Testimony in Support of HB 182
David Leuthold on behalf of the American Fair Credit Council

House Financial Institutions, Housing and Urban Development Committee
Wednesday, May 31, 2017

Good afternoon Chairman Dever, Vice Chair Sprague, Ranking Member Smith and members of the House Financial Institutions, Housing and Urban Development Committee, my name is David Leuthold and I am here to voice strong support for HB 182. The bill before you would amend state law and eliminate ambiguity over debt settlement to allow Ohioans with significant unsecured credit card debt a path to a brighter future.

I serve on a voluntary basis on the board of the American Fair Credit Council, the trade association for the debt settlement industry, and am proud to say I was a founding member of the AFCC. I'm also Vice Chairman of Century a debt settlement company based in North Huntingdon, Pennsylvania just outside of Pittsburgh. AFCC member companies have collectively helped consumers settle over $7 billion of debt and I'm extremely proud to be associated with this industry.

There is probably nothing more stressful in life than finding yourself deep in debt. There is a feeling of helplessness and desperation when you find yourself in a position where you can no longer repay the debts you owe. I know this feeling firsthand because I once lived it. Many years ago, I had a good paying job in the federal government that was eliminated and quickly found myself unable to cover the credit card payments I owed. I looked at my options and they were bleak: personal bankruptcy protection or credit counseling.

I'm not here to suggest that bankruptcy should be avoided in every instance, but we all know the stigma that it carries and the black mark bankruptcy leaves on an individual's credit worthiness. Every individual situation is different and in some cases bankruptcy can be the only way out for a family or individual with an unsustainable debt load. Recent changes in eligibility for bankruptcy protection have made it much more difficult to use this route to eliminate debts.

Credit counseling can also be a viable option for someone with heavy credit card debt, but this path is only available to those who have the means to repay the entire debt in full, including interest. Credit counselors can sometimes get late fees waived and interest rates reduced, but you must commit to cover the entire debt as part of a repayment program set up by the credit counseling organization. In essence they take over management of your debts and pay your creditors in return for a small percentage each month. Often these monthly payments and initial fees are non refundable. Fallout rates for credit counseling are excess of 50% leaving many people worse off than when they enrolled in the program. Sure the individual has made some progress toward paying off their debt before dropping out of the program, but the debt is still there and interest and late fees continue to accrue.

With debt settlement, we work one-on-one with creditors to reduce the principal owed on accounts. Our average client has $30,000 in debt on six different accounts. Many come to us after experiencing a life altering event: divorce or death of a spouse that eliminates part of a family's income; a medical crisis or job loss that leaves one unemployed or underemployed and no longer able to even make the minimum payments on their credit cards.

The Federal Trade Commission regulates debt settlement under the Telemarketing Sales Rule. The FTC issued strict guidelines for debt settlement that include a prohibition on upfront fees. We are only paid once we present a settlement to a client on each credit card account they owe, the settlement is accepted by the client and payment is made to the creditor. There are also a number of mandatory disclosures that must be made to a client enrolled in a debt settlement program, including a good faith estimate of the amount of time it may take to settle the debt, an estimate of the amount of money it will cost to settle the debt as well as the possibility of any tax liability for excusing or discharging a debt.

We hear time and again from our critics – mainly the credit counselors and bankruptcy attorneys – that there is no place for debt settlement and those who enroll in our program end up worse off in the end, pay excessive fees and generally get ripped off. These groups made similar statements in Maryland before that state legislature adopted legislation to allow for debt settlement, with a requirement to study outcomes for consumers. In the end, the Maryland Commissioner of Financial Regulations reported to the state legislature in 2016 that the agency received a total of 9 complaints over a three-year period related to debt settlement. Keep in mind, these 9 complaints were out of thousands of people who enrolled in debt settlement programs over that same period. Eight of these complaints were against entities that failed to register with the state or were exempt from regulation. Most of the complaints were against law firms and not debt settlement providers. The report, which I have included as an attachment to my testimony, showed that debt settlement saved Maryland consumers over $30 million and helped put people back on firm financial footing.

At the federal level debt settlement is regulated by the Consumer Financial Protection Bureau which has a complaint portal for consumers to lodge complaints. Since 2011 there have been more than 1 million complaints filed against financial services companies, but over this same period there were only 20 complaints against debt settlement companies. You can also look to the Better Business Bureau for a snapshot on the reputation of the debt settlement companies that are part of the Americans Fair Credit Council. AFCC has 27 member companies with a positive BBB rating, with 23 in the A category and of those 20 hold an A+ rating. If you think about the fact we do not get paid until we present a satisfactory agreement to the client, we actually have a vested interest in screening people to ensure they have the ability to complete a program.

There has also been a lot of focus over the years by critics of debt settlement over how the industry charges fees for the services we provide. In most instances a client would pay 21% of the amount of debt enrolled. For example, if someone brought us $1,000 in debt and the amount grew during the debt settlement process to $1,200 the fee would still be based on the original $1,000 enrolled. It can sometimes take weeks or months to settle a debt to the satisfaction of a client so it isn't unusual for additional interest to accrue. Bear in mind that most attorneys would charge a much higher fee to settle a debt and that nonprofit consumer credit counselors are sometimes paid both an initial consultation fee in addition to a monthly charge for managing payments on debts for a client.

HB 182 ensures that Ohio residents can utilize debt settlement services upon the effective date of the legislation should it be enacted into law. Currently the law is unclear and was custom written for consumer credit counseling. Rather than look to create a complex regulatory scheme at the Division of Financial Institutions at the Department of Commerce, we are simply amending current law to allow for debt settlement in a similar manner as credit counseling. Because we cannot operate in the same fashion as nonprofit credit counseling operations the bill makes it clear that as long as we comply with the federal Telemarketing Sales Act, then we are exempt from those provisions that are in direct conflict with federal rules and regulations. Specific examples include allowing for upfront fees and the ability to handle client's funds on their behalf – both of which credit counselors regularly do and debt settlement is prohibited from doing.

Mr. Chairman and members of the committee, I strongly urge you to support HB 182 and give Ohioans facing what at times can seem to be an almost insurmountable mountain of debt another option to regain their financial independence. Thank you for your time and attention today and I welcome any questions the committee may have.