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S.B. 112*
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Insurance and Financial Institutions

Primary Sponsor: Sen. Eklund

Yosef Schiff, Attorney

SUMMARY

- Expands the definition of “debt adjusting” to include providing services to debtors in the reduction or elimination of the amount or repayment terms of their debts.
- Expressly excludes from the definition of “debt adjusting” the activities of a debt collector under federal law.
- Requires a debt adjuster to disclose to a debtor any creditor who is believed will not negotiate settlements.
- Establishes that a person in compliance with federal law relating to debt adjusting is not subject to any conflicting requirement under Ohio’s Debt Adjusting Law.

DETAILED ANALYSIS

General overview

The bill modifies the Debt Adjusting Law by expanding the definition of “debt adjusting” and by addressing the conflicts that exist between that Law and the federal laws on debt adjusting by establishing that a person in compliance with federal law relating to debt adjusting is not subject to any conflicting requirement under Ohio’s Debt Adjusting Law. The bill also makes technical changes by relocating the Debt Adjusting Law (R.C. Chapter 4710) to the same chapter as the law governing credit service organizations (R.C. Chapter 4712)¹ and assigns the

* This analysis was prepared before the report of the Senate Insurance and Financial Institutions Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

¹ R.C. 4712.50 to 4712.54 and 4712.99, with conforming changes in R.C. 9.45, 2925.01, and 4712.01 and the repeal of R.C. 4710.99.

express culpable mental state of “recklessly” to the prohibition against violating the Debt Adjusting Law.²

Definition of “debt adjusting”

Currently, the term means doing business in debt adjusting, budget counseling, debt management, or debt pooling service, or holding oneself out as providing services to debtors in the management of their debts, to do either of the following:

1. Effect the adjustment, compromise, or discharge of any indebtedness of the debtor;
2. Receive from the debtor and disburse to the debtor’s creditors any money or other thing of value.

Under the bill, “debt adjusting” also means providing services to debtors in the reduction or elimination of the amount or repayment terms of their debts. And with respect to (1), above, the bill adds that the purpose behind those services is to obtain an adjustment of an interest rate on a debt, a waiver or reduction of fees or charges, or a discharge of a debt by reducing the principal balance of the debt. The bill expressly excludes from the definition of “debt adjusting” any activities of a debt collector, as defined in the federal Fair Debt Collection Practices Act.³

Conflict with federal law

The bill states that any person engaged in debt adjusting and operating in compliance with federal laws or regulations, such as the rules implementing the federal Telemarketing and Consumer Fraud and Abuse Prevention Act,⁴ is **not** subject to:

--The provision of the Debt Adjuster Law that limits the fees debt adjusters may charge debtors;⁵ or

--Any requirement of that Law that conflicts with those federal laws or regulations.⁶

Disclosure to debtor

The bill requires a person engaged in debt adjusting and operating in compliance with federal laws or regulations to disclose to the debtor in a debt management plan each creditor the person has reason to believe will not negotiate settlements directly with the person. A reckless violation of the disclosure requirement is a third degree misdemeanor for the first offense and a second degree misdemeanor for any subsequent offense.⁷

² R.C. 4712.99(B).

³ R.C. 4712.50(B) and 15 United States Code 1692a, not in the bill.

⁴ 16 Code of Federal Regulations part 310, not in the bill.

⁵ R.C. 4712.51(B).

⁶ R.C. 4712.54(A).

⁷ R.C. 4712.54(B) and 4712.99(B).

Unauthorized practice of law

Lastly, the bill states that it is not to be construed as permitting the unauthorized practice of law by anyone engaging in debt adjusting.⁸

HISTORY

Action	Date
Introduced	03-19-19
Reported, S. Insurance & Financial Institutions	---

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⁸ Section 4.