

As Introduced

**129th General Assembly
Regular Session
2011-2012**

S. B. No. 251

Senators Beagle, Sawyer

Cosponsors: Senators Patton, Hite, Balderson, Daniels, LaRose

—

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 require 2
the licensure of, and otherwise regulate, 3
providers of debt 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)(1) "Debt adjusting" means doing business in debt 14
adjusting, budget counseling, debt management, or debt pooling 15
service, or holding oneself out, by words of similar import, as 16
providing services to debtors in the management of their debts, to 17
do either of the following: 18

~~(1)(a)~~ To effect the adjustment, compromise, or discharge of
any account, note, or other indebtedness of the debtor; 19 20

~~(2)(b)~~ To receive from the debtor and disburse to the
debtor's creditors any money or other thing of value. 21 22

(2) "Debt adjusting" does not include debt settlement
services as defined in section 4710.20 of the Revised Code. 23 24

(C) "Resides" means to live in a particular place on a
temporary or a permanent basis. 25 26

Sec. 4710.20. As used in sections 4710.20 to 4710.43 of the
Revised Code: 27 28

(A) "Affiliate" means a person that controls, is controlled
by, or is under common control with the licensee. 29 30

(B) "Agreement" means an agreement between a licensee and an
individual for the provision of debt settlement services. 31 32

(C) "Business address" means the physical location of a
business, including the name and number of a street. 33 34

(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. 35 36 37

(E) "Day" means a calendar day. 38

(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 under which a creditor accepts less than the balance
owed as payment in full of the debt, and without receiving money
from the individual for distribution of that money to the
individual's creditor. The term does not include any of the
following: 39 40 41 42 43 44 45 46

(1) Legal services provided in an attorney-client 47

relationship by an attorney licensed or otherwise authorized to 48
practice law in this state; 49

(2) Accounting services provided in an accountant-client 50
relationship by a certified public accountant licensed to provide 51
accounting services in this state; 52

(3) Financial planning services provided in a financial 53
planner-client relationship by a member of a financial planning 54
profession who holds current certification by the certified 55
financial planner board of standards, inc. 56

(G) "Financial institution" means any national bank, any bank 57
doing business under authority granted by the superintendent of 58
financial institutions or the regulatory authority of another 59
state of the United States, any federal savings association, any 60
savings and loan association or savings bank doing business under 61
authority granted by the superintendent or the regulatory 62
authority of another state of the United States, or any credit 63
union regulated by a state or federal regulatory authority. 64

(H) "Good faith" means honesty in fact and the observance of 65
reasonable standards of fair dealing. 66

(I) "Licensee" means a person that has been issued a license 67
to provide debt settlement services under sections 4710.20 to 68
4710.43 of the Revised Code. 69

(J) "Person" means an individual, corporation, business 70
trust, estate, trust, partnership, limited liability company, 71
association, joint venture, or any other legal or commercial 72
entity. The term does not include a public corporation, 73
government, or governmental subdivision, agency, or 74
instrumentality. 75

(K) "Program" means a program or strategy in which a provider 76
furnishes debt settlement services in contemplation that creditors 77
will settle debts for less than the full amount of debt owed by an 78

individual. 79

(L) "Record" means information that is inscribed on a 80
tangible medium or that is stored in an electronic or other medium 81
and is retrievable in a perceivable form. 82

(M) "Sign" means, with present intent to authenticate or 83
adopt a record, to do either of the following: 84

(1) Execute or adopt a tangible symbol; 85

(2) Attach to or logically associate with the record an 86
electronic sound, symbol, or process. 87

(N) "State" means, except when the context indicates the term 88
is referring to the state of Ohio, a state of the United States, 89
the District of Columbia, Puerto Rico, the United States Virgin 90
Islands, or any territory or insular possession subject to the 91
jurisdiction of the United States. 92

(O) "Settlement" means an arrangement under which a creditor 93
accepts concessions on an individual's account through a debt 94
settlement services program and money is paid to the creditor. 95

Sec. 4710.21. (A) No person shall provide debt settlement 96
services for compensation without first having obtained a license 97
from the director of commerce under sections 4710.20 to 4710.43 of 98
the Revised Code. 99

(B) Sections 4710.20 to 4710.43 of the Revised Code do not 100
apply to the following persons or their employees when the person 101
or the employee is engaged in the regular course of the person's 102
business or profession: 103

