



# THE BUCKEYE INSTITUTE

## **Interested Party Testimony on House Bill 131 Before the Ohio House Financial Institutions Committee**

**June 4, 2019**

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The Buckeye Institute**

Chairman Jordan, Vice Chair Hillyer, Ranking Member Crossman, and members of the Committee, thank you for the opportunity to testify today regarding debt settlement services in Ohio.

My name is Greg R. Lawson. I am the research fellow at The Buckeye Institute, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

Ohioans—your constituents—have an **average of \$5,583** in credit card debt—more than 10 percent of the **median household income**. Currently, Ohio’s arbitrary fee caps and poorly tailored law makes it harder for some debt settlement firms to operate here, which, in turn, makes it harder for many of your constituents to reduce and settle their outstanding debts. Policies in House Bill 131 will help clarify the legal rules for debt settlement companies, and thus make it easier for Ohioans to manage their debt.

Unfortunately, some special-interest opponents of House Bill 131 have attacked debt settlement services for engaging in the so-called “unauthorized practice of law.” But, as I **wrote in yesterday’s *Akron Beacon Journal***, anti-market protectionism always comes at the consumer’s expense, and this case is no exception. To the limited extent that debt settlement companies may provide ancillary legal services in the course of negotiating settlements, Ohioans in debt end up paying less for these services than if they had to hire a lawyer to settle their debts.

Other opponents of the bill wrongly argue that the General Assembly must protect Ohio from debt settlement companies. They claim that debt settlement companies charge outrageous fees and often fail to deliver on their debt-resolution promises.

Consumer debt comes in all shapes and sizes. And debt resolution is not a one-size-fits-all market or service. Nor should it be. Consumers struggling with debt, of course, have various options available to them, including credit counseling and direct creditor negotiation, and the more options they have available the more likely it is that consumers will find the one that fits them best. Restricting consumer choice because some consumers may make an ill-advised decision, smacks of a well-intended paternalism that usually ends up harming the very people that advocates intend to help.

This is not to say that consumers and debt settlement companies cannot benefit from well-tailored oversight. As with many industries, carefully crafted regulations on debt settlement services are appropriate. And, not surprisingly, **federal regulations** already require debt settlement companies to disclose to clients the costs, benefits, and risks associated with debt settlement programs; and prevent settlement companies from charging their clients until they accept a settlement with a creditor and start paying off at least portion of their debt.

Ohio regulates this industry above and beyond the federal rules, muddies the regulatory waters, and thus makes it harder for settlement firms to serve clients who might need their services. House Bill 131 helps clarify Ohio’s rules in this area and can bring some needed relief to debt settlement companies and the constituents that may need them.

Thank you for your time and consideration. I welcome any questions that the Committee might have.

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# Akron Beacon Journal

## Ohio should settle with debt settlement services

*Akron Beacon Journal*

By Greg R. Lawson

June 3, 2019

COLUMBUS — Ohio continues to perpetuate the disturbing trend of allowing industry licensing boards to protect special interests from market competition. From the state cosmetology requirements that make hairdressers train for 10 times as long as emergency medical technicians to the latest special interest effort attacking debt settlement services for the so-called “unauthorized practice of law,” anti-market protectionism always comes at the consumer’s expense.

Debt settlement firms provide services that everyone hopes they will never need. Typically, these for-profit companies try to negotiate with creditors to allow those in debt to pay a lump-sum “settlement” that is less than the full amount owed. Ohioans in debt end up paying less for these services than if they had to hire a lawyer to settle their debts.

Unfortunately, firms that provide settlement services may fall prey to industry competitors ready to argue that debt settlement companies engage in the “unauthorized practice of law” and therefore should only be run by — you guessed it — lawyers. There is growing concern in the state’s debt-settlement industry that a decision by the Ohio Supreme Court will be misapplied and ultimately prevent non-lawyer debt settlement firms from serving Ohioans.

The court held last year that the debt-related services provided by one debt settlement company constituted an unauthorized practice of law by a corporation — but then, the company had already admitted as much when it stipulated that “it rendered legal services in Ohio.”

Running afoul of the unauthorized practice of law doctrine turns on “whether the conduct requires ordinary intelligence as opposed to the particular skill and knowledge possessed by one licensed to practice law.” Debt settlement services fall into the former category, not the latter.

As the American Fair Credit Council observed in its 2018 economic report regarding the debt settlement industry: “Although the debt settlement process involves functioning as the intermediary between the debtor and the creditor, debt settlement service providers do not provide legal representation, nor do they provide tax or bankruptcy advice or counseling services.”

Instead, as former Ohio attorney general Betty Montgomery has since explained, “Debt settlement activities by non-lawyers typically involve the negotiation of debts that draw upon the value of the debt and prior experience with collectors and debtors. Debt settlement companies do not undertake a true legal analysis to determine the value of an outstanding debt or a debtors’ ability to repay.”

Fortunately, the Ohio General Assembly seems to appreciate the distinction between true legal services and the typical services offered by the vast majority of debt settlement companies, and appears ready to defend debt settlers from yet another example of competition-by-regulation. Bills pending in the Ohio House and Senate would allow debt settlement firms to go about their business as usual.

The bills would protect firms from an over-zealous extension of one case, by clarifying the services that debt settlement companies are authorized to provide, and explicitly stating that nothing in the bills should be construed to permit the unauthorized practice of law.

The Ohio Supreme Court, of course, ultimately defines the metes and bounds of the “practice of law” in Ohio, but state policymakers should be applauded for taking steps to resist special interest groups from using knee-jerk over-licensing schemes to limit competition and harm consumers with higher prices and fewer options.

Ohioans already suffer under the burdens of regulation and occupational licensing restrictions. Those burdens limit job opportunities, impede career advancement, and can even add to the debts that debt settlement firms help to resolve. Reducing, restructuring and retiring old debts are hard enough for most people. Renaming debt settlement services as the “unauthorized practice of law” will only make it harder.

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***About The Buckeye Institute***

*Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.*

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