

As Introduced

130th General Assembly

**Regular Session
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H. B. No. 173

Representatives Terhar, Mallory

Cosponsors: Representatives Grossman, Brenner, Blair, Beck, Bishoff

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A B I L L

To amend sections 4710.01 and 4710.03 and to enact
sections 4710.20 to 4710.32 of the Revised Code to
regulate providers of debt settlement services.

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

Section 1. That sections 4710.01 and 4710.03 be amended and
sections 4710.20, 4710.21, 4710.22, 4710.23, 4710.24, 4710.25,
4710.26, 4710.27, 4710.28, 4710.29, 4710.30, 4710.31, and 4710.32
of the Revised Code be enacted to read as follows:

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Sec. 4710.01. As used in ~~this chapter~~ sections 4710.01 to
4710.04 of the Revised Code:

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

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(B)(1) "Debt adjusting" means doing business in debt
adjusting, budget counseling, debt management, or debt pooling
service, or holding oneself out, by words of similar import, as
providing services to debtors in the management of their debts, to
do either of the following:

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

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<u>(2)(b) To receive from the debtor and disburse to the debtor's creditors any money or other thing of value.</u>	19 20
<u>(2) "Debt adjusting" does not include debt settlement services as defined in section 4710.20 of the Revised Code.</u>	21 22
<u>(C) "Resides" means to live in a particular place on a temporary or a permanent basis.</u>	23 24
<u>Sec. 4710.03. Nothing in this chapter sections 4710.01 to 4710.04 of the Revised Code applies to any of the following:</u>	25 26
(A) The federal national mortgage association; the federal home loan mortgage corporation; a bank, bank holding company, trust company, savings and loan association, credit union, savings bank, or credit card bank, that is regulated by the office of the comptroller of currency, office of thrift supervision, federal reserve, federal deposit insurance corporation, national credit union administration, or division of financial institutions; or to subsidiaries of any of these entities;	27 28 29 30 31 32 33 34
(B) Debt adjusting incurred in the practice of law in this state;	35 36
(C) A person that incidentally engages in debt adjusting to adjust the indebtedness owed to that person;	37 38
(D) A registrant as defined in section 1321.51 of the Revised Code;	39 40
(E) A registrant or licensee as both are defined in section 1322.01 of the Revised Code.	41 42
<u>Sec. 4710.20. As used in sections 4710.20 to 4710.32 of the Revised Code:</u>	43 44
(A) " <u>Affiliate</u> " means any of the following:	45
(1) <u>A person that controls, is controlled by, or is under</u>	46

<u>common control with a provider.</u>	47
<u>(2) An executive officer or director of a provider or any individual performing functions similar to an executive officer or director.</u>	48
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<u>(3) An executive officer or director of a person described in division (A)(1) of this section or any individual performing functions similar to an executive officer or director.</u>	51
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<u>(B) "Concessions" means assent to repayment of a debt on terms more favorable to a debtor than the terms of the contract between the debtor and a creditor.</u>	54
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<u>(C) "Control" means the right to control at least ten percent of the voting power of another person.</u>	57
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<u>(D) "Day" means a calendar day.</u>	59
<u>(E) "Debt" means an individual to whom a provider furnishes debt settlement services.</u>	60
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<u>(F) "Debt settlement services agreement" means an agreement between a provider and a debtor for the furnishing of debt settlement services.</u>	62
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<u>(G)(1) "Debt settlement services" means the services as an intermediary between a debtor and one or more unsecured creditors of the debtor for the purpose of obtaining concessions with respect to the debtor's unsecured debt, which concessions may include a reduction in the principal amount of the debt.</u>	65
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<u>(2) "Debt settlement services" does not include any of the following:</u>	70
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<u>(a) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state;</u>	72
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<u>(b) Financial planning services provided in a financial planner-client relationship by a licensed member of a financial</u>	75
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<u>planning profession.</u>	77
<u>(H) "Financial institution"</u> means any <u>national bank</u> , any <u>bank doing business under authority granted by the superintendent of financial institutions or the regulatory authority of another state</u> , any <u>federal savings association</u> , any <u>savings and loan association or savings bank doing business under authority granted by the superintendent or the regulatory authority of another state</u> , any <u>trust company</u> , or any <u>credit union regulated by a state or federal regulatory authority.</u>	78 79 80 81 82 83 84 85
<u>(I) "Good faith"</u> means <u>honesty in fact and the observance of reasonable standards of fair dealing.</u>	86 87
<u>(J) "Person"</u> means an <u>individual</u> , <u>corporation</u> , <u>business trust</u> , <u>estate</u> , <u>trust</u> , <u>partnership</u> , <u>limited liability company</u> , <u>association</u> , <u>joint venture</u> , or any <u>other legal or commercial entity</u> . The term does not include a <u>public corporation</u> , <u>government</u> , or <u>governmental subdivision, agency, or instrumentality</u> .	88 89 90 91 92 93
<u>(K) "Principal amount of the debt"</u> means the <u>amount of a debt at the time of the execution of a debt settlement services agreement.</u>	94 95 96
<u>(L) "Program"</u> means a <u>program or strategy in which a provider furnishes debt settlement services.</u>	97 98
<u>(M) "Provider"</u> means a <u>person that furnishes, offers to furnish, or agrees to furnish debt settlement services.</u>	99 100
<u>(N) "Record"</u> means <u>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.</u>	101 102 103
<u>(O) "State"</u> means the <u>state of Ohio, except when the context indicates the term is referring to another state of the United States, the District of Columbia, Puerto Rico, the United States</u>	104 105 106

