



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 256
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Lang

Logan Briggs, Attorney

SUMMARY

- Prohibits a person from offering or providing debt resolution services to consumers residing in Ohio without first obtaining a license from the Superintendent of Financial Institutions.
- Establishes the requirements and criteria to apply for and receive a license as a debt resolution service provider (“provider”).
- Requires a provider to take certain actions regarding the provision of debt resolution services, fees and charges, disclosures, recordkeeping, reporting, and debt resolution services agreements.
- Establishes prohibited acts for a provider.
- Imposes restrictions on the creation and use of a dedicated account administered by a dedicated account service provider.
- Establishes requirements and procedures for terminating debt resolution service agreements.
- Provides for the enforcement, and the imposition of penalties for violation, of the bill.
- Permits appeals for determinations related to licensing and violations.

TABLE OF CONTENTS

Overview 2

Debt resolution services 3

 Licensing 3

 Application..... 4

 Criminal history records check 5

Bond.....	6
Licensure application denial.....	6
Suspension, revocation, denial, and surrender of license	6
Appeals.....	7
Exemptions.....	8
Debt resolution services provider duties and limitations.....	9
Disclosures.....	9
Communications.....	10
Prohibited acts.....	11
Marketing prohibitions.....	13
Fees and charges	14
Extending credit.....	14
Annual report	15
Requests for materials.....	15
Recordkeeping.....	15
Dedicated accounts.....	16
Termination of debt resolution services agreement	17
Consumer termination	17
Debt services provider termination	17
Enforcement and penalties.....	17
Effective date.....	18

DETAILED ANALYSIS

Overview

The bill repeals the current Debt Adjusting Law (R.C. Chapter 4710) and replaces it with a new framework for the licensing and regulation of debt services providers. Current law regulates persons engaged in debt adjusting, which is the business of adjusting debts, budget counseling, debt management, or debt pooling service, or providing services to help debtors manage their debts, in order to adjust, compromise or discharge their indebtedness or to pay off creditors with money or items of value received from the debtor.¹ The law establishes requirements for debt adjusting that include, for example, timely disbursement of debtor funds to creditors, maintenance of separate accounts for debtor funds, charging and accepting only reasonable fees, waivers or discontinuation of fees for debtors unable to pay those fees, audits, and insurance coverage. The law also imposes civil and criminal penalties for violating its requirements, which include a cause

¹ R.C. 4710.01(B), repealed.

of action and other relief under the Consumer Protection Law, as well as possible conviction for a second or third degree misdemeanor.²

Debt resolution services

For purposes of the new regulatory scheme, the bill defines “debt resolution services,” as any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more unsecured creditors, including a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor. However, “debt resolution services” do not include credit counseling.³

Licensing

The bill prohibits a person from providing or offering to provide debt resolution services to consumers residing in Ohio without first obtaining a license from the Superintendent of Financial Institutions. The license will correspond to the primary business address of the debt resolution services provider (“provider”), but a provider is not required to obtain a separate license for each business location in Ohio. A license, under the regulatory scheme, is not transferrable or assignable. A provider may only operate under the business name listed on its license, or under a fictitious business name registered with the Secretary of State and provided to the Superintendent, but the bill prohibits operating under any other business name.⁴

Once issued, a license to provide debt resolution services is valid for two years after the date of issuance. If a license is renewed, the license is valid for two years after the date on which the previous license expired.⁵

The bill requires the Superintendent to adopt rules in accordance with Ohio’s Administrative Procedure Act (APA) as necessary to administer applications for and issuance of debt resolution services licenses. These rules may include requirements for reasonable fees to investigate applicants, licensure, and renewal.⁶

The bill also updates the law imposing limitations on initial license refusal to clarify that its provisions do not apply to debt services provider licenses.⁷

² R.C. 4710.01 to 4710.99, repealed.

³ R.C. 4710.01(H).

⁴ R.C. 4710.02(A) to (C) and (E).

⁵ R.C. 4710.04(A).

