



February 26, 2020

Re: S.B. 112

Members of the Senate Insurance and Financial Institutions Committee:

Thank you for the opportunity to speak to you regarding the unauthorized practice of law. As you are aware, I stand before you as the attorney for the debt settlement industry and not a lobbyist for SB 112. My role has been to give you an understanding of the law as it pertains to the unlicensed practice of law, refuting those who have testified before you that the industry is involved in the unlicensed practice of law by its very nature. I have given you two memos—in case you wish to read a more detailed summary of the case law. One memo was prepared months ago for this committee, and one was prepared just after the recent decision in the Ohio Supreme Court case of *Ohio State Bar Association v. Watkins Global Network, L.L.C, et al.* a few short weeks ago. I am happy to report that the Court's analysis and our analysis agree!

This recent decision by the Ohio Supreme Court demonstrates that the Ohio State Bar Association, as the debt settlement industry has been saying for years, has woodenly applied the *Kolodner* case in the attempts it has made to curtail this industry in this state. As you will read in the attached February 4, 2020 memo, the Court has put to rest this response by the Bar. In an opinion reflecting some impatience with the Bar, the Court in the *Watkins* case instructs the Bar to look at the facts of each case to determine if the requisite training and skill of an attorney is involved when seeking to charge someone with the unlicensed practice of law. In its opinion the Court once again refers the Bar to the *Cleveland Bar Assn. v. CompManagement, Inc.* case decided in 2006 (when it overruled the Bar) as a point of reference and evaluation. The Court's recently decided *Watkins* case puts to rest—finally—the Bar's reflexive attempt to curtail the activities of the debt settlement industry in Ohio, instructing, if not admonishing, that **"any person who negotiates a settlement of a debt on behalf of another but does not have a license to practice law in the state of Ohio engages in the unauthorized practice of law."** (emphasis added). Rather, it opines, it depends on the facts of each case: Did the charged individual give legal advice, draft legal documents, engage in assertions of legal defenses or legal tactics when assisting his client? In short, did the individual use the specialized skills, training and tactics acquired by and utilized by an attorney at law?

Members of the Committee, this industry seeks to do business in the State of Ohio. The *Watkins* case now grants the legal authority—within the stated parameters of this case—to do so without being **per se** engaged in the unlicensed practice of law.

Thank you for your kind attention.

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