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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Hackett

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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 a debt collector under federal law from the Debt Adjusting Law.
- Prohibits a person from engaging in debt adjusting without first registering with the Attorney General.
- Requires a debt adjuster to comply with the federal Telemarketing Sales Rule.
- Prohibits a debt adjuster from sending cease and desist letters to creditors on behalf of debtors.

DETAILED ANALYSIS

General overview

The bill modifies the Debt Adjusting Law by expanding what constitutes “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 restrictions on fees that are imposed 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 requires debt adjusters to register with the Attorney General, and prohibits debt adjusters from sending certain cease and desist letters.²

¹ R.C. 4712.50 to 4712.55 and 4712.99, with conforming changes in R.C. 9.45, 2925.01, and 4712.01 and the repeal of R.C. 4710.99.

² R.C. 4712.99(B).

Definition of “debt adjusting”

Currently, “debt adjusting” 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, what constitutes “debt adjusting” is expanded to also mean 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 may be 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

Registration

The bill prohibits a person from engaging in debt adjusting without first registering with the Attorney General.⁴

Application

The application for registration and renewal must be in a form prescribed by the Attorney General, signed under oath, and must contain any information the Attorney General reasonably requires. The Attorney General must evaluate an applicant’s financial responsibility and general fitness. A registration lasts for two years from the date of issuance. Any adjudication by the Attorney General relating to the registration requirement must follow Ohio’s Administrative Procedure Act.⁵

The following items must accompany an application for registration:

- An unexpired certificate from the Tax Commissioner verifying that the applicant is not subject to any assessment or enforcement action for unpaid commercial activity tax, interest, or penalties. The Commissioner must provide this certificate to the applicant not later than 14 days after receiving the applicant’s request. The certificate expires 90 days after the date of its issuance.
- Proof that the applicant is in compliance with any requirement imposed by the Secretary of State for an entity to engage in business in Ohio;

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

⁴ R.C. 4712.502(A).

⁵ R.C. 4712.502(C).

- The applicant's name, principal business address and telephone number, all business addresses in Ohio, the principal email address for the business, and the principal website address to be used for the business;
- The name and home address of each executive officer and director of the applicant and each person that owns, directly or indirectly, more than 20% of the voting interests of the applicant;
- A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment in any jurisdiction, or any material administrative or enforcement action by a governmental agency, in each case relating to financial fraud or misuse, against the applicant, any of its executive officers, directors, or owners; and
- A copy of each form of agreement and the schedule of fees and charges that the applicant will use with consumers who reside in Ohio.⁶

An applicant or registrant must notify the Attorney General within 30 days after a material change in any of the above information, including the following:

- A change in the applicant's or registrant's home or business address;
- A merger or dissolution relative to the registration;
- When a registrant pleads guilty or is convicted of any felony in a court of competent jurisdiction.⁷

Registration denial

The Attorney General may deny a registration if any of the following applies:

- The applicant does not satisfy the registration criteria;
- The application contains information that is materially erroneous or incomplete;
- The applicant fails to provide in a timely manner such information as the Attorney General may reasonably request;
- Either of the following apply to an executive officer, director, managing member, or principal of the applicant:
 - The person has been convicted of or pleaded no contest to a felony;
 - The person has committed an act involving fraud, deceit, or dishonesty.
- An executive officer, director, managing member, or principal of the applicant has had a professional license or registration revoked, suspended, or subjected to administrative action in any jurisdiction, and such license or registration has not been reinstated;

⁶ R.C. 4712.502(D).

⁷ R.C. 4712.502(F).