⁶ R.C. 4710.02(F).

⁷ R.C. 9.79(I)(10). This provision may need to be amended to correctly reflect the statutory description of provider activity: “debt resolution services.”

Application

An application for a license, or for a renewal of a license, to provide debt resolution services must be in a form and manner prescribed by the Superintendent. The license or renewal application must be signed under oath and include all of the following:

- Proof that the applicant is licensed, registered, or certified to transact business in the state under Ohio's Corporations Law;
- The applicant's name, principal business address, and telephone number;
- All of the applicant's business addresses in Ohio;
- The principal electronic mail address and website the applicant uses or intends to use in providing debt resolution services to consumers residing in Ohio;
- The name and business address of each of the applicant's key officers;
- A statement describing, to the extent known to the applicant or to the extent that a reasonably prudent person would know under the same circumstances, any material civil or criminal judgment or any enforcement action against the applicant or any of the applicant's key officers, in any jurisdiction or by any local, state, or federal governmental agency, in each case relating to debt resolution, debt pooling, prorating, activity as a credit services organization, unfair and deceptive trade practices, false advertising, consumer deception law or regulation, or any other similar business activities;
- A copy of each agreement and the schedule of fees and charges that the applicant uses or intends to use in providing debt resolution services to consumers residing in Ohio;
- Income statements and balance sheets for the applicant for the two fiscal years preceding the date of the application, which the Superintendent must keep confidential and which are not subject to Ohio's Public Records Law;
- Any other information the superintendent reasonably requires.⁸

If a debt resolution services provider ("provider") is renewing a license, that provider also must provide access to all of the provider's books and records concerning debt resolution services provided to consumers residing in Ohio.⁹

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

- A change in the applicant's principal place of business;
- A merger or dissolution related to the license;

⁸ R.C. 4710.04(B) and (C).

⁹ R.C. 4710.04(D).

- The applicant, provider, or a key officer pleading guilty to or being convicted of any felony in a court of competent jurisdiction.¹⁰

The bill permits the Superintendent to participate in and utilize a multistate licensing system for application, renewal, amendment, or surrender of licenses under the bill, for sharing regulatory information, or for any other activity that the Superintendent determines to be in the best interest of the state. The bill requires the applicant or provider to pay all applicable charges to use the system. Additionally, the Superintendent may establish requirements for licensure or for the provision of debt resolution services that may be necessary for participation in the multistate licensing system.¹¹

Criminal history records check

The bill permits the Superintendent to conduct a criminal history records check of the key officers of each applicant. The bill defines “key officer” as the chief executive officer, chief financial officer, chief compliance officer, and members of the board of directors of a business. Under the bill, the Superintendent may require an applicant for licensure to submit a full set of fingerprints for each of the applicant’s key officers for the purpose of conducting this records check, and may require submission in an electronic format. The Superintendent may request that the Bureau of Criminal Identification and Investigation conduct the criminal records check based on the applicant’s, key officer’s, or other person’s fingerprints. The Superintendent may also contract with an approved vendor for the collection and transmission of fingerprints. If their fingerprints are unreadable, the Superintendent may request that the fingerprints be re-submitted. Additionally, the Superintendent may agree to a reasonable fingerprinting fee to be charged by the contractor to the applicant and may order the applicant to pay for collecting and transmitting fingerprints to the contractor.

Under the bill, the Superintendent must treat and maintain any key officer’s fingerprints and criminal history record information as confidential and must limit the use of those records solely to the purposes permitted by the bill. All of the following apply to the fingerprints and criminal history records:

- They are not subject to subpoena, other than a subpoena issued in a criminal action or investigation;
- They are confidential by law and privileged;
- They are not subject to discovery or admissible in evidence in any civil action.

If an applicant does not comply with the bill’s provisions regarding fingerprinting and criminal history records checks, the Superintendent shall not issue a license for debt resolution

¹⁰ R.C. 4710.04(G).

