



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [H.B. 542 of the 129th G.A.](#)

**Date:** November 14, 2012

**Status:** As Introduced

**Sponsor:** Rep. Ruhl

**Local Impact Statement Procedure Required:** No

**Contents:** Requires the licensure and regulation of debt settlement services

### State Fiscal Highlights

- The bill requires the Department of Commerce to license debt settlement service providers. Because the amount of initial license and renewal fees to be charged would be established by rule, it is uncertain precisely how much annual license fee revenue would be deposited. The fees are to be deposited into the Debt Settlement Services Fund created by the bill.
- The Department of Commerce will incur new costs to review and examine license applicants, investigate complaints, and exercise enforcement authority over debt settlement service providers. There are likely to be well under 100 debt settlement service providers licensed by the Department of Commerce, based on information from other states that regulates these service providers.
- The bill applies the Consumer Sales Practices Act (CSPA) to actions by debt settlement service providers that are deemed to be unfair or deceptive. This could increase the number of complaints handled by the Office of the Attorney General's Consumer Protection Section, which is funded out of the GRF and the Consumer Protection Enforcement Fund (Fund 6310).

### Local Fiscal Highlights

- The bill permits civil actions to be filed by both the Attorney General's Office and customers of debt settlement providers. As a result, the number of civil cases filed in county and municipal courts could increase. The actual number of cases filed would most likely be relatively small as, under current practice, the Attorney General's Office would attempt to resolve a complaint before filing in court. Filing fee and court cost revenue could offset some of the expenses associated with handling these cases.

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## Detailed Fiscal Analysis

### Background

The bill requires the Department of Commerce to license and regulate debt settlement service providers. Specifically, the bill defines "debt settlement services" as services provided by an intermediary between an individual and one or more unsecured creditors where a creditor accepts less than the balance owed as payment in full of the debt. Debt settlement service providers do not make regular payments to a debtor's creditors. Rather, a debt settlement service provider typically encourages the debtor to stop making payments to creditors and instead make monthly payments to a savings or other dedicated account according to a plan developed by the debt settlement service provider. When the payments in the account reach a target percentage of the debt owed, the debt settlement service provider submits an offer to the creditor on the debtor's behalf to settle with a lump sum of cash in the account. In recent years, a number of states have enacted legislation regulating debt settlement service providers in response to the proliferation of such companies. Much of the growth in this market niche can be attributed to a weak economy in which an increasing number of consumers are unable to repay their debts. The states that have enacted regulation include Colorado, Delaware, Illinois, Maryland, Minnesota, Nevada, North Dakota, Rhode Island, Tennessee, Texas, and Utah.

### Department of Commerce Oversight

The bill requires debt settlement service providers to obtain a license from the Department of Commerce. The term of the license may be no more than two years. License fees paid by debt settlement service providers are to be deposited into the Debt Settlement Services Fund created by the bill to administer the debt settlement services regulation program. The precise amount of revenue generated by the fees is uncertain, as the bill requires the license fees to be reasonable and established in rule by the Director of Commerce. License fees are to be adjusted for inflation based on the Consumer Price Index (CPI). Specifically, the Director of Commerce is to adopt a base year and adjust the dollar amounts of the fees if the change in the index from the base year is at least 10%. The dollar amounts are to be rounded to the nearest \$10.

The number of licensed debt settlement service providers in the states that have adopted a law regulating these entities in recent years appears to be small. Based on research by LSC staff, the states with the most licensees appear to be Tennessee and Texas, with around 20 to 30 licensed debt settlement service providers.<sup>1</sup> This suggests

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<sup>1</sup> Because other states license both debt settlement services and credit counseling services together as "debt management services," a count of businesses specifically identified as debt settlement service providers in other states is difficult to ascertain; however, LSC found that no more than 40 debt management companies are licensed in any other state.

that the number of providers likely to seek licensure in Ohio will be rather small as well. Although the number of new licensees may be small, the Department of Commerce indicated that the workload associated with licensing and examining debt settlement service providers could be substantial. This is partly because all of the anticipated licensees are expected to be out of state. Thus, examinations would be more time consuming and involve greater expense than examinations for in-state firms.

The annual fees associated with initial licensure and renewals vary amongst the states that have adopted debt settlement service provider laws. Most are in the \$1,000 to \$2,000 range, though some are as low as \$200 to \$300. If the number of debt settlement service providers receiving a license in Ohio is, in fact, small and assuming Ohio were to adopt a similar fee structure as these other states, annual revenue to the Debt Settlement Services Fund is likely to be minimal.

### **New requirements for debt settlement service providers**

The bill places various requirements and prohibitions on debt settlement service providers. Among other provisions, providers must be bonded, maintain customer service systems, provide a financial analysis with respect to the income and debts of the individual seeking the service, provide certain disclosures to consumers, abide by certain requirements with respect to debt settlement agreements, and keep an accounting of the debt settled and terms of the settlement. In addition, the bill gives the Director of Commerce the authority to investigate providers at the Director's initiative, or as a result of a complaint, take action to obtain voluntary compliance, and seek or provide remedies for violations. This can include suspending or revoking a license, ordering a licensee to correct a violation by making restitution, and imposing civil penalties. Civil penalties assessed may not exceed \$1,000 per violation or failure to comply unless a person violates or fails to comply with a final order issued by the Director. In this case, there can be an additional civil penalty of up to \$1,000 per violation or failure to comply. These penalties would be deposited into the Debt Settlement Services Fund, with the amounts adjusted each year for inflation, just as the license fees are.

The bill also gives the Department of Commerce the authority to litigate (via the Attorney General's Office) to enforce the bill. Under the authority, the Director is permitted to recover the reasonable expenses incurred to bring actions or proceedings necessary to enforce the bill, including attorney's fees. However, the alleged violator must be afforded the opportunity for a hearing before any enforcement action can be taken. Any action or proceeding brought by the Director of Commerce must be commenced within two years after the conduct that is the basis of the Director's complaint occurs.

## **Consumer Sales Practices Act and private rights of action**

The bill also provides a right of action for individuals to seek remedies for violations of the bill. If a violation is deemed to be an unfair or deceptive practice, which the bill also considers any violation committed by an unlicensed provider, the Consumer Sales Practices Act (CSPA) would apply. While the number and scope of related complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill are unknown, the CSPA permits the Attorney General or consumers of debt settlement services to file a civil action to pursue remedies. It is uncertain how many consumers would pursue a civil remedy without the assistance of the Attorney General, but the number is assumed to be small as these consumers would, most likely, report a complaint to the Attorney General's Office initially and then allow the Consumer Protection Section to seek a resolution to the complaint.

As a result of the above enforcement provisions, the number of civil cases filed in county and municipal courts may increase. However, the actual number of cases filed would most likely be relatively small as, under current practice, the Attorney General's Office or the Department of Commerce would attempt to resolve a complaint before filing in court. The filing of such civil suits would likely generate some additional filing fee and court cost revenue for counties and municipalities and place some additional burdens on the courts that will have to adjudicate these matters. If the Attorney General's Office successfully pursues a civil remedy under preexisting Consumer Sales Practice Law, the court adjudicating the matter may order civil penalties up to \$25,000. Three-quarters of this civil penalty would be awarded to the Attorney General's Office. The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as \$6,250 if the \$25,000 maximum possible fine is assessed).