



TESTIMONY
January 22, 2020

Testimony to the Senate Insurance & Financial Institutions Committee on Senate Bill 112

Good afternoon, Chairman Hackett, Vice Chair Hottinger and Ranking Member Craig and members of the committee. My name is Kalitha Williams and I am the project director for asset building at Policy Matters Ohio, a nonprofit, nonpartisan organization with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. My work centers on household financial stability and consumer protection issues in Ohio. I also convene Ohio CASH, a statewide coalition of organizations focused on improving the financial and economic conditions for low- and moderate-income families and communities in the state. Thank you for the opportunity to testify today regarding Senate Bill 112, which would undo important parts of the Ohio Debt Adjusters Act (ODA).

The current state and federal regulations governing this industry are working and this legislation is unnecessary and likely harmful to Ohio consumers. In 2004, through the sponsorship of then State Representative Tom Patton, the legislature implemented the ODA to protect Ohioans from unscrupulous debt settlement companies. The for-profit debt settlement industry aggressively markets to consumers saddled with debt, desperately seeking help and financial relief. Once the consumer engages in a plan, the debt adjuster insists the consumer stop making debt payments and fund an escrow account to be used to negotiate with the creditors. Unfortunately, while the escrow account grows, compounding late fees, higher interest rates, and finance charges increase the amounts of the original, unpaid debts. In many cases, consumers default, and find themselves in worse shape than before they involved the adjuster. Some end up filing for bankruptcy, the very thing they were trying to avoid. In short, few consumers actually

complete the program but many pay thousands of dollars in fees, and accrue more debt than before they engaged the debt settlement company.

The ODA prohibits debt adjusters from accepting more than \$75 for initial consultation fees, charging more than \$100 annually in consultation fees or contributions, or collecting more than 8.5 percent of the amount paid by the debtor each month or \$30, whichever is greater. The statute gives the Ohio Attorney General enforcement authority to ensure debt adjusters comply. For over 10 years the ODA has protected consumers from excessive fees from for-profit debt adjusters. Senate Bill 112 would remove these important protections, by lifting fee caps and leaving Ohioans vulnerable to predatory practices and exorbitant fees.

In 2009, the Federal Trade Commission (FTC) found the debt settlement industry's previous practice of charging up-front fees to be an unfair practice and, in 2010, implemented an industry-wide requirement that the adjuster settle at least one debt before receiving payment. This and other consumer protections including fee and adverse credit disclosures are already regulated by the FTC.ⁱ

The bill sponsor testified that for-profit debt settlement companies are not able to operate in Ohio, but this is not the case. Bill supporters assert the state regulations are only for credit counseling agencies. However, according to the summary by the Ohio Legislative Service Commission for a similar bill proposed by the American Fair Credit Council (AFCC) that would remove fee caps, references to “debt adjusting” in Ohio Revised Code 4710 include for-profit debt settlement services.ⁱⁱ Also, Federal Trade Commission rules are not in conflict with the Ohio Debt Adjusters Act. In fact, in the final rule, the FTC stated that states could implement additional protections for consumers including fee caps without any conflict with federal regulations.ⁱⁱⁱ

Moreover, there is evidence that debt adjusters already do business in Ohio. A quick search of the Ohio Attorney General complaint database finds several for-profit debt adjusters operating in Ohio, including DebtHelp, Global Client Solutions and Freedom Debt Relief, three members of the AFCC.. Several AFCC members are also registered with the Ohio Secretary of State to do

business in Ohio. While debt adjusters are able to provide their services in Ohio, they must do so within the parameters of the Ohio Debt Adjuster's Act, including using the statutory fee caps. When they do not, the Ohio Attorney General takes swift action, much like the lawsuit former state Attorney General DeWine took against a pair of companies in 2012 (see attached news release).

The bill sponsor testified about the limited options available for consumers seeking help with their debt burdens. However, other options may have better outcomes for consumers than debt settlement companies. Those options include:

- 1) Consumers can work directly with creditors to negotiate their debt. In this scenario, all payments go directly to the creditor. Consumers may also be able to receive a hardship interest rate of under 10 percent, can avoid defaults which lead to lawsuits, and may be able to pay off their debt faster.
- 2) Consumers can also seek the assistance of the National Foundation of Credit Counseling, a national network of nonprofit organizations — including many in Ohio — that offer debt management programs. Consumers unable to negotiate with their creditors can work with a counselor who almost immediately negotiates with creditors. Debt settlement companies, on the other hand, wait until the consumer has saved enough in an escrow account to begin negotiating, an industry practice that causes defaults.
- 3) Even consumers who file bankruptcy have protections that debt settlement agreements cannot provide. Bankruptcy can protect consumers from lawsuits, which may bombard consumers when they stop paying their debtors. Also, debts reduced through bankruptcy are not considered taxable income, as is the case with debt negotiated through debt settlement companies. Consumers of debt settlement companies often end up filing for bankruptcy after paying hundreds of dollars of fees that could have been used to pay down their debt.

For-profit debt settlement companies claim to have “special relationships” with creditors to help consumers settle debts. However, a survey conducted by the debt collection industry showed

that 45 percent of creditors will not even work with these companies.^{iv} Given this, consumers struggling with debt will most likely be better served if they avoid the industry altogether.