(1) A judicial officer, a person acting under an order of a 104
court or an administrative agency, or an assignee for the benefit 105
of creditors; 106

(2) A financial institution, bank holding company, or the 107

subsidiary, agent, or affiliate of either; 108

(3) A title insurer, escrow company, or other person that 109
provides bill-paying services if the provision of debt settlement 110
services is incidental to the bill-paying services; 111

(4) An agent or employee of a licensee. 112

Sec. 4710.22. (A) Application for an original or renewal 113
license to provide debt settlement services shall be in writing, 114
signed under oath, and in the form prescribed by the director of 115
commerce. The application form shall contain a statement informing 116
the applicant that a false or dishonest answer to a question may 117
be grounds for denial or subsequent suspension or revocation of 118
the applicant's license. The application for an original or 119
renewal license shall be accompanied by a license fee as 120
determined by the director by rule, and shall contain all of the 121
following: 122

(1) The applicant's name, principal business address and 123
telephone number, and all of the applicant's other business 124
addresses in this state, electronic mail addresses, and internet 125
web site addresses; 126

(2) All names under which the applicant conducts business; 127

(3) The address of each location in this state at which the 128
applicant will provide debt settlement services or a statement 129
that the applicant does not maintain a physical location in the 130
state; 131

(4) The name and home address of each officer and director of 132
the applicant and each person that owns at least ten per cent of 133
the applicant's business; 134

(5) A statement describing, to the extent it is known or 135
should be known by the applicant, any material civil or criminal 136
judgment relating to financial fraud or misuse, any material 137

<u>violation of state or federal securities laws, and any material</u>	138
<u>administrative or enforcement action relating to financial fraud</u>	139
<u>or misuse by a governmental agency in any jurisdiction against the</u>	140
<u>applicant, any of its officers, directors, owners, or agents;</u>	141
<u>(6) A copy of each form of agreement that the applicant will</u>	142
<u>use with individuals who reside in this state;</u>	143
<u>(7) The schedule of fees and charges that the applicant will</u>	144
<u>use with individuals who reside in this state;</u>	145
<u>(8) A copy or description of any ownership interest of at</u>	146
<u>least ten per cent by a director, owner, or employee of the</u>	147
<u>applicant in the applicant's debt settlement services business;</u>	148
<u>(9) A description of any ownership interest of at least ten</u>	149
<u>per cent by a director, owner, or employee of the applicant in:</u>	150
<u>(a) Any affiliate of the applicant; or</u>	151
<u>(b) Any entity that provides products or services to the</u>	152
<u>applicant or any individual relating to the applicant's debt</u>	153
<u>settlement services business.</u>	154
<u>(10) The identity of each director who is an affiliate of the</u>	155
<u>applicant;</u>	156
<u>(11) Evidence that the applicant has a resident agent in the</u>	157
<u>state recorded with the secretary of state;</u>	158
<u>(12) Any other information that the director reasonably</u>	159
<u>requires to perform the director's duties, which the director may</u>	160
<u>require by rule.</u>	161
<u>(B) The director may, upon receipt and review of an</u>	162
<u>application, request additional information that the director</u>	163
<u>reasonably requires to perform the director's duties.</u>	164
<u>(C) The term of any license issued pursuant to sections</u>	165
<u>4710.20 to 4710.43 of the Revised Code shall not be more than two</u>	166
<u>years. Licensees who wish to renew their license must submit an</u>	167

application for renewal at least thirty days, but not more than 168
sixty days, before the license expiration date. 169

(D) If a person who provides debt settlement services holds a 170
license or certificate of registration in another state 171
authorizing it to provide debt settlement services, the person may 172
submit a copy of that license or certificate and the application 173
for it instead of the application described in division (A) of 174
this section if all of the following apply: 175

(1) The application in the other state contains information 176
substantially similar to or more comprehensive than that required 177
by division (A) of this section. 178

(2) The applicant provides the information required by 179
divisions (A)(1), (3), (6), and (7) of this section. 180

(3) The applicant certifies that the information contained in 181
the application is current, and to the extent it is not current, 182
supplements the application to make the information current. 183

Sec. 4710.23. (A) The director of commerce shall issue an 184
original or renewal license to the applicant unless the director 185
finds any of the following: 186

