal act. 325  
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(C) The disclosures and materials required by sections 4710.27, 4710.29, and 4710.35 of the Revised Code shall be presented in a form that is capable of being accurately reproduced for later reference. 329  
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(D) With respect to disclosure by means of an internet web site, the disclosure of the information required by division (D) of section 4710.27 of the Revised Code must appear on one or more screens that contain no other information, and the individual must indicate that the individual has seen the information before proceeding to assent to formation of a program. 333  
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(E) At the time of providing the materials and agreement required by divisions (C) and (D) of section 4710.27, and sections 4710.29 and 4710.35 of the Revised Code, a licensee shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials and shall comply with a request as provided in division (F) of this section. 339  
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(F) If a licensee is requested, before the expiration of ninety days after a program is completed or terminated, to send a 346  
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written copy of the materials required by divisions (C) and (D) of 348  
section 4710.27, and sections 4710.29 and 4710.35 of the Revised 349  
Code, the licensee shall send them at no charge within three 350  
business days after the request is made, but the licensee need not 351  
comply with a request more than once per calendar month or if it 352  
reasonably believes the request is made for purposes of 353  
harassment. If a request is made more than ninety days after a 354  
program is completed or terminated, the licensee shall send within 355  
a reasonable time a written copy of the materials requested. 356

(G) A licensee that maintains an internet web site shall 357  
disclose on the home page of its web site or on a page that is 358  
clearly and conspicuously connected to the home page by a link 359  
that clearly reveals its contents all of the following: 360

(1) Its name and all names under which it does business; 361

(2) Its principal business address, telephone number, and 362  
electronic mail address, if any. 363

(H) Subject to division (I) of this section, if a consumer 364  
who has consented to electronic communication in the manner 365  
provided by section 101 of the federal act withdraws consent as 366  
provided in the federal act, a licensee may terminate its 367  
agreement with the consumer. 368

(I) If a licensee wishes to terminate an agreement with a 369  
consumer pursuant to division (H) of this section, it shall notify 370  
the consumer that it will terminate the agreement unless the 371  
consumer, within thirty days after receiving the notification, 372  
consents to electronic communication in the manner provided in 373  
section 101(c) of the federal act. 374

(J) This section modifies, limits, and supersedes the federal 375  
act, but does not modify, limit, or supersede section 101(c) of 376  
that act or authorize electronic delivery of any of the notices 377  
described in section 103(b) of that act. 378

<u>Sec. 4710.29. (A) An agreement must meet the following</u>	379
<u>requirements:</u>	380
<u>(1) Be in a record;</u>	381
<u>(2) Be dated and signed by the individual;</u>	382
<u>(3) Include the name of the individual and the address where</u> <u>the individual resides;</u>	383 384
<u>(4) Include the name, business address, and telephone number</u> <u>of the licensee;</u>	385 386
<u>(5) Be delivered to the individual immediately upon formation</u> <u>of the agreement;</u>	387 388
<u>(6) Disclose all of the following:</u>	389
<u>(a) The services to be provided;</u>	390
<u>(b) The amount or method of determining the amount of all</u> <u>fees, individually itemized, to be paid by the individual;</u>	391 392
<u>(c) How the licensee will comply with its obligations under</u> <u>section 4710.35 of the Revised Code;</u>	393 394
<u>(d) That the individual may cancel the agreement as provided</u> <u>in section 4710.30 of the Revised Code;</u>	395 396
<u>(e) That the individual may contact the director of commerce</u> <u>with any questions or complaints regarding the licensee;</u>	397 398
<u>(f) The address, telephone number, and internet address or</u> <u>web site of the director.</u>	399 400
<u>(B) For purposes of division (A)(5) of this section, delivery</u> <u>of an electronic record occurs when it is made available in a</u> <u>format in which the individual may retrieve, save, and print the</u> <u>record, and the individual is notified that it is available.</u>	401 402 403 404
<u>(C) If the director supplies the licensee with any</u> <u>information required under division (A)(6)(f) of this section, the</u>	405 406

licensee may comply with that requirement only by disclosing the 407  
information supplied by the director. 408