¹¹ R.C. 4710.04(E).

services. However, the fingerprinting provisions do not apply to applications to renew an existing license.¹²

Bond

Prior to offering or providing debt resolution services, the bill requires every debt services provider to file a surety bond in favor of the state in an amount prescribed by rule by the Superintendent, up to \$50,000.¹³

Licensure application denial

The Superintendent may deny an application for a license if any of the following applies:

- The applicant does not satisfy the licensing criteria under the bill;
- The application contains information that is materially erroneous or incomplete;
- The applicant fails to provide in a timely manner such information as the Superintendent may reasonably request;
- Either of the following apply to a key officer of the applicant:
 - The person has been convicted of or pleaded guilty to a felony;
 - The person has committed any criminal act involving fraud, deceit, or dishonesty.
- The applicant or a key officer of the applicant has had a professional license revoked, suspended, or has been subjected to an enforcement action in any state, and such license or enforcement action has not been reinstated or resolved, respectively.

Not later than 20 days after a licensure or renewal denial, the Superintendent must provide to the applicant a written decision containing the reasons supporting the denial. Within 30 days after the date of receipt of the notice, the applicant may appeal the denial pursuant to the APA.¹⁴

Suspension, revocation, denial, and surrender of license

Under the bill, the Superintendent may suspend, revoke, or deny renewal of a license if any of the following applies:

- A provider has materially violated the bill or any rule adopted by the Superintendent or any other law applicable to the conduct of the providers business, the Superintendent has provided notice and a reasonable opportunity to cure the violation, and the provider has failed to cure the violation;
- A fact or condition exists that, if it had existed when the provider applied for a license, would have warranted the Superintendent to refuse the license;

¹² R.C. 4710.01(K) and 4710.04(F).

¹³ R.C. 4710.02(D).

¹⁴ R.C. 4710.05.

- The provider does not satisfy the application criteria;
- The provider has refused to permit the Superintendent to examine the provider's books and records;
- The provider has failed to file the required annual report, or has made a material misrepresentation or omission in filing the report;
- The provider has not responded within a reasonable time and in an appropriate manner to the Superintendent's communications.

The Superintendent shall not suspend or revoke a license without first providing notice and affording the provider an opportunity for a hearing. However, if the Superintendent determines that a delay associated with issuing an order consistent with APA will irreparably harm the public interest, the bill permits the Superintendent to summarily suspend the license immediately.¹⁵

If the Superintendent suspends, revokes, or denies renewal of a license, the Superintendent may order the provider to make available its books and records with respect to any Ohio consumers that are being or have been serviced by the provider.

A provider may deliver a written notice to the Superintendent to surrender its license, provided, however, that if a provider surrenders its license, civil or criminal liability for acts committed before the surrender is not affected.

Upon submission of a renewal application for a license and until such time as that application is approved or denied, the provider may continue to provide or offer to provide debt resolution services, but a denial of such license renewal application terminates any right to provide debt resolution services in Ohio, except to the extent expressly authorized by the Superintendent.¹⁶

Appeals

The bill establishes that all matters and procedures related to notice, hearing, and appeal for any violation or contested case under the bill are governed by the APA. However, as discussed above, the Superintendent may summarily suspend a license immediately if a delay in issuing an order consistent with the APA would irreparably harm the public interest.

Any order issued by the Superintendent related to notice, hearings, appeals of violations, or summary license suspension is subject to review by appeal to the Court of Common Pleas in the county in which the debt services provider resides. If the provider's residence is outside of the state, then the orders are subject to review by appeal to the Court of Common Pleas for Franklin County.¹⁷

¹⁵ R.C. 4710.06(A) and (C) and 4710.07(B).

¹⁶ R.C. 4710.06(B), (D), and (E).

¹⁷ R.C. 4710.07(A), (B), and (C).