(1) The applicant has not complied with the requirements of 187
section 4710.22 of the Revised Code. 188

(2) The application contains information that is materially 189
erroneous or incomplete. 190

(3) An officer, director, or owner of the applicant has been 191
convicted of a crime, or suffered a civil judgment, involving 192
dishonesty or the violation of state or federal securities laws. 193

(4) The application is not accompanied by the fee established 194
by the director. 195

(5) There is reasonable evidence to support the director's 196

opinion that the applicant will not provide debt settlement services in a lawful, honest, and fair manner. 197
198

(B) The director shall approve or deny an initial license within sixty days after an application is filed. If a request for additional information is made pursuant to division (B) of section 4710.22 of the Revised Code, the director may extend the sixty-day period for not more than forty-five days. 199
200
201
202
203

(C) If a licensee has filed a timely and complete application for license renewal, the license remains in effect until the director notifies the applicant of a denial. 204
205
206

(D) Within seven days after issuing an order denying an application, the director shall notify the applicant of the denial, the grounds for the denial, and the applicant's opportunity for a hearing pursuant to Chapter 119. of the Revised Code. If the application is denied, the director shall return the license fee. 207
208
209
210
211
212

(E) If the director has denied an application for a renewal license, the licensee, within thirty days after receiving notice of the denial, may appeal and request a hearing in accordance with Chapter 119. of the Revised Code. While an appeal is pending, the licensee may continue to provide debt settlement services to individuals with whom the licensee has agreements. If the licensee's appeal fails, the licensee may, with the approval of the director, continue to provide debt settlement services to individuals with whom it has agreements until the licensee transfers the agreements to another licensee. The director may establish a date by which all transfers must occur and may modify the date at any time. 213
214
215
216
217
218
219
220
221
222
223
224

Sec. 4710.24. No person licensed under sections 4710.20 to 4710.43 of the Revised Code shall conduct business in this state unless the licensee has obtained and maintains in effect at all 225
226
227

times a corporate surety bond issued by a bonding company or 228
insurance company authorized to do business in this state. The 229
bond shall be in favor of the director of commerce and in a penal 230
sum the director determines is warranted by the financial 231
condition and business experience of the licensee, the history of 232
the licensee in providing debt settlement services, the risk to 233
individuals, and any other factor the director considers 234
appropriate. The penal sum shall be at least ten thousand dollars 235
and not more than fifty thousand dollars. 236

The term of the bond shall coincide with the term of the 237
license. The licensee shall file a copy of the bond with the 238
director. The bond shall be for the exclusive benefit of any 239
individual injured by a violation of or failure to comply with any 240
provision of sections 4710.20 to 4710.43 of the Revised Code by a 241
licensee or an employee of a licensee. 242

Sec. 4710.25. A licensee shall do all of the following: 243

(A) Act in good faith when engaging in the business of debt 244
settlement services; 245

(B) Maintain a toll-free communication system, staffed at a 246
level that reasonably permits an individual to speak to a customer 247
service representative, as appropriate, during ordinary business 248
hours; 249

(C) Provide all disclosures and documents required by 250
sections 4710.20 to 4710.43 of the Revised Code in English and in 251
any other language the licensee has or will use primarily to 252
communicate with the individual. 253

(D) List on all written, recorded, or electronic 254
advertisements targeted at customers in this state that the 255
licensee is licensed by the department of commerce and maintains a 256
surety bond as required by this chapter. 257

Sec. 4710.26. (A) Before providing debt settlement services, 258
a licensee shall give the individual an itemized list of goods and 259
services and the charges for each. The information shall be 260
presented in a clear and conspicuous manner. 261

(B) A licensee shall not provide debt settlement services 262
unless the licensee has prepared a financial analysis with respect 263
to the income and debts of the individual seeking the services. 264

(C) Before an individual assents to an agreement to engage in 265
a program, a licensee shall do both of the following: 266

(1) Provide the individual with a copy of the financial 267
analysis required by division (B) of this section in a record that 268
identifies the licensee and that the individual may keep whether 269
or not the individual assents to the agreement; 270

(2) Inform the individual of the availability, at the 271
individual's option, of assistance by a toll-free communication 272
system or in person to discuss the financial analysis required by 273
division (B) of this section. 274

(D) Before an individual assents to an agreement to engage in 275
a program, the licensee shall inform the individual of all of the 276
following in writing: 277