(D) An agreement must provide that the individual has a right 409  
to terminate the agreement at any time by giving the licensee 410  
written or electronic notice, in which event all powers of 411  
attorney granted by the individual to the licensee are revoked and 412  
ineffective. 413

(E) In accordance with section 4710.30 of the Revised Code, 414  
an agreement must be accompanied by a form that contains the 415  
following in boldface type, surrounded by bold black lines: 416

"Notice of right of cancellation: 417

You may cancel this agreement, without any penalty or 418  
obligation, at any time before midnight of the third business day 419  
after the day you agree to it by electronic communication or by 420  
signing it. 421

To cancel this agreement during this period, send an e-mail 422  
to [e-mail address of licensee] or mail or deliver a signed, dated 423  
copy of this notice, or any other written notice to [name of 424  
licensee] at [address of licensee] before midnight of the third 425  
business day after the day you execute this agreement. 426

If you cancel this agreement within the 3-day period, we will 427  
refund all money you already have paid us. 428

I cancel this agreement, 429

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Print your name 431

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Signature 433

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Date" 435

(F) An agreement may confer on a licensee a power of attorney to settle up to fifty per cent of an individual's debt. An agreement may not confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must state that the licensee will obtain the assent of the individual after a creditor has assented to a settlement for more than fifty per cent of the amount of the individual's debt. 436  
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(G) An agreement may not do the following: 443

(1) Provide for application of the law of any jurisdiction other than the United States and this state; 444  
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(2) Except as permitted by Section 2 of the "Federal Arbitration Act," 61 Stat. 669, 9 U.S.C. 1, et seq., as amended, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law; 446  
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(3) Contain a provision that restricts the individual's remedies under sections 4710.20 to 4710.43 of the Revised Code, or other law; 451  
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(4) Contain a provision that does the following: 454

(a) Limits or releases the liability of any person for not performing the agreement or for violating sections 4710.20 to 4710.43 of the Revised Code; 455  
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(b) Indemnifies any person for liability arising under the agreement or sections 4710.20 to 4710.43 of the Revised Code. 458  
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(H) All rights and obligations specified in division (D) of this section and section 4710.30 of the Revised Code apply even if not recited in the agreement. 460  
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**Sec. 4710.30.** An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with section 4710.29 or 463  
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4710.34 of the Revised Code, in which event the individual may 466  
cancel the agreement within thirty days after the individual 467  
assents to it. To exercise the right of cancellation, the 468  
individual must give notice in a record to the licensee. Notice by 469  
mail is given when mailed. 470

**Sec. 4710.31.** (A) A licensee may not impose, directly or 471  
indirectly, a fee or other charge on an individual or receive 472  
money from or on behalf of an individual for debt settlement 473  
services, except as permitted by this section. 474

(B) A debt settlement service fee or charge must be derived 475  
from a settlement between a creditor and debtor, negotiated by the 476  
licensee. The total fee or charge may not exceed fifteen per cent 477  
of the principal amount of the debt being settled in the 478  
settlement. The fee or charge shall be collected at a rate of not 479  
more than one per cent per month, or if the payment plan included 480  
in the settlement is less than fifteen months in length, in equal 481  
monthly payments for the term of the settlement. The debtor may 482  
voluntarily accelerate or prepay any unpaid installment fee or 483  
charge, and the licensee may collect the fee or charge on a pro 484  
rata basis once the licensee has a finalized settlement from the 485  
creditor. The licensee may charge an additional fee not to exceed 486  
five per cent of the amount equal to the principal amount of the 487  
debt being settled minus the amount to be paid under the 488  
settlement. 489