<u>Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.</u>	107
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<u>(P) "Superintendent of financial institutions" includes the deputy superintendent for consumer finance as provided in section 1181.21 of the Revised Code.</u>	109
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<u>Sec. 4710.21. (A) A provider shall not furnish debt settlement services to a debtor who the provider reasonably should know resides in this state at the time the debt settlement services agreement is entered into, except as provided in sections 4710.20 to 4710.32 of the Revised Code.</u>	112
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<u>(B) Sections 4710.20 to 4710.32 of the Revised Code do not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:</u>	117
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<u>(1) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;</u>	121
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<u>(2) A financial institution or an affiliate or agency of a financial institution if the affiliate or agent is subject to examination by a federal or state banking regulatory authority;</u>	124
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<u>(3) A title insurer, escrow company, or other person that provides bill-paying services if the furnishing of debt settlement services is incidental to the bill-paying services;</u>	127
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<u>(4) An attorney licensed or otherwise authorized to practice law in this state who furnishes debt settlement services directly to a client as part of a lawyer-client relationship and does not have a business relationship with a provider that is in any way related to the furnishing of debt settlement services.</u>	130
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<u>Sec. 4710.22. A provider, prior to offering to furnish or</u>	135

<u>furnishing debt settlement services to a debtor who the provider reasonably should know resides in this state at the time the debt settlement services agreement is entered into, shall submit all of the following to the department of commerce:</u>	136
<u>(A) Evidence that the provider has a resident agent in this state recorded with the secretary of state;</u>	140
<u>(B) Proof of a bond in effect meeting the requirements of section 4710.23 of the Revised Code;</u>	142
<u>(C) Proof that the provider is authorized by the laws of this state to conduct business in this state.</u>	144
<u>Sec. 4710.23. (A) A provider shall obtain and maintain in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state that meets all of the following conditions:</u>	146
<u>(1) The bond is in favor of the superintendent of financial institutions.</u>	150
<u>(2) The bond is for the exclusive benefit of any debtor located in this state, and of the state for the benefit of any debtor, who is injured by a failure to comply with any provision of sections 4710.20 to 4170.32 of the Revised Code.</u>	152
<u>(3) The bond is in the amount of fifty thousand dollars.</u>	156
<u>(B) Any debtor claiming against the bond for a failure to comply with any provision of sections 4710.20 to 4710.32 of the Revised Code may maintain an action at law against the provider and against the corporate surety. The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond.</u>	157
<u>(C) Whenever the penal sum of the bond is reduced by one or more recoveries or payments, the provider shall furnish a new or</u>	163
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<u>additional bond under this section, so that the total or aggregate penal sum of the bond or bonds equals the sum required by this section, or shall furnish an endorsement executed by the corporate surety reinstating the bond to the required penal sum.</u>	165 166 167 168
<u>(D) The bond shall not be canceled by the provider or by the corporate surety, except upon notice to the superintendent by certified mail, return receipt requested. The cancellation shall not be effective prior to thirty days after the superintendent receives the notice.</u>	169 170 171 172 173
<u>Sec. 4710.24. A provider shall do all of the following:</u>	174
<u>(A) Act in good faith in all matters relating to the furnishing of debt settlement services;</u>	175 176
<u>(B) Maintain a toll-free communication system, staffed at a level that reasonably permits a debtor to speak to a customer service representative, as appropriate, during ordinary business hours;</u>	177 178 179 180
<u>(C) Provide all disclosures required by sections 4710.20 to 4710.32 of the Revised Code in English and in any other language the provider will use primarily to communicate with a debtor.</u>	181 182 183
<u>Sec. 4710.25. (A) Before a debtor consents to pay the fees for the goods and services offered by the provider, the provider shall disclose, in a clear and conspicuous manner, all of the following material information:</u>	184 185 186 187
<u>(1) A good faith estimate of the amount of time necessary to achieve the represented results and, to the extent that the debt settlement services may include a settlement offer to any of the debtor's creditors, a good faith estimate of the time by which the provider will start to make bona fide settlement offers to the debtor's creditors, and the cost to the debtor for furnishing the debt settlement services;</u>	188 189 190 191 192 193 194