(1) Programs are not suitable for all individuals. 278

(2) Participation in a program may adversely affect the 279
individual's credit rating or credit scores. 280

(3) Nonpayment of debt may lead creditors to increase finance 281
and other charges or undertake collection activity, including 282
litigation. 283

(4) If a creditor settles for less than the full amount of 284
the debt, the program may result in the creation of taxable income 285
to the individual, even if the individual does not receive any 286
money. 287

(5) Specific results cannot be predicted or guaranteed and the licensee cannot force negotiations or settlements with creditors but will advocate solely on behalf of the individual. 288
289
290

(6) Programs require that individuals meet a certain savings goal in order to maximize settlement results. 291
292

(7) The licensee does not provide accounting or legal advice to individuals, unless the licensee is professionally licensed to provide such advice. 293
294
295

(8) The licensee does not make payments to the individual's creditors. 296
297

(9) The name and business address of the licensee. 298

Sec. 4710.27. (A) As used in this section: 299

(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. 300
301
302

(2) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes. 303
304
305

(B) A licensee may satisfy the requirements of sections 4710.26, 4710.28, and 4710.33 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. 306
307
308
309

(C) The disclosures and materials required by sections 4710.26, 4710.28, and 4710.33 of the Revised Code shall be presented in a form that is capable of being accurately reproduced for later reference. 310
311
312
313

(D) With respect to disclosure by means of an internet web site, the disclosure of the information required by division (D) of section 4710.26 of the Revised Code must appear on one or more 314
315
316

screens that contain no other information, and the individual must 317
indicate that the individual has seen the information before 318
proceeding to assent to the formation of a program. 319

(E) At the time of providing the materials and agreement 320
required by divisions (C) and (D) of section 4710.26 and sections 321
4710.28 and 4710.33 of the Revised Code, a licensee shall inform 322
the individual that upon electronic, telephonic, or written 323
request, it will send the individual a written copy of the 324
materials and will comply with a request as provided in division 325
(F) of this section. 326

(F) If a licensee is requested, before the expiration of 327
ninety days after a program is completed or terminated, to send a 328
written copy of the materials required by divisions (C) and (D) of 329
section 4710.26 and sections 4710.28 and 4710.33 of the Revised 330
Code, the licensee shall send them at no charge within three 331
business days after the request is made, but the licensee need not 332
comply with a request more than once per calendar month or if it 333
reasonably believes the request is made for purposes of 334
harassment. If a request is made more than ninety days after a 335
program is completed or terminated, the licensee shall send within 336
a reasonable time a written copy of the materials requested. 337

(G) A licensee that maintains an internet web site shall 338
disclose on the home page of its web site or on a page that is 339
clearly and conspicuously connected to the home page by a link 340
that clearly reveals its contents, all of the following: 341

(1) Its name and all names under which it does business; 342

(2) Its principal business address, telephone number, and 343
electronic mail address, if any. 344

(H) Subject to division (I) of this section, if a consumer 345
who has consented to electronic communication in the manner 346
provided by section 101 of the federal act withdraws consent as 347

provided in the federal act, a licensee may terminate its 348
agreement with the consumer. 349

(I) If a licensee wishes to terminate an agreement with a 350
consumer pursuant to division (H) of this section, it shall notify 351
the consumer that it will terminate the agreement unless the 352
consumer, within thirty days after receiving the notification, 353
consents to electronic communication in the manner provided in 354
section 101(c) of the federal act. 355

(J) This section modifies, limits, and supersedes the federal 356
act, but does not modify, limit, or supersede section 101(c) of 357
that act or authorize electronic delivery of any of the notices 358
described in section 103(b) of that act. 359

Sec. 4710.28. (A) An agreement shall meet the following 360
requirements: 361

(1) Be in a record; 362

(2) Be dated and signed by the individual; 363

(3) Include the name of the individual and the address where 364
the individual resides; 365

(4) Include the name, business address, and telephone number 366
of the licensee; 367

(5) Be delivered to the individual immediately upon formation 368
of the agreement; 369

(6) Disclose all of the following: 370

(a) The services to be provided; 371

(b) The amount or method of determining the amount of all 372
fees, individually itemized, to be paid by the individual; 373

(c) How the licensee will comply with its obligations under 374
section 4710.33 of the Revised Code; 375