(C) A licensee may not impose fees or charges or receive 490  
payment for debt settlement services until a settlement has been 491  
executed in the form required under division (C) of section 492  
4710.35 of the Revised Code. If the settlement calls for money to 493  
be paid to the creditor in installments, the licensee may collect, 494  
at the time the installment payment is made, a debt settlement 495  
service fee or charge for each installment payment, provided that 496

the total fee or charge is proportionally distributed equally 497  
among the total number of installment payments. 498

(D) A licensee may not impose fees or charges or receive 499  
payment for debt settlement services until the licensee and the 500  
individual have signed an agreement that complies with sections 501  
4710.29 and 4710.34 of the Revised Code. 502

(E) A licensee may impose a reasonable charge to the 503  
individual, plus any amount passed on from a financial institution 504  
for each check, negotiable order of withdrawal, share draft, or 505  
other negotiable instrument returned or dishonored for any reason, 506  
provided that the terms and conditions upon which such 507  
insufficient funds charges will be charged to the individual are 508  
set forth in the agreement. 509

(F) A licensee may not solicit or accept a voluntary 510  
contribution from an individual or on behalf of an individual. 511

**Sec. 4710.32.** (A) If a licensee imposes a fee or other charge 512  
or receives money or other payments not authorized by section 513  
4710.31 of the Revised Code, the individual may void the agreement 514  
and recover as provided for in section 4710.41 of the Revised 515  
Code. 516

(B) If a person providing debt settlement services is not 517  
licensed as required by section 4710.21 of the Revised Code when 518  
an individual assents to an agreement, the agreement is voidable 519  
by the individual. 520

(C) If an individual voids an agreement under this section, 521  
the licensee or person providing debt settlement services without 522  
a license does not have a claim against the individual for breach 523  
of contract or for restitution. 524

**Sec. 4710.33.** If an individual who has entered into a fee 525  
agreement fails for sixty days to make payments required by the 526

agreement, a licensee may terminate the agreement. 527

Sec. 4710.34. (A) A licensee may not do any of the following: 528

529

(1) Settle a debt on behalf of an individual for more than 530  
fifty per cent of the amount of the debt owed a creditor, unless 531  
the individual assents to the settlement after the creditor has 532  
assented; 533

(2) Take a power of attorney that authorizes the licensee to 534  
settle a debt, unless the power of attorney expressly limits the 535  
licensee's authority to settle debts for not more than fifty per 536  
cent of the amount of the debt owed a creditor; 537

(3) Exercise or attempt to exercise a power of attorney after 538  
an individual has terminated an agreement; 539

(4) Initiate a transfer of money from an individual's account 540  
at a financial institution or with another person, unless the 541  
transfer is one of the following: 542

(a) A return of money to the individual; 543

(b) Before termination of an agreement, properly authorized 544  
by the agreement for payment of a fee; 545

(c) In payment of a creditor to fund a negotiated settlement 546  
authorized by an individual under division (A)(1) of this section 547  
or through a power of attorney under division (A)(2) of this 548  
section; 549

(d) In payment of a creditor to fund a negotiated settlement 550  
of which both the settlement and transfer of money had been 551  
authorized by the debtor. 552

(5) Structure a settlement in a manner that would result in a 553  
negative amortization of any of an individual's debts; 554

(6) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification or confirmation by the creditor that the payment is in full settlement of the debt, or is part of a payment plan that is in full settlement of the debt; 555  
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(7) Represent that: 561

(a) The licensee will furnish money to pay bills or prevent attachments; 562  
563

(b) Payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness; or 564  
565

(c) Participation in a program will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment. 566  
567  
568

(8) Represent that the licensee is authorized or competent to furnish legal advice or perform legal services, unless such advice or services is provided by a licensed attorney working with the licensee; 569  
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(9) Represent that it is one of the following: 573

(a) A not-for-profit entity, unless it is organized and properly operating as a not-for-profit entity under the laws of this state; 574  
575  
576

