



Am. H.B. 367

127th General Assembly

(As Reported by H. Financial Institutions, Real Estate, and Securities)

Reps. Blessing, Flowers, J. McGregor, Fessler, Webster

BILL SUMMARY

- Establishes a new set of regulations for debt settlement service providers, as distinguished from persons doing business in debt adjusting.

CONTENT AND OPERATION

Background--Debt Adjusting Law

Current Ohio law regulates the practice of debt adjusting, defined as:

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: (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. (R.C. 4710.01.)

Persons engaged in debt adjusting are required to maintain a separate trust account for each debtor, charge only fees authorized by statute, and disburse to the appropriate creditor all funds received from the debtor, less certain permissible fees or contributions, within 30 days. These persons annually must undergo an audit and must maintain certain required levels of insurance coverage for employee dishonesty (R.C. 4710.02 not in the bill). Certain violations of the Debt Adjusting Law are deemed to be unfair or deceptive acts in violation of the "Consumer Sales Practices Act" (CSPA) (R.C. 1345.02), as well as constituting a misdemeanor of the third degree (R.C. 4710.04 and 4710.99 not in the bill).

The practice of "debt settlement service" would likely fall under the current definition of debt adjusting, and therefore, debt settlement service providers would currently be subject to the regulations of Chapter 4710. of the Revised Code.

Proposed debt settlement provider regulation

The bill distinguishes between "debt adjusting" and "debt settlement service," and establishes a distinct set of regulations for debt settlement service providers.

The principal distinction that the bill makes is that unlike debt adjusters, debt settlement providers do not receive and disburse any of a client's money.

"Debt settlement service" means the negotiation, adjustment, or settlement of a consumer's debt without holding, receiving, or disbursing the debtor's funds.

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

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

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

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

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

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

Debt settlement service

(R.C. 4710.01 and 4710.05)

The bill alters the current definition of "debt adjusting" to specifically not include "debt settlement service," as defined below, and establishes the following distinct regulations and requirements for debt settlement service providers.

	Current Debt Adjusting Law (unchanged by the bill)	H.B. 367 proposed debt settlement regulation
Insurance coverage type	Must maintain coverage for employee dishonesty, depositor's forgery, and computer fraud, by an insurer rated at least A- or its equivalent by a nationally recognized rating organization.	Must maintain coverage for dishonesty, fraud, theft, and other misconduct on the part of a director, employee, or agent, by an insurer rated at least A- or its equivalent by a nationally recognized rating organization.
Minimum required insurance coverage	At least 10% of the monthly average for the immediate preceding six months of the aggregate amount of all deposits made with the person by all debtors, but not less than \$100,000.	Not less than \$100,000.
Insurance coverage deductible	Not more than 10% of the face amount of the policy coverage.	Not more than \$10,000.
Audit requirements	Must annually arrange for and undergo an audit by an independent, third party, certified public accountant of the persons' business, including any trust funds deposited and distributed to creditors on behalf of debtors. Must file the audit results and auditor's opinion with the consumer protection divisions of the Attorney General.	Must maintain books and records and file a financial statement annually with the consumer protection divisions of the Attorney General. The Attorney General may require an audit.
Enforcement	A person injured by a violation of the Debt Adjusting Law has a cause of action and is entitled to the same private remedies available to a consumer under the "Consumer Sales	The Attorney General or the prosecuting attorney of any county may bring an action upon finding that any person has violated the bill's provisions and a court may

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	Protection Act" (<i>R.C. 1345.09</i>). Also, all powers and remedies available to the Attorney General under the CSPA are also available to the Attorney General to enforce the Debt Adjusting Law (<i>R.C. 4710.04</i>).	make any necessary order or enter a judgment. The Attorney General or prosecuting attorney may accept an assurance of discontinuance of any method, act, or practice that is in violation of the bill's provisions from any person alleged to be engaged in the unlawful act (<i>R.C. 4710.05(E) and (F)</i>).
Prohibitions, permissible fees and charges	<p>A debt adjusting service provider, if charging or accepting fees or contributions, may not do any of the following:</p> <p>(1) Charge or accept a fee or contribution exceeding \$75 from a debtor residing in this state for an initial consultation or initial set up of a debt management plan or similar plan;</p> <p>(2) Charge or accept consultation fees or contributions exceeding \$100 per calendar year from a debtor residing in this state;</p> <p>(3) Charge or accept a periodic fee or contribution from a debtor residing in this state for administering a debt management plan or similar plan, which fee or contribution exceeds eight and one-half per cent of the amount paid by the debtor each month for distribution to the debtor's creditors or \$30, whichever is greater (<i>R.C. 4710.02(B)</i>).</p>	<p>A debt settlement provider may not do any of the following:</p> <p>(1) Provide debt settlement service without a written contract, or take any contract or other written instrument that has incomplete or blank sections when the contract or written instrument is signed by the debtor;</p> <p>(2) Receive or charge fees in an aggregate amount in excess of 20% of the principal amount of the debt;</p> <p>(3) Make loans or offer credit;</p> <p>(4) Take any confession of the judgment or power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceedings;</p> <p>(5) Take as part of any agreement to provide debt settlement services a release of any obligation to be performed on the part of the debt settlement provider;</p>

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		<p>(6) Advertise, display, distribute, or broadcast or televise services, or permit services to be displayed, advertised, distributed, broadcasted or televised, in any manner whatsoever in which is made any false, misleading, or deceptive statement or representation with regard to the services to be performed or the fees to be charged by the debt settlement provider;</p> <p>(7) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf in connection with the debt settlement provider's activities;</p> <p>(8) Disclose to anyone the name or any personal information of a debtor for whom the debt settlement provider has or is providing debt settlement service other than a debtor's own creditors or the provider's agents. The debt settlement provider may not disclose the name of a debtor's creditor to anyone other than the debtor or another creditor of the debtor and then only to the extent necessary to secure the cooperation of a creditor in a debt settlement plan (<i>R.C. 4710.05(D)</i>).</p>

HISTORY

ACTION	DATE
Introduced	10-25-07
Reported, H. Financial Institutions, Real Estate & Securities	04-03-08

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