<u>(2) To the extent that the debt settlement services may include a settlement offer to any of the debtor's creditors, a good faith estimate of the amount of money, or the percentage of each outstanding debt, that the debtor will be required to accumulate before the provider makes a bona fide settlement offer;</u>	195 196 197 198 199
<u>(3) To the extent that any aspect of the debt settlement services relies upon or results in the debtor's failure to make timely payments to creditors, that the use of the debt settlement services will likely adversely affect the debtor's creditworthiness, may result in the debtor being subject to collection actions or sued by creditors, may result in the creation of taxable income to the debtor, and may increase the amount of money the debtor owes due to the accrual of fees and interest;</u>	200 201 202 203 204 205 206 207 208
<u>(4) To the extent that the provider requests or requires the debtor to place funds in an account at a financial institution, that the debtor owns the funds held in the account;</u>	209 210 211
<u>(5) That the debtor may withdraw from the debt settlement services agreement at any time without penalty.</u>	212 213
<u>(B) A provider shall not misrepresent, directly or by implication, any material aspect of the debt settlement services, including, but not limited to, any of the following:</u>	214 215 216
<u>(1) The amount of money or the percentage of the debt amount that a debtor may save by entering into the debt settlement services agreement;</u>	217 218 219
<u>(2) The effect of debt settlement services on the debtor's creditworthiness and on the collection efforts of the debtor's creditors;</u>	220 221 222
<u>(3) The percentage or number of debtors who attain the represented results;</u>	223 224