(b) A tax-exempt entity, unless it has received certification of tax-exempt status from the federal internal revenue service. 577  
578

(10) Take a confession of judgment or power of attorney to confess judgment against an individual; 579  
580

(11) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information. 581  
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(B) If a licensee furnishes debt settlement services to an 584

<u>individual, the licensee may not do any of the following, directly</u>	585
<u>or indirectly:</u>	586
<u>(1) Purchase a debt or obligation of the individual;</u>	587
<u>(2) Receive from or on behalf of the individual any of the</u>	588
<u>following:</u>	589
<u>(a) A promissory note or other negotiable instrument other</u>	590
<u>than a check or a demand draft;</u>	591
<u>(b) A post-dated check or demand draft.</u>	592
<u>(3) Lend money to provide credit to the individual, except as</u>	593
<u>a deferral of a fee payment at no additional expense to the</u>	594
<u>individual;</u>	595
<u>(4) Obtain a mortgage or other security interest from any</u>	596
<u>person in connection with the services provided to the individual;</u>	597
<u>(5) Disclose the identity or identifying information of the</u>	598
<u>individual or the identity of the individual's creditors, except</u>	599
<u>in the following circumstances:</u>	600
<u>(a) To the director of commerce, upon proper demand;</u>	601
<u>(b) To a creditor of the individual, to the extent necessary</u>	602
<u>to secure the cooperation of the creditor in a program;</u>	603
<u>(c) To the extent necessary to administer the program;</u>	604
<u>(d) As permitted by federal law.</u>	605
<u>(6) Except as otherwise provided in section 4710.31 of the</u>	606
<u>Revised Code, provide the individual less than the full benefit of</u>	607
<u>a compromise of a debt arranged by the licensee;</u>	608
<u>(7) Furnish legal advice or perform legal services, unless</u>	609
<u>the person furnishing that advice to, or performing those services</u>	610
<u>for, the individual is licensed to practice law;</u>	611
<u>(8) Advise individuals to stop payment on any of the accounts</u>	612
<u>being handled by the licensee;</u>	613

(9) Receive compensation from creditors, financial institutions, or third-party collection agencies, as a result of providing debt settlement services to an individual. 614  
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(C) A licensee that advertises debt settlement services shall not make statements that are misleading or deceptive, and the advertisements shall not conflict with the information specified in divisions (D)(2), (3), and (5) of section 4710.27 of the Revised Code. 617  
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**Sec. 4710.35.** (A) A licensee shall provide the accounting required by division (B) of this section in accordance with the following requirements: 622  
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(1) At the following times while the agreement is in effect: 625

(a) After each settlement of debt with a creditor on behalf of the individual; 626  
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(b) Within five business days after a request by an individual, but the licensee need not comply with more than one request in any calendar month. 628  
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630

(2) Upon cancellation or termination of an agreement. 631

(B) If a creditor has agreed to accept as payment in full an amount less than the full amount of the debt owed by an individual, the licensee shall document in a record an accounting of all of the following: 632  
633  
634  
635

(1) The amount the creditor accepts as settlement in full of the debt; 636  
637

(2) Any other terms of the settlement; 638

(3) The amount of the debt when the creditor agreed to the settlement; 639  
640

(4) For licensees using fee agreements that calculate any portion of the fee based on a percentage of savings the individual 641  
642

realizes from a settled debt, the calculation of that fee. 643

(C) A settlement must be in writing, indicate the assent of 644  
the creditor and the debtor or the debtor's attorney in fact 645  
through endorsement, and clearly set forth the original amount of 646  
the debt, the amount the creditor has agreed to accept as payment 647  
in full of the debt, and the difference between these amounts 648  
which shall be the amount of debt forgiven. 649

(D) A licensee shall maintain records for each individual for 650  
whom it provides debt settlement services for four years after the 651  
final payment made by the individual and produce a copy of them to 652  
the individual within a reasonable time after a request is made 653  
for them. The licensee may use electronic or other means of 654  
storage of the records. 655

