Proponent Testimony of Steven Boms
On Behalf of
The American Fair Credit Council
to the
Ohio Senate Insurance and Financial Institutions Committee
Regarding
Sub H.B. 182

Good morning Chairman Hottinger, Vice Chair Hackett, Ranking Member Brown and members of the Senate Insurance and Financial Institutions Committee. My name is Steve Boms and I appear today on behalf of the American Fair Credit Council ("AFCC") to offer testimony in support of H.B. 182, legislation to enable debt settlement in Ohio.

Unfortunately, there are few options available to consumers in financial distress. For those Americans who have, for example, suffered a loss of income or incurred significant, unforeseen medical expenses and can no longer afford to pay their unsecured debt, personal bankruptcy is too often the only path available. The long-term financial consequences of filing personal bankruptcy, of course, are significant and can substantially limit the future economic opportunities of the filer for up to a decade. And this assumes that the consumer can meet the means test of the bankruptcy code, a test designed to prevent the discharge of credit card debt.

For some consumers in financial difficulty, credit counseling may be a viable alternative; however, credit counseling does not reduce the amount owed by the consumer – it simply provides them with a longer timeframe in which to pay their entire debt, at a reduced rate of interest.

The AFCC is the nation's leading trade association for the debt settlement industry, fighting for consumer rights, defending access to debt settlement services and ensuring the ethical treatment of consumers seeking to resolve their debts through debt settlement. Amidst a growing debt crisis – national credit card debt eclipsed $1 trillion for the time in history earlier this year – AFCC members negotiate with creditors on behalf of financially challenged consumers across the country who have experienced a financial hardship to achieve reductions in the amount that they owe, not simply reducing their interest rates. This service provides debt settlement clients with much-needed relief and peace of mind. Debt settlement should be seen as the opportunity for consumers in financial crisis to restructure their debt obligations in a dignified and efficient manner, in all cases with the participation and consent of their creditors.

By the time a consumer reaches out to a debt settlement provider, they are typically delinquent on at least one – and, frequently, most – of their credit card, and owe tens of thousands of dollars to multiple creditors. Our members' customers are not looking for an easy way to skip their bills: In the midst of significant financial hardship, they are committed to resolving their obligations with what they are able to afford. Debt settlement offers a way of meeting what many regard as a

moral obligation: the opportunity to pay something, if not everything, in a dignified and economically reasonable manner.

The debt settlement industry is federally regulated by the Federal Trade Commission ("FTC" under the 2010 amendments to the Telemarketing Sales Rule ("TSR"). Under the revisions to the TSRs, to which the AFCC actively contributed and which our organization supported, debt settlement companies are barred from assessing their customers any fees whatsoever until: a settlement on an account has been reached for a consumer; the consumer has accepted the settlement; and the consumer has made a payment to the creditor towards the settlement. Debt settlement is therefore one of the only products in the financial marketplace whose providers, by federal law, must deliver a resolution to their customers before they are legally permitted to collect a fee.

The TSR amendments, which banned advance fees, was a sea change for the industry. Unfortunately, our members still live with the perception of our industry as it existed before the imposition of federal regulation almost a decade ago, even though the data demonstrably paints a much different picture of the industry today.

An independent study published earlier this year found that debt settlement, on average, saves consumers $2.64 for every $1 in fees they pay for debt settlement services. The majority of debt settlement customers see their first account settled within four to six months of starting their debt settlement program. And, importantly, under the FTC rules, debt settlement customers have the right to reject any proposed settlement at any time, for any reason, or to withdraw from their debt settlement program whenever they choose, without any penalty.

Opponents of H.B. 182 claim AFCC members can operate in Ohio under existing debt adjusting law (ORC 4710), but this simply is untrue. Current law in the state applies to credit counseling. Further, numerous provisions of current law, including the ability to charge up to $75 for an initial consultation fee for a debt management plan and collecting up to 8.5% or $30 (whichever is greater) each month for paying creditors for clients, are in direct conflict with the FTC's 2010 amendments to the TSR.

H.B. 182 seeks to harmonize Ohio's statutory environment with federal regulation. Under the legislation, debt settlement providers in compliance with federal law would be permitted to offer their services to consumers in Ohio. If H.B. 182 were to become law, additional safeguards would also be in place. For example: the legislation calls for annual audits for debt settlement providers and provides for the ability of the Ohio Attorney General to regulate our members' businesses under the unfair sales practices act. Further, if H.B. 182 were to be enacted, the AFCC would require, as it does across the country, that its members in Ohio adhere to best practices and would conduct anonymous audits through "secret shopper" tests. And, of course, all debt settlement service providers would be subject to federal regulation by the FTC, as all as the Bureau of Consumer Financial Protection, under the TSR and the Federal Trade Commission Act.

Ohio's existing statutory and legal environment does not overtly prohibit debt settlement providers from working with consumers in the state; instead, this is an ambiguous area of the law. Some debt settlement companies have tried to lend a hand to Ohioans and work with them to reduce burdensome levels of unsecured debt, but, in every instance, the Ohio State Bar

Association has asserted that providing debt settlement services to consumers represents the unauthorized practice of law ("UPL") in the state. Rather than expend significant amounts of time and money fighting against an entrenched interest in Columbus, most of these debt settlement companies have settled these cases and agreed to stop doing business in Ohio, to the detriment of consumers. You will hear more on the UPL issue from former Attorney General Betty Montgomery who has researched this issue and is prepared to share her findings and opinion with the committee.

Amidst ever-increasing levels of unsecured consumer debt, Ohioans need more, not fewer, options available to them to resolve their burdens. Alongside other organizations, including The Buckeye Institute, we would respectfully submit that, given the stringent federal regulatory framework that has been applied to the debt settlement industry for the last eight years, the time has come for Ohio to address the ambiguity in its laws regarding whether its citizens can avail themselves of debt settlement to assist them through a financial hardship. I urge passage of sub H.B. 182.