Exemptions

All of the following are exempt from the bill:

- A person organized as a tax exempt organization or credit counseling organization under the Internal Revenue Code of 1986;
- A judicial officer, including an individual acting under the direction of a court;
- A bank, including agents and employees of a bank acting within the scope of such agency or employment;
- An attorney licensed to practice law in Ohio who provides debt resolution services within an attorney-client relationship;
- A creditor or employee of a creditor, acting within the scope of such employment, that negotiates debt resolution with consumers or with debt services providers acting on behalf of consumers;
- An assignee or trustee for the benefit of creditors;
- Officers or employees of the United States or any state who perform debt resolution services on behalf of the federal government, a state, a municipal corporation, or a state agency, and who receive compensation solely from the governmental entity;
- Certified public accountants licensed in Ohio who provide debt resolution services within an accountant-client relationship;
- Dedicated account service providers (DASPs – which the bill defines as entities that facilitate consumer-authorized transactions pursuant to federal rules for Abusive Telemarketing Acts and Practices) that do not otherwise provide debt resolution services for consumers;
- Persons that provide debt resolution services exclusively to individuals who do not reside in Ohio or who the person has no reason to know reside in Ohio at the time the person agrees to provide the debt resolution services;
- Persons that provide credit counseling services only and who do not attempt to negotiate or settle a debt.

Additionally, the bill does not require either of the following to obtain a license under the bill:

- Employees of a debt resolution services provider acting within the scope of employment;
- Persons who market on behalf of debt resolution services providers and do not otherwise provide debt resolution services.¹⁸

¹⁸ R.C. 4710.01(I) and (J) and 4710.03.

Debt resolution services provider duties and limitations

Disclosures

The bill requires a debt services provider to distribute or otherwise make available to a consumer a copy of the executed agreement between the provider and consumer for debt resolution services at the time the agreement is executed by the consumer, or as soon as is practical thereafter. If the consumer agrees, the provider may distribute the copy of the executed agreement in an electronic format. The agreement between the provider and consumer shall disclose all of the following:

- The services the provider agrees to perform;
- The methodology the provider will use to calculate fees and charges and, if available, the fees the provider will charge;
- A good faith estimate of the amount of time necessary to achieve the resolution of all enrolled debts, and if applicable, an estimate of when the provider will make a bona fide resolution offer to each creditor;
- If the debt resolution services include a resolution offer to creditors, the amount of money or the percentage of each outstanding debt that the consumer is required to accumulate before the debt resolution services provider will make a bona fide resolution offer to each of those creditors;
- That debt resolution services are not suitable for all individuals;
- To the extent that the debt resolution services rely upon or result in the consumer's failure to timely pay creditors, that failure will likely affect their creditworthiness, may subject the consumer to collections efforts or lawsuits, and may increase the amount owed due to accrued fees and interest;
- That debt resolution may result in the creation of taxable income to the consumer, even if the consumer does not receive any money;
- Specific results cannot be predicted or guaranteed and the provider cannot require a creditor to negotiate or resolve a debt;
- That debt resolution programs require consumers to meet regular savings goals in order to enable resolutions;
- That the provider does not provide tax, accounting, or legal advice to consumers, unless licensed to do so in Ohio;
- That the provider is the consumer's advocate and does not receive compensation from creditors for providing debt resolution services to the consumer;
- That the provider does not make monthly or other payments to the consumer's creditors;
- The list of debts that the agreement covers;

- That, if applicable, the consumer’s rights are subject to mandatory arbitration for disputes with the provider;
- Each of the requirements related to dedicated accounts (see “**Dedicated Accounts**” below).¹⁹

If a debt services provider maintains a website, the bill requires the provider to disclose both of the following on the website’s homepage, or on a page that is clearly and conspicuously connected to the homepage by a link that clearly identifies its contents:

- The provider’s name and all names under which the provider does business in Ohio;
- The provider’s principal business address, telephone number, and email address, if it has one.²⁰

Communications

The bill requires each provider to maintain a toll-free telephone number that is staffed at a level to ensure it can adequately accept requests from the reasonable anticipated volume of consumers contacting the provider during ordinary business hours.²¹

The bill also requires providers to distribute, or arrange to be distributed, a statement of accounting to any consumer who resides in Ohio. The statement must be distributed as follows:

- At least one time each month the agreement is in effect;
- Within five business days after a consumer requests a statement of accounting from the provider, though the provider is not required to respond to more than one such request from the same consumer in the same month;
- Within five business days after the date on which a consumer or the provider terminates an agreement.