Sec. 4710.36. (A) The director of commerce may do the 656  
following: 657

(1) Act on the director's own initiative or in response to 658  
complaints and may receive complaints regarding, or take action to 659  
obtain voluntary compliance with, sections 4710.20 to 4710.43 of 660  
the Revised Code; 661

(2) Seek or provide remedies as provided for in section 662  
4710.38 of the Revised Code. 663

(B) The director may investigate and examine, by subpoena or 664  
otherwise, the activities, books, accounts, and records of a 665  
licensee, or a person to which a licensee has delegated its 666  
obligations under an agreement, to determine compliance with 667  
sections 4710.20 to 4710.43 of the Revised Code. Information that 668  
identifies individuals who have agreements with the licensee shall 669  
not be disclosed to the public. In connection with the 670  
investigation, the director may do the following: 671

(1) Charge the person the reasonable expenses necessarily 672

incurred to conduct the examination; 673

(2) Require or permit a person to file a statement under oath 674  
as to all the facts and circumstances of a matter to be 675  
investigated. 676

(C) The director may adopt rules in accordance with Chapter 677  
119. of the Revised Code to implement the provisions of sections 678  
4710.20 to 4710.43 of the Revised Code. 679

(D) The director may enter into cooperative arrangements with 680  
any other federal or state agency having authority over licensees 681  
and may exchange with any of those agencies information about a 682  
licensee, including information obtained during an examination of 683  
the licensee. 684

**Sec. 4710.37.** (A) As used in this section, "consumer price 685  
index" means the consumer price index prepared by the United 686  
States bureau of labor statistics (U.S. city average for urban 687  
wage earners and clerical workers: all items, 1982-1984=100) or, 688  
if that index is no longer published, a generally available 689  
comparable index. 690

(B) The director of commerce, by rule adopted in accordance 691  
with Chapter 119. of the Revised Code, shall establish reasonable 692  
fees to be paid by licensees for the expense of administering 693  
sections 4710.20 to 4710.43 of the Revised Code. All fees, 694  
charges, and penalties collected under sections 4710.20 to 4710.43 695  
of the Revised Code shall be paid to the director and shall be 696  
deposited by the director into the state treasury to the credit of 697  
the debt settlement services fund, which is hereby created. Funds 698  
in the debt settlement services fund shall be used for 699  
administering sections 4710.20 to 4710.43 of the Revised Code. 700

(C) The director, by rule adopted in accordance with Chapter 701  
119. of the Revised Code, shall establish the dollar amounts for 702



license fees under section 4710.22 of the Revised Code and shall 703  
establish that license fees under section 4710.22, and penalties 704  
collected under section 4710.38 of the Revised Code, shall adjust 705  
to reflect inflation, as measured by the consumer price index. The 706  
director shall adopt a base year and adjust the dollar amounts, 707  
effective on July 1 of each year, if the change in the index from 708  
the base year, as of December 31 of the preceding year, is at 709  
least ten per cent. The dollar amount must be rounded to the 710  
nearest ten dollars. 711

(D) The director shall notify licensees of any change in 712  
dollar amounts made pursuant to division (C) of this section and 713  
make that information available to the public. 714

**Sec. 4710.38.** (A) The director of commerce shall enforce 715  
sections 4710.20 to 4710.43 of the Revised Code and any rule 716  
adopted pursuant to section 4710.36 of the Revised Code by taking 717  
one or more of the following actions: 718

(1) Ordering a licensee or a director, employee, or other 719  
agent of a licensee to cease and desist from any violations; 720

(2) Ordering a licensee or a person that has caused a 721  
violation to correct the violation or that has failed to comply 722  
with those sections to correct the failure, including making 723  
restitution of money or property to a person aggrieved by a 724  
violation or failure to comply; 725