(d) That the individual may contact the director of commerce with any questions or complaints regarding the licensee; 376
377

(e) The address, telephone number, and internet address or web site of the director. 378
379

(B) For purposes of division (A)(5) of this section, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print the record, and the individual is notified that it is available. 380
381
382
383

(C) If the director supplies the licensee with any information required under division (A)(6)(e) of this section, the licensee may comply with that requirement only by disclosing the information supplied by the director. 384
385
386
387

(D) An agreement shall provide that the individual has a right to terminate the agreement at any time by giving the licensee written or electronic notice, in which event all powers of attorney granted by the individual to the licensee are revoked and ineffective. 388
389
390
391
392

(E) An agreement may not do any of the following: 393

(1) Provide for application of the law of any jurisdiction other than the United States and this state; 394
395

(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; 396
397
398
399
400

(3) Contain a provision that restricts the individual's remedies under sections 4710.20 to 4710.43 of the Revised Code, or other law; 401
402
403

(4) Contain a provision that does the following: 404

(a) Limits or releases the liability of any person for not 405

performing the agreement or for violating any provision of 406
sections 4710.20 to 4710.43 of the Revised Code; 407

(b) Indemnifies any person for liability arising under the 408
agreement or under sections 4710.20 to 4710.43 of the Revised 409
Code. 410

Sec. 4710.29. (A) A licensee shall not impose, directly or 411
indirectly, a fee or other charge on an individual or receive 412
money from or on behalf of an individual for debt settlement 413
services, except as permitted by this section. 414

(B) A licensee shall not impose fees or other charges or 415
receive payment for debt settlement services unless both of the 416
following conditions are met: 417

(1) The licensee and the individual have signed an agreement 418
that substantially complies with sections 4710.28 and 4710.32 of 419
the Revised Code. 420

(2) A settlement has been executed in the form required under 421
division (C) of section 4710.33 of the Revised Code and at least 422
one payment has been made by the individual pursuant to that 423
settlement. 424

(C) The total amount of fees or other charges for debt 425
settlement services shall be reasonable. A fee or other charge 426
shall: 427

(1) Bear the same proportional relationship to the total fees 428
or other charges for renegotiating, settling, reducing, or 429
altering the terms of the entire debt balance as the individual 430
debt amount bears to the entire debt balance at the time the 431
licensee and the individual signed the agreement; or 432

(2) Represent a percentage of the difference between the debt 433
owed the creditor and the amount the creditor has agreed to accept 434
as payment in full of the debt. If the fee or other charge for an 435

individual debt is determined in this manner, the same percentage shall be used for all of the other individual debts. 436
437

(D) A licensee may impose a reasonable charge to the individual, plus any amount passed on from a financial institution for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason, provided that the terms and conditions upon which such insufficient funds charges will be charged to the individual are set forth in the agreement. 438
439
440
441
442
443
444

(E) A licensee shall not solicit or accept a voluntary contribution from an individual or on behalf of an individual. 445
446

Sec. 4710.30. (A) If a licensee imposes a fee or other charge or receives money or other payments not authorized by section 4710.29 of the Revised Code, the individual may void the agreement and recover as provided for in section 4710.39 of the Revised Code. 447
448
449
450
451

(B) If a person providing debt settlement services is not licensed as required by section 4710.21 of the Revised Code when an individual assents to an agreement, the agreement is voidable by the individual. 452
453
454
455

(C) If an individual voids an agreement under this section, the licensee or person providing debt settlement services without a license does not have a claim against the individual for breach of contract or for restitution. 456
457
458
459

Sec. 4710.31. If an individual who has entered into an agreement fails for sixty days to set aside the savings required by the agreement, a licensee may terminate the agreement. 460
461
462

Sec. 4710.32. A licensee shall not do any of the following: 463

(A) Exercise or attempt to exercise a power of attorney after 464

an individual has terminated an agreement; 465

(B) Initiate a transfer of money from an individual's account 466
at a financial institution or with another person, unless the 467
transfer is one of the following: 468

(1) A return of money to the individual; 469

(2) Before termination of an agreement, properly authorized 470
by the agreement for payment of a fee; 471

(3) In payment of a creditor to fund a negotiated settlement 472
authorized by an individual. 473

(C) Structure a settlement in a manner that would result in a 474
negative amortization of any of an individual's debts; 475