The statement of accounting must contain all of the following information to the extent applicable:

- The amount of money that the consumer has deposited into the consumer’s dedicated account and all withdrawals from that account from the date the consumer’s debt resolution services program is initiated to the date the statement of accounting is issued;
- The amounts, dates, and creditors associated with each resolution obtained by the provider on behalf of the consumer;
- The fees that the provider has charged to and collected from the consumer in connection with each of the consumer’s resolutions;

¹⁹ R.C. 4710.08(B) and (C).

²⁰ R.C. 4710.16(C).

²¹ R.C. 4710.08(D).

- The amount of money that the consumer holds in the consumer's dedicated account;
- All of the following, with respect to each resolution obtained by the provider for the consumer:
 - The total amount of money that the consumer paid to the creditor to fully discharge or satisfy the consumer's debt;
 - The amount of the debt at the time the provider and the consumer entered into the agreement;
 - The amount of the debt at the time the creditor agreed to resolve the debt;
 - The amount of compensation that the provider received or will receive to resolve the debt.

If a provider enables or provides electronic access 24 hours per day, seven days per week, to all of the consumer's deposit account transaction information, including all deposit and withdrawal activity, and electronic access by a consumer to account activity, including resolution information, account status, resolution dates, resolution amounts, and fees paid, then the bill considers the provider to have satisfied the content and distribution requirements discussed above.²²

Prohibited acts

The bill prohibits a provider, a person who markets debt resolution services on behalf of providers, or a person who markets on behalf of providers and does not otherwise provide debt resolution services, from doing any of the following:

- Take or exercise a power of attorney that authorizes the provider to resolve a debt;
- Send cease and desist notices to creditors;
- Require consumers to notify creditors of changes of address or telephone number for the purpose of diverting communication from the creditor to the debt services provider rather than the consumer;
- Exercise or attempt to exercise any authority of the consumer after a provider has received notice in accordance with the bill that the consumer has terminated the consumer's agreement with the provider;
- Initiate, or request that a DASP initiate, a transfer from a consumer's bank account unless the transfer meets any of the following:
 - The request is for the purpose of returning money to the consumer;
 - The request is made prior to any termination of an agreement and is a fee properly authorized by the agreement and the bill;

²² R.C. 4710.14.

- The transfer is at the express direction of the consumer to a consumer's creditor to fund a negotiated resolution with that creditor.
- Receive consumer funds or control consumer funds, other than to receive funds in payment of fees for debt resolution services rendered by the provider;
- Resolve a debt or lead a consumer to believe that a payment to a creditor is in resolution of a debt to the creditor unless, at the time of resolution, the creditor confirms that the payment is in full resolution of the debt or is part of a payment plan that, upon completion, will be in full resolution of the debt;
- Make any representation of either of the following:
 - That the provider will furnish money to pay bills or prevent attachments;
 - That participation in a program will prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.
- Misrepresent that the provider is able to furnish legal advice or perform legal services;
- Misrepresent, directly or by implication, any material aspect of any debt resolution services program, including any of the following:
 - The amount of money or the percentage of the debt amount that a consumer may save by using such service;
 - The amount of time necessary to achieve the represented results;
 - The amount of money or the percentage of each outstanding debt that the consumer is required to accumulate before the provider of the debt resolution services will initiate attempts with the consumer's creditors or make a bona fide offer to negotiate, resolve, or modify the terms of the consumer's debt;
 - The effect of the service on a consumer's creditworthiness;
 - The effect of the service on collection efforts of the consumer's creditors;
 - The percentage or number of consumers who attain the represented results;
 - Whether debt resolution services are offered or provided by a nonprofit entity.
- Take a confession of judgment or power of attorney to confess judgment against a consumer;
- Purchase a debt or obligation of the consumer or obtain a mortgage or other security interest from any person in connection with the services provided to the consumer;
- Receive from or on behalf of a consumer a promissory note or other negotiable instrument other than a check or a demand draft or a post-dated check or demand draft;
- Except as permitted by federal law or by order of a court of competent jurisdiction, disclose the identity or identifying information of a consumer or the identity of the consumer's creditors, except to the Superintendent, upon proper demand, or to the