(3) Imposing on a licensee or a person that has caused a 726  
violation or has failed to comply a civil penalty not exceeding 727  
one thousand dollars for each violation or failure to comply; 728

(4) Prosecuting a civil action to do either of the following: 729

(a) Enforce an order; 730

(b) Obtain restitution or an injunction or other equitable 731  
relief, or both. 732

(5) Intervening in an action brought under section 4710.39 of 733  
the Revised Code. 734

(B) If a person violates or fails to comply with, or 735  
knowingly authorizes, directs, or aids in the violation of or 736  
failure to comply with, a final order issued under division (A)(1) 737  
or (2) of this section, the director may impose an additional 738  
civil penalty not exceeding one thousand dollars for each 739  
violation or failure. 740

(C) The director may maintain an action to enforce sections 741  
4710.20 to 4710.43 of the Revised Code in any county. 742

(D) The director may recover the reasonable costs of 743  
enforcing divisions (A), (B), and (C) of this section, including 744  
attorney's fees based on the hours reasonably expended and the 745  
hourly rates for attorneys of comparable experience in the 746  
community. 747

(E) In determining the amount of a civil penalty to impose 748  
under division (A) or (B) of this section, the director shall 749  
consider the seriousness of the violation or failure, the good 750  
faith of the person committing the violation or failure, any 751  
previous violations or failures by the person, the deleterious 752  
effect of the violation or failure on the public, and any other 753  
factor the director considers relevant to the determination of the 754  
civil penalty. 755

(F) No enforcement action or adjudication order made by the 756  
director under this section shall be valid unless an opportunity 757  
for a hearing is afforded in accordance with Chapter 119. of the 758  
Revised Code. Such opportunity for a hearing shall be given before 759  
taking the enforcement action or making the adjudication order 760  
except in those situations where section 119.06 of the Revised 761  
Code provides otherwise. 762

Sec. 4710.39. The director of commerce shall publish and 763  
maintain, on the department of commerce internet web site, a 764  
current list of all providers licensed under sections 4710.20 to 765  
4710.43 of the Revised Code. 766

Sec. 4710.40. (A) As used in this section, "insolvent" means: 767  
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(1) Having generally ceased to pay debts in the ordinary 769  
course of business other than as a result of a good-faith dispute; 770

(2) Being unable to pay debts as they become due; 771

(3) Being insolvent within the meaning of the federal 772  
bankruptcy law. 773

(B) The director may suspend, revoke, or deny renewal of a 774  
license if any of the following apply: 775

(1) A fact or condition exists that, if it had existed when 776  
the licensee applied for a license, it would have been a reason 777  
for denial. 778

(2) The licensee has committed a material violation of or 779  
failure to comply with any provision of sections 4710.20 to 780  
4710.43 of the Revised Code or a rule or order of the director. 781

(3) The licensee is insolvent. 782

(4) The licensee or an employee or affiliate of the licensee 783  
has refused to permit the director to make an examination 784  
authorized by section 4710.36 of the Revised Code, failed to 785  
comply with an order to file a statement pursuant to division 786  
(B)(2) of section 4710.36 of the Revised Code within thirty days 787  
after the request, or made a material misrepresentation or 788  
omission with regard to such statement. 789

(5) The licensee has not responded within a reasonable time 790  
and in an appropriate manner to communications from the director. 791

(C) If the director suspends or revokes a license, the licensee may appeal and request a hearing pursuant to Chapter 119. of the Revised Code. 792  
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Sec. 4710.41. (A) If an individual voids an agreement pursuant to section 4710.32 of the Revised Code, the individual may recover in a civil action all money paid by or on behalf of the individual pursuant to the agreement, in addition to the recovery under division (B)(3) of this section. 795  
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(B) Subject to division (C) of this section, an individual with respect to whom a licensee or a person providing debt settlement service without a license violates or fails to comply with any provision of sections 4710.20 to 4710.43 of the Revised Code may recover in a civil action all of the following from the licensee or person that caused the violation or failure: 800  
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(1) Compensatory damages for economic injury caused by the violation or failure; 806  
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(2) Except as otherwise provided in division (C) of this section and subject to adjustment of the dollar amount pursuant to section 4710.37 of the Revised Code, with respect to a failure to comply with division (D) of section 4710.26, a violation of divisions (A) and (B) of section 4710.34, and a violation of or failure to comply with sections 4710.27, 4710.29, 4710.30, and 4710.31 of the Revised Code, the greater of the amount recovered under division (B)(1) of this section or one thousand dollars; 808  
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(3) Reasonable attorney's fees and costs. 816