(D) Settle a debt or lead an individual to believe that a 476
payment to a creditor is in settlement of a debt to the creditor 477
unless, at the time of settlement, the individual receives a 478
certification or confirmation by the creditor that the payment is 479
in full settlement of the debt, or is part of a payment plan that 480
is in full settlement of the debt; 481

(E) Represent that: 482

(1) The licensee will furnish money to pay bills or prevent 483
attachments; 484

(2) Payment of a certain amount will guarantee satisfaction 485
of a certain amount or range of indebtedness; or 486

(3) Participation in a program will or may prevent 487
litigation, garnishment, attachment, repossession, foreclosure, 488
eviction, or loss of employment. 489

(F) Represent that the licensee is authorized or competent to 490
furnish legal advice or perform legal services, unless such advice 491
or services is provided by a licensed attorney working with the 492
licensee; 493

<u>(G) Represent that it is one of the following:</u>	494
<u>(1) A not-for-profit entity, unless it is organized and properly operating as a not-for-profit entity under the laws of this state;</u>	495 496 497
<u>(2) A tax-exempt entity, unless it has received certification of tax-exempt status from the federal internal revenue service.</u>	498 499
<u>(H) Take a confession of judgment or power of attorney to confess judgment against an individual;</u>	500 501
<u>(I) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information;</u>	502 503 504
<u>(J) Purchase a debt or obligation of the individual;</u>	505
<u>(K) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;</u>	506 507
<u>(L) Make statements that are misleading or deceptive.</u>	508
Sec. 4710.33. <u>(A) A licensee shall provide the accounting required by division (B) of this section upon request.</u>	509 510
<u>(B) For each settlement, the licensee shall document in a record an accounting of all of the following:</u>	511 512
<u>(1) The amount the creditor accepts as settlement in full of the debt and any other terms of the settlement;</u>	513 514
<u>(2) The amount of the debt when the creditor agreed to the settlement;</u>	515 516
<u>(3) For licensees using fee agreements that calculate any portion of the fee based on a percentage of savings the individual realizes from a settled debt, the calculation of that fee.</u>	517 518 519
<u>(C) A settlement shall be in writing, indicate the assent of the creditor through endorsement, and clearly set forth the amount</u>	520 521

of the debt, the amount the creditor has agreed to accept as 522
payment in full of the debt, and any other material terms of the 523
settlement. The debtor's authorization of the settlement shall be 524
documented in a record. 525

(D) A licensee shall maintain records for each individual for 526
whom it provides debt settlement services for four years after the 527
final payment made by the individual and produce a copy of them to 528
the individual within a reasonable time after a request is made 529
for them. The licensee may use electronic or other means of 530
storage of the records. 531

Sec. 4710.34. (A) The director of commerce may do the 532
following: 533

(1) Act on the director's own initiative or in response to 534
complaints and may receive complaints regarding, or take action to 535
obtain compliance with, sections 4710.20 to 4710.43 of the Revised 536
Code; 537

(2) Seek or provide remedies as provided for in section 538
4710.36 of the Revised Code. 539

(B) The director may investigate and examine, by subpoena or 540
otherwise, the activities, books, accounts, and records of a 541
licensee, or a person to which a licensee has delegated its 542
obligations under an agreement, to determine compliance with 543
sections 4710.20 to 4710.43 of the Revised Code. Information that 544
identifies individuals who have agreements with the licensee shall 545
not be disclosed to the public. In connection with the 546
investigation, the director may do the following: 547

(1) Charge the person the reasonable expenses necessarily 548
incurred to conduct the examination; 549

(2) Require or permit a person to file a statement under oath 550
as to all the facts and circumstances of a matter to be 551

investigated. 552

(C) The director may adopt rules in accordance with Chapter 119. of the Revised Code to implement the provisions of sections 4710.20 to 4710.43 of the Revised Code. 553
554
555

(D) The director may enter into cooperative arrangements with any other federal or state agency having authority over licensees and may exchange with any of those agencies information about a licensee, including information obtained during an examination of the licensee. 556
557
558
559
560

Sec. 4710.35. (A) As used in this section, "consumer price index" means the consumer price index prepared by the United States bureau of labor statistics (U.S. city average for urban wage earners and clerical workers: all items, 1982-1984=100) or, if that index is no longer published, a generally available comparable index. 561
562
563
564
565
566