extent necessary or appropriate to administer the program, including a dedicated account service provider or to a creditor of the consumer.

The bill also prohibits debt resolution services agreements from containing any provision that does any of the following:

- Provides for the application of the law of any jurisdiction other than the United States and Ohio;
- Except as specifically permitted by the laws of this state and the Federal Arbitration Act, restricts an individual's remedies under the bill or any other Ohio law;
- Limits or releases the liability of any person for not performing the agreement or for violating this chapter.

For the purposes of these prohibitions, "resolve" means entering into a binding agreement to discharge in full a debt in exchange for a payment of a sum certain of money.²³

Marketing prohibitions

The bill prohibits a debt services provider from engaging in any of the following activities:

- Directly or through a person who markets debt resolution services on behalf of a provider (including a person who does not otherwise provide debt resolution services), advertise, announce, broadcast, display, distribute, print, publish, televise, or permit any other person to advertise, announce, broadcast, display, distribute, print, publish, or televise on the provider's behalf, a statement or representation related to debt resolution services that is deceptive, false, or misleading.
- Directly or indirectly provide anything of value in exchange for favorable treatment in reviews or favorable placement on rankings.
- Directly or indirectly own or operate a website or other public-facing resource presenting rankings or consumer reviews of the provider. The bill also applies this prohibition to any affiliate of a provider.
- Make any statement or take any action that is likely to mislead consumers regarding whether reviews the provider uses to advertise the provider's business accurately reflect all reviews consumers have submitted.

No provider shall fail to comply with guidance issued by the federal Consumer Financial Protection Bureau or other federal laws or rules related to deceptive acts or practices that impede consumer reviews, including the Federal Trade Commission rules concerning the use of endorsements and testimonials in advertising.²⁴

²³ R.C. 4710.13.

²⁴ R.C. 4710.15; 16 Code of Federal Regulations 255, not in the bill.

Fees and charges

The bill prohibits a provider from directly or indirectly imposing a fee or other charge on a consumer who resides in Ohio, and from receiving payment from or on behalf of such a consumer for performing debt resolution services except as provided by the bill.

A provider cannot request or receive any payment for debt resolution services until and unless all of the following requirements are met:

- The provider renegotiates, resolves, reduces, or otherwise alters the terms of at least one debt pursuant to a resolution agreement or other valid contractual agreement executed by the consumer and the creditor;
- The consumer makes at least one payment pursuant to that resolution agreement or other valid contractual agreement between the consumer and the creditor;
- To the extent that debts enrolled in a service are renegotiated, resolved, reduced, or otherwise altered individually, the fee or consideration meets either of the following:
 - The fee bears the same proportional relationship to the total fee for renegotiating, resolving, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount, as of the time the debt was enrolled in the service. In other words, a provider cannot charge a fee for resolving 20% of a consumer's enrolled debt if that individual fee exceeds 20% of the total fee charged for the entire debt balance.
 - The fee is a percentage of the amount saved as a result of the renegotiation, resolution, reduction, or alteration, where the amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt. In this case, the agreement shall prescribe a uniform fee that does not change from one individual debt to another.