(C) In a class action, the minimum damages provided in division (B) of this section do not apply. 817  
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(D) In addition to the remedies available under division (B) of this section, if a licensee fails to comply with an individual's right to cancellation under section 4710.30 of the 819  
820  
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Revised Code, the individual may recover in a civil action all 822  
money paid by or on behalf of the individual pursuant to the 823  
agreement, except for amounts paid to creditors. 824

(E) A licensee is not liable under this section for a 825  
violation or failure to comply with any provision of sections 826  
4710.20 to 4710.43 of the Revised Code if the licensee proves that 827  
the violation or failure was not intentional and resulted from a 828  
good-faith error notwithstanding the maintenance of procedures 829  
reasonably adapted to avoid the error. If, in connection with a 830  
violation or failure, the licensee has received more money than 831  
authorized by an agreement or sections 4710.20 to 4710.43 of the 832  
Revised Code, the defense provided by division (E) of this section 833  
is not available unless the licensee refunds the excess within 834  
three business days after learning of the violation or failure. 835

(F) If a licensee or a person providing debt settlement 836  
service without a license violates or fails to comply with any 837  
provision of sections 4710.20 to 4710.43 of the Revised Code, an 838  
individual may recover under this section or pursuant to section 839  
4710.43 of the Revised Code, but not both for the same act or 840  
practice. 841

**Sec. 4710.42.** (A) An action or proceeding brought pursuant to 842  
division (A), (B), or (C) of section 4710.38 of the Revised Code 843  
must be commenced within four years after the conduct occurs that 844  
is the basis of the director's complaint. 845

(B) An action brought pursuant to section 4710.41 of the 846  
Revised Code must be commenced within two years after the latest 847  
of the following: 848

(1) The individual's last transmission of money to the 849  
licensee; 850

(2) The date on which the individual discovered or reasonably 851

should have discovered the facts giving rise to the individual's 852  
claim; 853

(3) Termination of actions or proceedings by the director 854  
with respect to a violation or failure to comply with any 855  
provision of sections 4710.20 to 4710.43 of the Revised Code. 856

(C) The period prescribed in division (B)(2) of this section 857  
is tolled during any period during which the licensee or, if 858  
different, the defendant, has materially and willfully 859  
misrepresented information required by sections 4710.20 to 4710.43 860  
of the Revised Code to be disclosed to the individual, if the 861  
information so misrepresented is material to the establishment of 862  
the liability of the defendant under sections 4710.20 to 4710.43 863  
of the Revised Code. 864

**Sec. 4710.43.** Any violation or failure to comply with 865  
sections 4710.20 to 4710.43 of the Revised Code by a licensee or a 866  
person providing debt settlement service without a license is 867  
deemed an unfair or deceptive act or practice in violation of 868  
section 1345.02 of the Revised Code. A person injured by such a 869  
violation has a cause of action and is entitled to the same relief 870  
available to a consumer under section 1345.09 of the Revised Code, 871  
and all the powers and remedies available to the attorney general 872  
to enforce sections 1345.01 to 1345.13 of the Revised Code are 873  
available to the attorney general to enforce sections 4710.20 to 874  
4710.43 of the Revised Code. 875

**Section 2.** That existing section 4710.01 of the Revised Code 876  
is hereby repealed. 877