- The applicant's license or registration was revoked or suspended in another jurisdiction and has not been reinstated.⁸

Not later than 20 days after a denial, the Attorney General must provide to the applicant a written decision and findings containing the reasons supporting the denial. Not later than 30 days after the date of the notice, the applicant may appeal the denial pursuant to the Ohio Administrative Procedure Act.⁹

Suspension, revocation, denial, and surrender of registration

The Attorney General may suspend, revoke, or deny renewal of a registration if any of the following applies:

- A registrant has materially violated the Debt Adjusting Law or any rule adopted by the Attorney General or any other law applicable to the conduct of its business;
- A fact or condition exists that, if it had existed when the registrant applied for a registration, would have warranted the Attorney General to refuse the registration;
- The registrant does not satisfy the application criteria;
- The registrant has refused to permit the Attorney General to examine the registrant's books and records;
- The registrant has not responded within a reasonable time and in an appropriate manner to the Attorney General's communications.¹⁰

If the Attorney General suspends, revokes, or denies renewal of a registration, the Attorney General may seek a court order to seize the registrant's books and records with respect to any Ohio consumers that are being serviced by the registrant.¹¹

A registrant may deliver a written notice to the Attorney General to surrender its registration, provided, however, that if a registrant surrenders its registration, its civil or criminal liability for acts committed before the surrender is not affected.¹²

Upon submission of a renewal application for a registration and until such time as such renewal application is approved or denied, the registrant may continue to provide debt adjusting services, but a denial of such registration terminates any right to provide debt adjusting services in Ohio unless approved by the Attorney General.¹³

⁸ R.C. 4712.502(G).

⁹ R.C. 4712.502(H).

¹⁰ R.C. 4712.502(I)(1).

¹¹ R.C. 4712.502(I)(2).

¹² R.C. 4712.502(I)(3).

¹³ R.C. 4712.502(I)(4).

Attorney General duties

Under the bill, the Attorney General is required to adopt rules relating to all of the following:

- Registration, oversight, and enforcement of the Debt Adjusting Law, including any rules to expand registration requirements;
- Reasonable registration fees, any subsequent increase of which must be approved by the General Assembly through the biennial operating appropriations act;
- Penalties for violating the Debt Adjusting Law, which may include any of the following:
 - Fines;
 - Suspension of registration for up to five years;
 - Indefinite barring from registration.¹⁴

The Attorney General may participate in a multi-state licensing system for the sharing of regulatory information and for the registration and application of debt adjusters. The Attorney General may establish requirements for participation by an applicant in a multi-state licensing system, which may vary from the provisions set out in the Debt Adjusting Law.¹⁵

Appeals

Except for enforcement actions taken with respect to an application or denial of registration, a person subject to an enforcement action by the Attorney General under the Debt Adjusting Law may appeal the decision to the court of common pleas of the county in which the registrant's place of business is located or the county in which the registrant is a resident.¹⁶

Conflict with federal law; penalties

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, is **not** subject to the provision of the Debt Adjusting Law that limits the fees debt adjusters may charge debtors.

The bill also explicitly requires a person engaged in debt adjusting to comply with federal laws relating to debt adjusting and the federal Telemarketing Sales Rule. Recklessly failing to comply with this new provision is a third degree misdemeanor for a first offense and a second degree misdemeanor for any subsequent offense.¹⁷

¹⁴ R.C. 4712.502(B) and (J).

¹⁵ R.C. 4712.502(E).

¹⁶ R.C. 4712.502(K).

¹⁷ R.C. 4712.51, 4712.54, and 4712.99(C) and 16 Code of Federal Regulations Part 310, not in the bill.

Cease and desist letters

Under the bill, a person engaged in debt adjusting is prohibited from sending a cease and desist letter or a similar letter to any creditor on behalf of a debtor. A violation of this prohibition is deemed an unfair or deceptive act or practice under the Consumer Sales Practices Act (CSPA). The Attorney General has broad authority to enforce the CSPA, including suing for injunctive relief and civil penalties. Additionally, under the bill and under the CSPA a consumer has a private right of action and can sue the supplier to rescind the transaction or to recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages. If the supplier's violation is an act or practice that has already been declared deceptive or unconscionable by the Attorney General or by a court, then the consumer may sue to rescind the transaction or recover three times the amount of the consumer's actual economic damages.¹⁸

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.¹⁹

HISTORY

Action	Date
Introduced	07-13-21

S0211-I-134/ar

¹⁸ R.C. 4712.55(A) and 4712.53(A) and R.C. 1345.02 and 1345.09, not in the bill.

¹⁹ R.C. 4712.55(B).