(B) The director of commerce, by rule adopted in accordance with Chapter 119. of the Revised Code, shall establish reasonable fees to be paid by licensees for the expense of administering sections 4710.20 to 4710.43 of the Revised Code. All fees, charges, and penalties collected under sections 4710.20 to 4710.43 of the Revised Code shall be paid to the director and shall be deposited by the director into the state treasury to the credit of the debt settlement services fund, which is hereby created. Funds in the debt settlement services fund shall be used for administering sections 4710.20 to 4710.43 of the Revised Code. 567
568
569
570
571
572
573
574
575
576

(C) The director, by rule adopted in accordance with Chapter 119. of the Revised Code, shall establish the dollar amounts for the license fees under section 4710.22 of the Revised Code. Those license fees, and the penalties collected under section 4710.36 of the Revised Code, shall be adjusted to reflect inflation, as measured by the consumer price index. The director shall adopt a 577
578
579
580
581
582

base year and adjust the dollar amounts, effective on July 1 of 583
each year, if the change in the index from the base year, as of 584
December 31 of the preceding year, is at least ten per cent. The 585
dollar amount shall be rounded to the nearest ten dollars. 586

(D) The director shall notify licensees of any change in 587
dollar amounts made pursuant to division (C) of this section and 588
make that information available to the public. 589

Sec. 4710.36. (A) The director of commerce shall enforce 590
sections 4710.20 to 4710.43 of the Revised Code, and any rule 591
adopted thereunder, by taking one or more of the following 592
actions: 593

(1) Ordering a licensee or a director, employee, or other 594
agent of a licensee to cease and desist from any violations; 595

(2) Ordering a licensee or another person that has caused a 596
violation to correct the violation, or a licensee or another 597
person that has failed to comply with those sections to correct 598
the failure, including making restitution of money or property to 599
a person aggrieved by a violation or failure to comply; 600

(3) Imposing on such a licensee or person a civil penalty not 601
exceeding one thousand dollars for each violation or failure to 602
comply; 603

(4) Prosecuting a civil action to do either of the following: 604

(a) Enforce an order; 605

(b) Obtain restitution or an injunction or other equitable 606
relief, or both. 607

(B) If a person violates or fails to comply with, or 608
knowingly authorizes, directs, or aids in the violation of or 609
failure to comply with, a final order issued under division (A)(1) 610
or (2) of this section, the director may impose an additional 611
civil penalty not exceeding one thousand dollars for each 612

violation or failure. 613

(C) The director may maintain an action to enforce sections 4710.20 to 4710.43 of the Revised Code in any county. 614
615

(D) The director may recover the reasonable costs of actions or proceedings brought pursuant to divisions (A) and (B) of this section, including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community. 616
617
618
619
620

(E) In determining the amount of a civil penalty to impose under division (A) or (B) of this section, the director shall consider the seriousness of the violation or failure, the good faith of the person committing the violation or failure, any previous violations or failures by the person, the deleterious effect of the violation or failure on the public, and any other factor the director considers relevant to the determination of the civil penalty. 621
622
623
624
625
626
627
628

(F) No enforcement action or adjudication order made by the director under this section shall be valid unless an opportunity for a hearing is afforded in accordance with Chapter 119. of the Revised Code. Such opportunity for a hearing shall be given before taking the enforcement action or making the adjudication order except in those situations where section 119.06 of the Revised Code provides otherwise. 629
630
631
632
633
634
635

Sec. 4710.37. The director of commerce shall publish and maintain, on the department of commerce internet web site, a current list of all licensees. 636
637
638

Sec. 4710.38. (A) As used in this section, "insolvent" means: 639
640

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of a good-faith dispute; 641
642

<u>(2) Being unable to pay debts as they become due;</u>	643
<u>(3) Being insolvent within the meaning of the federal bankruptcy law.</u>	644 645
<u>(B) The director of commerce may suspend, revoke, or deny renewal of a license if any of the following apply:</u>	646 647
<u>(1) A fact or condition exists that, if it had existed when the licensee applied for a license, it would have been a reason for denial.</u>	648 649 650
<u>(2) The licensee has committed a material violation of or failure to comply with any provision of sections 4710.20 to 4710.43 of the Revised Code or a rule or order of the director.</u>	651 652 653
<u>(3) The licensee is insolvent.</u>	654
<u>(4) The licensee or an employee or affiliate of the licensee has refused to permit the director to make an examination authorized by division (B) of section 4710.34 of the Revised Code, failed to comply with an order to file a statement pursuant to division (B)(2) of section 4710.34 of the Revised Code within thirty days after the request, or made a material misrepresentation or omission with regard to that statement.</u>	655 656 657 658 659 660 661
<u>(5) The licensee has not responded within a reasonable time and in an appropriate manner to communications from the director.</u>	662 663
<u>(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.</u>	664 665 666
<u>Sec. 4710.39.</u> <u>(A) If an individual voids an agreement pursuant to section 4710.30 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.</u>	667 668 669 670 671

