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To: Senate Insurance and Financial Institutions Committee
From: Representative Bill Seitz
Date: November 27th, 2018
Re: Sponsor Testimony HB 182

Chairman Hottinger, Vice Chair Hackett, Ranking Member Brown, and members of the Insurance and Financial Institutions Committee, thank you for allowing me the opportunity to present sponsor testimony for House Bill 182.

While the economy for both Ohio and the nation has rebounded from the severe recession of just a few years ago, many Ohioans still find themselves facing a mountain of personal debt. There are really only two options for these individuals: consumer credit counseling or personal bankruptcy. Both have significant cost barriers and, in the case of bankruptcy, significant consequences. HB 182 will allow for debt settlement to be a third option that may be pursued.

The main distinctions between consumer credit counseling and debt settlement are:

- Credit counseling allows individuals to consolidate their credit card debt under a debt management plan which allows for reduced interest rates but requires significant monthly payments to the credit counselor. The credit counselor then pays the creditors, pro rata, 100% of the amount owed (plus interest) over a five-year term. This option may be a good choice for consumers who have the means to fully repay their debts, but for those who are unable to produce the steep monthly payments, credit counseling is not an option.
- Debt settlement allows consumers with significant unsecured debt to completely restructure their debt burden. The debt settlement firms negotiate directly with credit card companies to reduce the principal owed by consumers. Payments for the reduced amount go directly to the creditor, fully discharging the debt. Debt settlement is only intended for those with severe financial hardship, which means most debt settlement clients could not qualify for credit

counseling. Most debt settlement clients find themselves in financial distress following an event such as job loss, divorce, medical crisis or other unforeseen situations that put them in a position where they no longer have the means to repay their debts. The average client is a college graduate earning at least \$70,000.

Ohio law does not allow consumers to access debt settlement services at this time. Current law is written to accommodate only credit counseling and includes such concepts as trust accounts, specific fees for certain services and fees in advance of services, none of which are applicable to debt settlement services. As a result, consumer credit counseling services have a virtual monopoly in the area of consumer debt management.

A few years ago, the Federal Trade Commission issued rules governing the debt settlement industry. These rules do not apply to the non-profit credit counseling companies who are allowed to charge upfront fees under state law. However, under the Federal Trade Commission rules, debt settlement companies are expressly prohibited from accepting any upfront fees for their services. They can only be compensated after settling a debt on behalf of a client, and this can often take months or years. Debt settlement practitioners are forbidden from holding client funds for their clients and instead rely on customers to set aside funds on a regular basis in order to enable payments to creditors once a settlement is reached (see attached chart on fees and payment structures of both business models). The FTC rule has been a national model and has been enforced to root out bad actors in the debt settlement industry.

Previous versions of debt settlement legislation prescribed a complex regulatory program overseen by the Department of Commerce. The two major objections I heard to the previous versions of this bill were:

1. It created a complex regulatory structure to be administered by the state; and
2. It arguably infringed on the Supreme Court's right to regulate the unregulated practice of law.

This bill solves both objections. First, it provides that debt settlement companies may operate within the existing state debt pooling statute (that govern nonprofit credit counselors) so long as they are fully compliant with the Federal Trade Commission's regulations on what they can and cannot do. Second, it provides (lines 675-677 of the bill) that nothing in HB 182 shall be construed to authorize the unauthorized practice of law.

During House hearings on this bill, some advocates urged us to include fee caps on what the debt settlement companies can charge. We rejected this idea because the FTC carefully considered that issue when adopting its rule and deemed it unnecessary. Moreover, after the FTC issued its rule, four states that had previously imposed fee caps repealed them as unnecessary. Finally, in at least 25 states, debt settlement companies operate today without fee caps including every state bordering Ohio except West Virginia, and including such large states as California, New York, Massachusetts, Texas, Tennessee, Virginia, Maryland, Missouri, and North Carolina. That said, we did include a provision requiring the debt settlement company to disclose to its customer the identity of each creditor that the debt settlement

company believes will not do business with a debt settlement company (lines 656-661 of the bill). This was done so that the debtor could evaluate whether the debt settlement company would be able to meaningfully negotiate a deal on that debtor's behalf, and also in recognition of the fact that nothing in the bill requires any creditor to do business with any debt settlement company.

HB 182 will be a way of providing Ohioans with additional help when it comes to rectifying issues of personal debt and as such I strongly urge favorable consideration of this bill. Thank you for allowing me to provide testimony and at this time I am happy to answer any questions the committee may have.

DEBT SETTLEMENT v CREDIT COUNSELING

Current Ohio law-ORC 4710	Debt Settlement	Credit Counseling
Disburse to creditors all funds received from the debtor within 30 days of receipt of funds.	Prohibited by FTC from handling funds on behalf of clients.	Authorized under ORC Sec. 4710.02
Maintain a separate trust account for the receipt of funds from debtor and payment to creditors	Customers may set aside funds in a dedicated account held in their name. They are free to access these funds at any time. The debt settlement provider has no access to this private account.	Authorized by ORC Sec. 4710.02 to take over the responsibility for managing payments to creditors on behalf of clients.
Charge or accept only reasonable fees or contributions, including up to \$75 for initial consultation and set up of a debt management plan; up to \$100 a year in consultation fees or contributions annually; a fee of 8.5% or \$30 per month (whichever is greater) for paying creditors on behalf of the debtor.	Prohibited by FTC from accepting any form of advance payment for services.	Authorized under ORC Sec. 4710.02.

<p>Required to arrange for and undergo an annual audit conducted by an independent, third-party certified public account of the funds deposited and distributed to creditors on behalf of debtors.</p>	<p>Willing to comply with an annual state audit requirement of business activities. Again, debt settlement firms cannot create a trust account to manage funds for clients. Any funds that are set aside are controlled by the debtor.</p>	<p>Required under ORC Sec. 4710.02</p>
<p>Carry insurance coverage of at least \$100,000 (deductible cannot exceed 10% of the face value of the policy) AG consumer protection division must be notified 30-day prior to termination of such policy.</p>	<p>Willing to carry an insurance policy or bond to cover employee misconduct, forgery, or computer fraud.</p>	<p>Insurance coverage is mandatory under ORC Sec. 4710.02</p>
<p>Violations deemed an unfair or deceptive trade practice subject to enforcement by the Attorney General.</p>	<p>Any violations could potentially be subject to <i>both</i> FTC action and enforcement by the AG under the consumer sales practices act.</p>	<p>Subject only to AG jurisdiction.</p>
<p>Mandatory consumer disclosures.</p>	<p>The Telemarketing Sales Rule mandates clear and conspicuous disclosures including how much debt settlement services will cost, a good-faith estimate of the time it will take to settle a debt, how much money a consumer can expect to save, consequences for failing to make agreed upon payments, potential income tax obligations</p>	<p>Not required under state law.</p>