



**OHIO STATE BAR
ASSOCIATION**
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November 8, 2021

The Honorable Steve Wilson, Chairman
Senate Financial Institutions and Technology Committee
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

Thank you for this opportunity to provide written testimony on Senate Bill 211. As you know, the Ohio State Bar Association (OSBA) has testified in opposition to this bill in its myriad forms. We have continued to do this because, although the season and the number of the bill changes, the substance of the bill does not. It still seeks to authorize what has already been established to be the practice of law.

We wanted to provide you this written testimony to further clarify both our position and other misinformation that continues to abound surrounding debt settlement practices and the unauthorized practice of law.

I. The Bill Seeks to Authorize the Unauthorized Practice of Law

The definition of the practice of law and the rendering of judgment on such is a constitutionally given power placed solely with the Supreme Court of Ohio. The inclusion of language proclaiming that none of the actions contemplated by the bill constitute the unauthorized practice of law does nothing to change the nature of those actions. These proposed statutory amendments will not divest the Supreme Court of Ohio of the authority to define UPL. Instead, it may create constitutionally deficient law that will result in additional litigation. Perhaps more detrimental to both the economy and the public, it also creates an environment of ambiguity, leading unwitting businesses into UPL prosecutions and leaving consumers at risk.

In November of 2020, we were asked to review the previous iteration of SB 211 to determine what, if any, suggestions that we had to reduce the risk to consumers of UPL. After review from our Committee, we responded in a November 6th letter to Senator Eklund identifying several key additions to Ohio law that would help insulate consumers from the risks associated with the Unauthorized Practice of Law. Proponents of this legislation point to federal law as an assurance that sufficient oversight exists, but our position remains – the best protection for Ohio citizens is through Ohio law.

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II. Watkins Global Network Case

Proponents also suggest that the Ohio Supreme Court's holding in *Ohio State Bar Association v. Watkins Global Network* was greatly misconstrued by the letter stating that that the decision "makes clear that concerns about UPL in the context of debt settlement are misplaced."

It is difficult to reconcile this suggestion with an actual reading of the case. In its opinion, the Court held that debt settlement firms will continue to be sanctioned for engaging in the unauthorized practice of law. What the Court clarified, however, is how those alleged UPL violations are fact-specific and must be proven rather than this being a per se violation (automatic).

We believe this holding is being misstated and it is our ethical responsibility to provide information about the law accurately and completely. For this reason, we continue to reiterate the Court's holding in this case and what it means for the prosecution of debt settlement activities that constitute the unauthorized practice of law.

III. Professional Maligning and Clarification

In addition to the misrepresentation discussed above, the OSBA (and, by extension, its members) has faced claims of lawyer-protectionism for its continued opposition to this legislation. We believe this characterization to be unfair and unjust.

Our cases involving debt settlement activities are not arrived at from angry calls by out of work attorneys. Rather, we want to be clear that our concerns have and continue to arise from complaints received from Ohio citizens who've been harmed by the provision of legal services by unskilled and uneducated providers.

IV. Moving Forward

Despite the outcome of this legislation and the changes proposed therein, the law will remain the same. The definition of the unauthorized practice of law will continue to be within the sole jurisdiction of the Court. Accordingly, the Ohio State Bar Association Unauthorized Practice of Law Committee will continue its duty to Ohio citizens by investigating and prosecuting claims of UPL, including those against debt settlement companies.

We appreciate your consideration of our concerns.

Thank you,

Scott Lundregan
Legislative Counsel/Director of Policy
Ohio State Bar Association