A provider cannot impose any charges or receive payment until the provider and consumer have signed an agreement that complies with the bill. However, fees or charges for dedicated account service providers or for third-party legal service providers are not considered a fee or charge imposed by a provider for performed debt resolution services.²⁵

Extending credit

The bill permits providers to extend credit to a consumer in the form of a deferral of all or some of the provider's fee for resolving the consumer's debts, at no additional expense to the consumer. This allows a consumer to repay the fee over time rather than paying the provider's fee all at once right away. Additionally, a provider may assist in arranging credit to a consumer, if that credit is extended to the consumer by or through a person that is either separately licensed or authorized to perform lending in Ohio or is exempt from lending licensure.²⁶

²⁵ R.C. 4710.12.

²⁶ R.C. 4710.08(E) and (F).

Annual report

The bill requires providers to file an annual report with the Superintendent, in writing and under oath, that includes all of the following information for the pertinent calendar year:

- The total number of active consumers who reside in Ohio;
- The total number of enrolled consumers who reside in Ohio;
- The total amount of fees collected by the provider from consumers who reside in Ohio.

If a provider fails to file this annual report or fails to amend the report on or before the 30th day after the Superintendent provides notice, the bill permits the Superintendent to assess a civil penalty and to suspend, revoke, or refuse to renew the provider's license under the bill.²⁷

Requests for materials

Under the bill, a provider must inform the consumer, each time the provider gives the consumer any material or agreements in accordance with the bill, that the provider is required to send the consumer a copy of the material following any electronic, telephonic, or written request.

If a consumer submits a request for materials to a provider at any time before the 91st day after the agreement is terminated, or the date the provider fulfills all of its obligations under the agreement, the provider must send the materials at no charge to the consumer within five business days after receiving the request. However, a provider is not required to comply with more than one request per consumer per month, or with any request it reasonably believes is made for the purpose of harassment. If a consumer submits a request for materials more than 90 days after the termination of the agreement or fulfillment of the provider's obligations, the provider must send a copy of the materials to the consumer within a reasonable time of receiving the request.

A provider is not required to comply with a request for material submitted after the later of the following two dates:

- Two years after the termination of the agreement, or the date the provider fulfills all of its obligations under the agreement;
- The expiration of the six-year statute of limitations for contracts in writing.²⁸

Recordkeeping

The bill requires a provider to keep all of the following records for two years after the date the record is produced:

- All substantially different advertising, brochures, telemarketing scripts, promotional materials, and supportive data;

²⁷ R.C. 4710.11.

²⁸ R.C. 4710.16(A) and (B).

- The name and last known address of each consumer, the goods or services purchased, the date such goods or services were first provided or the consumer signed an agreement for the provision of goods or services, and the amount paid by the consumer for the goods or services;
- The name, any fictitious name used, the last known home address and telephone number, and the job title for all current and former employees directly involved in sales or solicitations;
- If the provider permits fictitious names to be used by employees, each fictitious name shall be traceable to only one specific employee.

Additionally, a provider shall keep a copy of each signed agreement with any consumer for at least five years after the date the agreement is terminated, or the date the provider fulfills all of its obligations under the agreement. Providers may keep the records required by the bill in any form, and in the same manner, format, or place as the provider keeps records in the normal course of business.

If the provider's business dissolves or terminates, the bill requires the principal of the business to maintain the required records. If the business is sold or assigned, or if there is a change in ownership, the successor business must maintain the required records.²⁹

Dedicated accounts

The bill permits a provider to request or require a consumer residing in Ohio, as a condition to the provision of debt resolution services, to establish and place funds into a dedicated account administered by a DASP. However, the bill only permits them to do so when all of the following requirements are met:

- The funds are held in a bank insured by the federal deposit insurance corporation.
- The consumer owns the funds held in the account and any interest accrued on those funds.
- The DASP is not owned or controlled by, or affiliated with, the provider. The bill defines these terms as follows:
 - "Control" means the direct or indirect possession of the power to direct or cause the direction of the management of a provider, whether by contract or through ownership of more than 20% of the voting securities of the provider.
 - "Affiliated with" means controlling, being controlled by, or being under common control with a provider.
- The DASP does not give or accept any money or other compensation in exchange for referrals of business involving debt resolution services.