(B) Subject to division (C) of this section, an individual with respect to whom a licensee or a person providing debt settlement services 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:

(1) Compensatory damages for economic injury caused by the violation or failure;

(2) Except as otherwise provided in division (C) of this section, with respect to a failure to comply with division (C) of section 4710.25 of the Revised Code, a violation of section 4710.32 of the Revised Code, and a violation of or failure to comply with sections 4710.26, 4710.28, and 4710.29 of the Revised Code, the greater of the amount recovered under division (B)(1) of this section or one thousand dollars;

(3) For violations of section 4710.21 or 4710.29 of the Revised Code, reasonable attorney's fees and costs.

(C) In a class action, the minimum damages provided in division (B) of this section do not apply.

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

(E)(1) If a licensee violates or fails to comply with any

provision of sections 4710.20 to 4710.43 of the Revised Code, an 703
individual may recover under this section or, if the violation or 704
failure by the licensee violates section 1345.02 of the Revised 705
Code, under section 1345.09 of the Revised Code, but not both for 706
the same act or practice. 707

(2) If a person providing debt settlement services without a 708
license violates or fails to comply with any provision of sections 709
4710.20 to 4710.43 of the Revised Code, an individual may recover 710
under this section and section 4710.41 of the Revised Code. 711

Sec. 4710.40. (A) An action or proceeding brought pursuant to 712
division (A) or (B) of section 4710.36 of the Revised Code must be 713
commenced within two years after the conduct that is the basis of 714
the director of commerce's complaint occurs. 715

(B) An action brought pursuant to section 4710.41 of the 716
Revised Code must be commenced within two years after the latest 717
of the following: 718

(1) The individual's last transmission of money to the 719
licensee; 720

(2) The date on which the individual discovered or reasonably 721
should have discovered the facts giving rise to the individual's 722
claim; 723

(3) Termination of actions or proceedings by the director 724
with respect to a violation of or failure to comply with any 725
provision of sections 4710.20 to 4710.43 of the Revised Code. 726

(C) The period prescribed in division (B)(2) of this section 727
is tolled during any period during which the licensee or, if 728
different, the defendant, has materially and willfully 729
misrepresented information required by sections 4710.20 to 4710.43 730
of the Revised Code to be disclosed to the individual, if the 731
information so misrepresented is material to the establishment of 732

the liability of the defendant under sections 4710.20 to 4710.43 733
of the Revised Code. 734

Sec. 4710.41. Any violation of or failure to comply with any 735
provision of sections 4710.20 to 4710.43 of the Revised Code by a 736
person providing debt settlement services without a license is 737
deemed an unfair or deceptive act or practice in violation of 738
section 1345.02 of the Revised Code. A person injured by such a 739
violation has a cause of action and is entitled to the same relief 740
available to a consumer under section 1345.09 of the Revised Code. 741

Sec. 4710.42. All the powers and remedies available to the 742
attorney general to enforce sections 1345.01 to 1345.13 of the 743
Revised Code are available to the attorney general to enforce 744
sections 4710.25 to 4710.33 of the Revised Code, to the extent 745
those sections address a violation of section 1345.02 of the 746
Revised Code. 747

Sec. 4710.43. If a licensee act or practice violates sections 748
4710.25 to 4710.33 of the Revised Code and section 1345.02 of the 749
Revised Code, one of the following, but not both, may occur 750
regarding the act or practice: 751

(A) Recovery of civil penalties, damages, or reimbursement 752
under section 1345.07 of the Revised Code; 753

(B) Recovery of civil penalties, damages, or restitution 754
under section 4710.36 of the Revised Code. 755

Section 2. That existing section 4710.01 of the Revised Code 756
is hereby repealed. 757