Other government entities and consumer protection organizations have found problems with the industry. The Office of the Comptroller of the Currency, a national bank regulator, stated that debt settlement “is not a legitimate method of satisfying debts.”^v In 2012, the New York City Department of Consumer Affairs conducted its own investigation and called debt settlement “the single greatest consumer fraud of the year.”^{vi} The Consumer Financial Protection Bureau and the Federal Trade Commission have brought several actions against debt settlement companies for illegally charging up-front fees^{vii, viii} and making false claims to consumers.^{ix}

Last Summer, the Consumer Financial Protection Bureau brought action against Freedom Debt Relief for violating the FTC Telemarketing Sales Rule and the Consumer Financial Protection Act of 2010 by charging advance fees, not informing consumers of their rights to money they deposited with the company, and charging consumers fees before debts were settled. The company settled with the CFPB and agreed to pay \$20 million in restitution to impacted consumers and a hefty \$5 million dollar penalty. Freedom Debt Relief is the largest debt settlement company in the nation and a founding member of the AFCC, the industry group pushing this legislation. This and other actions from our financial institution regulators indicate that this industry is still behaving badly and harming consumers.^x

Lifting fee caps is the true purpose of this legislation. The Federal Trade Commission prohibited up-front fees from consumers, which reduced industry profits. This legislation is part of a national effort to remove fee caps. It has been introduced in Ohio on at least four other occasions and in several other states with fee caps. Consumer advocates across the nation have stood up to for-profit debt settlement companies and called on state legislatures to uphold fee caps and protect consumers. Legislation similar to SB 112 has been rejected in state legislatures in Florida, Washington, Connecticut and Louisiana.

After Colorado removed its fee cap in 2011, the regulatory agency recommended restoring a fee cap in 2015. The data from Colorado showed more than half the consumers who entered the

program did not complete it—and terminated within two years.^{xi,xii} Their data show the debt settlement business model simply does not work for the vast majority of people. The fee limits Ohio already has in place are a necessary protection to curb some of the worst abuses by for-profit debt settlement companies. Moreover, some states outright banned for-profit debt settlement.^{xiii}

We ask that you protect Ohio consumers and oppose Senate Bill 112. Passing this legislation will hurt the financial stability of Ohio working families and drive borrowers deeper into debt. Ohioans need real solutions to support their financial stability, not industries that take advantage of their economic challenges.

Mr. Chairman, thank you for allowing me to testify on this legislation. I am happy to answer any questions that you or any of the other members of the committee may have.

*Policy Matters Ohio is a nonprofit, non-partisan research institute
with offices in Cleveland and Columbus.*

ⁱ Federal Register / Vol. 75, No. 153 (Aug. 10, 2010) at 48478, available at <https://www.gpo.gov/fdsys/pkg/FR-2010-08-10/pdf/2010-19412.pdf>.

ⁱⁱ The Ohio Legislative Commission analysis of SB 251, a similar bill proposed by the AFCC which would have excluded for-profit debt settlement services from the Ohio Debt Adjuster’s Act, found that “ Debt settlement services would otherwise likely fall under the definition of debt adjusting, and therefore would be subject to the Debt Adjusting Law requirements.” See page 6, <http://www.lsc.state.oh.us/analyses129/s0251-i-129.pdf>

ⁱⁱⁱ Telemarketing Sales Rule, 16 CFR Part 312, at 85-86 (Aug. 10, 2010), available at <http://www.ftc.gov/os/2010/07/R411001finalrule.pdf>

^{iv} Inside ARM Debt Settlement Survey: How Creditors and Collectors Utilize the Debt Settlement Industry to Increase Collections, January 2013. InsideARM.com

^v See Office of the Comptroller of the Currency, U.S. Department of the Treasury, “Answers about Debt Elimination and Fraudulent Schemes” available at <http://helpwithmybank.gov/get-answers/credit/debt-elimination-and-fraudulent-schemes/faq-credit-debt-elim-fraud-schemes-02.html> (last visited February 23, 2011).

^{vi} Department of Consumer Affairs Launches Investigation Into Debt Settlement Companies. See http://www.nyc.gov/html/dca/html/pr2011/pr_080911.shtml

^{vii} Press Release: “CFPB Takes action Against Two Companies for Charging Illegal Debt-Relief Fees” (May 7, 2013), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-companies-for-charging-illegal-debt-relief-fees/>.

^{viii} Press Release “FTC Reaches Settlement With Nationwide Debt Relief Provider” (March 7, 2017) available at <https://www.ftc.gov/news-events/press-releases/2017/03/ftc-reaches-settlement-nationwide-debt-relief-provider>
<https://www.ftc.gov/news-events/press-releases/2017/03/ftc-reaches-settlement-nationwide-debt-relief-provider>

^{ix} Press Release “CFPB Sues World Law Group for Charging Illegal Fees and Making False Promises in Debt-Relief Scheme” (September 15, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-sues-world-law-group-for-charging-illegal-fees-and-making-false-promises-in-debt-relief-scheme/>

^x Press Release “Consumer Financial Protection Bureau Settles Lawsuit Against Freedom Debt Relief” (July 9, 2019), available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-lawsuit-against-freedom-debt-relief/>

^{xi} Colorado Department of Regulatory Agencies 2014 Sunset Review: Colorado Uniform Debt-Management Services Act (October 2014) available at [http://www.leg.state.co.us/CLICS/CLICS2015A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/b77886c524bc845087257df0006f3e3b/\\$FILE/15SenateJud0218AttachD.pdf](http://www.leg.state.co.us/CLICS/CLICS2015A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/b77886c524bc845087257df0006f3e3b/$FILE/15SenateJud0218AttachD.pdf)

^{xii} State of Colorado Department of Law 2014 Annual Report: Colorado Uniform Debt-Management Services Act (2014), available at <http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/2014%20DM%20ANNUAL%20REPORT%20-%20FINAL.pdf>

^{xiii} National Conference of State Legislatures state-by-state analysis of debt settlement statutes and regulations, available at <http://www.ncsl.org/research/financial-services-and-commerce/credit-counseling-debt-managem983and-settlem983.aspx>