²⁹ R.C. 4710.16(D) to (G).

- The consumer may terminate the debt resolution services agreement at any time without penalty by giving notice as required under the bill.
- The debt resolution services provider agrees to notify the DASP of the consumer's termination of the agreement within five business days after the consumer gives notice as required by the bill.³⁰

Termination of debt resolution services agreement

Consumer termination

The bill permits a consumer to terminate a debt resolution services agreement at any time without penalty by notifying the provider electronically, in writing, or by phone on a recorded line. If a consumer terminates an agreement, not later than two business days (any day, excluding Saturday, Sunday, and a legal holiday) after receiving the termination notice, the provider must advise the consumer of the effect the termination will have on previously negotiated installment resolution agreements and pending resolution negotiations. Not later than five business days after advising the consumer, absent further consumer instructions, the provider must notify the DASP of the consumer's termination and request that the DASP communicate with the consumer regarding disposition of all funds held in the dedicated account.

If a consumer terminates a debt resolution services agreement, the provider is entitled to recover all fees for their services rendered before receipt of any termination notice, provided that those fees are requested or received in accordance with the bill.³¹

Debt services provider termination

The bill permits a provider to terminate an agreement with a consumer if the consumer fails to honor obligations under the agreement within 60 days after being required to by the agreement. Additionally, a provider may immediately terminate an agreement if a consumer refuses to pay any fee to the provider after the provider has rendered corresponding debt resolution services. The provider must provide notice of termination either electronically or in writing.

If a provider terminates an agreement with a consumer, the consumer does not owe any further payment to the provider as of the date the agreement is terminated, except for any fees for debt resolution services rendered by the provider prior to that date.³²

Enforcement and penalties

The bill requires the Superintendent to adopt rules as necessary to license and oversee providers within one year of the bill's effective date.³³

³⁰ R.C. 4710.08(A).

³¹ R.C. 4710.01(D) and 4710.09; R.C. 3901.81, not in the bill.

³² R.C. 4710.10.

³³ Section 4(B).

The bill authorizes the Superintendent to investigate the books, accounts, records, and files of a provider or any other person that the Superintendent has reason to believe is providing or offering to provide debt resolution services to consumers residing in Ohio.³⁴

If the Superintendent finds that a person has violated any material provision of the bill, or other law applicable to the conduct of a provider, the Superintendent may impose a penalty on that person. However, the Superintendent must provide notice and an opportunity to cure the violation. If the person does not cure their violation, the bill permits the imposition of a penalty of up to \$1,000 per violation, with a maximum up to \$100,000 for multiple violations. A continuing violation is considered a single violation for the purposes of imposing a penalty. However, the Superintendent's finding or other order may be appealed in accordance with the APA.³⁵

The bill restricts actions brought by the Superintendent from being commenced after the later of the following:

- Three years after the Superintendent or harmed consumer discovers the conduct at issue;
- If the violation constitutes a criminal offense, the applicable statute of limitations for that offense under the Ohio Criminal Code.

However, the bill specifies that the Superintendent may take an adverse administrative action or impose a fine at any time.³⁶

Effective date

The provisions of the bill apply to agreements entered into, amended, or renewed on or after the effective date of the bill's statutory provisions. The bill further provides that the rights, duties, and interests resulting from an agreement entered into prior to the bill's effective date are to be completed, terminated, or enforced under the law as it existed on the date the agreement was entered into.

The statutory provisions go into effect one year after the effective date of the bill, which coincides with the date by which the bill requires the Superintendent to adopt rules to administer the bill's provisions. However, given that the repeal of the current law provisions goes into effect on the effective date of the bill, there will be an intermediate period where the Revised Code has no statutes governing debt adjusting or debt resolution services.³⁷

³⁴ R.C. 4710.07(D).

³⁵ R.C. 4710.17.

³⁶ R.C. 4710.18.

³⁷ R.C. 4710.19; Section 4(A).

HISTORY

Action	Date
Introduced	09-08-25