<u>(4) Whether debt settlement services are being offered or furnished by a nonprofit entity.</u>	225
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<u>(C) Prior to entering into a debt settlement services agreement, a provider shall prepare a financial analysis with respect to the income and debts of the debtor seeking the debt settlement services and provide the debtor with a copy of the financial analysis.</u>	227
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<u>Sec. 4710.26. A provider shall not impose fees or receive payment for debt settlement services unless all of the following conditions are met:</u>	232
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<u>(A) The provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt under a debt settlement program.</u>	235
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<u>(B) The debtor has made at least one payment to a creditor in furtherance of a settlement with that creditor;</u>	238
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<u>(C) The fee for settling each individual debt enrolled in a debt settlement program shall do either of the following:</u>	240
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<u>(1) Bear the same proportional relationship to the total fees for settling the entire debt balance as the individual debt amount bears to the entire debt amount. For purposes of division (C)(1) of this section, "individual debt amount" and "entire debt amount" mean the amounts owed at the time the debt was enrolled in the program.</u>	242
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<u>(2) Represent a percentage of the amount saved as a result of the settlement. The percentage charged shall not change from one individual debt to another. For purposes of division (C)(2) of this section, the "amount saved" means the difference between the amount owed at the time the debt was enrolled in the program and the amount actually paid to satisfy the debt.</u>	248
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<u>Sec. 4710.27.</u> (A) A provider shall not hold a debtor's funds intended for distribution to creditors.	254
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(B) Nothing in this section prohibits a provider from requesting or requiring the debtor to place funds in an account to be used for payment of the provider's fees and for payments to creditors in connection with a renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of debt, provided that all of the following conditions are met:	256
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(1) The funds are held in a specifically designated account at a financial institution.	258
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(2) The debtor owns and controls the funds held in the account and is paid accrued interest on the account, if any.	260
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(3) The entity administering the account is not owned or controlled by, or an affiliate of, the provider.	262
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(4) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business by the provider.	264
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(5) The debtor may terminate the debt settlement services agreement at any time without penalty, and must receive all funds in the account, other than funds earned by the provider in accordance with sections 4710.20 to 4710.32 of the Revised Code, within seven business days after the debtor's request.	266
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<u>Sec. 4710.28.</u> If a provider enters into a debt settlement services agreement without complying with sections 4710.20 to 4710.32 of the Revised Code, the debtor may void the agreement.	268
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<u>Sec. 4710.29.</u> (A) The superintendent of financial institutions may investigate an alleged failure to comply with any provision of sections 4710.20 to 4710.32 of the Revised Code or	270
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<u>any complaints concerning such a failure.</u>	283
<u>(B) As often as the superintendent considers it necessary,</u>	284
<u>the superintendent may investigate and examine, in or outside this</u>	285
<u>state, the activities and the books, accounts, papers, records,</u>	286
<u>and other documents of a provider or of any person to which a</u>	287
<u>provider has delegated its obligations under an agreement or under</u>	288
<u>sections 4710.20 to 4710.32 of the Revised Code. In connection</u>	289
<u>with the investigation, the superintendent may charge the provider</u>	290
<u>the reasonable expenses necessarily incurred to conduct the</u>	291
<u>examination.</u>	292
<u>(C) In conducting any investigation pursuant to this section,</u>	293
<u>the superintendent may compel, by subpoena, witnesses to testify</u>	294
<u>in relation to any matter over which the superintendent has</u>	295
<u>jurisdiction and may require the production of any book, account,</u>	296
<u>paper, record, or other document pertaining to that matter. If a</u>	297
<u>person fails to file any statement or report, obey any subpoena,</u>	298
<u>give testimony, produce any book, account, paper, record, or other</u>	299
<u>document as required by a subpoena, or permit photocopying of any</u>	300
<u>book, account, paper, record, or other document subpoenaed, the</u>	301
<u>court of common pleas of any county in this state, upon</u>	302
<u>application made to it by the superintendent, shall compel</u>	303
<u>obedience by attachment proceedings for contempt, as in the case</u>	304
<u>of disobedience of the requirements of a subpoena issued from the</u>	305
<u>court or a refusal to testify therein.</u>	306
<u>(D) Examination or investigation information that identifies</u>	307
<u>debtors who have debt settlement services agreements with a</u>	308
<u>provider shall not be disclosed to the public.</u>	309
 <u>Sec. 4710.30. If the superintendent of financial institutions</u>	310
<u>determines that a person is engaged in or is believed to be</u>	311
<u>engaged in activities that may constitute a failure to comply with</u>	312

<u>any provision of sections 4710.20 to 4710.32 of the Revised Code,</u>	313
<u>the superintendent, after notice and a hearing conducted in</u>	314
<u>accordance with Chapter 119. of the Revised Code, may do any of</u>	315
<u>the following:</u>	316
<u>(A) Issue a cease and desist order. Such an order shall be</u>	317
<u>enforceable in the court of common pleas.</u>	318
<u>(B) Seek and obtain civil penalties in an amount not to</u>	319
<u>exceed one thousand dollars for each failure to comply.</u>	320
<u>(C) Order the person to correct or remedy the conditions</u>	321
<u>resulting from the failure to comply, including by making</u>	322
<u>restitution. Such an order shall be enforceable in the court of</u>	323
<u>common pleas.</u>	324
 <u>Sec. 4710.31. Any material, nontechnical failure to comply</u>	325
<u>with any provision of sections 4710.20 to 4710.32 of the Revised</u>	326
<u>Code is deemed an unfair or deceptive act or practice in violation</u>	327
<u>of section 1345.02 of the Revised Code. A debtor injured by such a</u>	328
<u>failure has a cause of action and is entitled to the same relief</u>	329
<u>available to a consumer under section 1345.09 of the Revised Code.</u>	330
 <u>Sec. 4710.32. Sections 4710.20 to 4710.31 of the Revised Code</u>	331
<u>modify, limit, and supersede the federal "Electronic Signatures in</u>	332
<u>Global and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001</u>	333
<u>et seq., as amended, but do not modify, limit, or supersede</u>	334
<u>section 101(c) of that act or authorize electronic delivery of any</u>	335
<u>of the notices described in section 103(b) of that act.</u>	336
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 Section 2. That existing sections 4710.01 and 4710.03 of the	338
Revised Code are hereby repealed.	339