



**Proponent Testimony of Steven Boms
On Behalf of
The American Fair Credit Council
to the
Senate Financial Institutions and Technology Committee
Regarding
S.B. 68**

Good morning Chairman Wilson, Vice Chair Hackett, Ranking Member Smith and members of the Senate Financial Institutions and Technology 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 S.B. 68, legislation to enable debt settlement in Ohio. S.B. 68 is identical to legislation approved by the committee in December of last year.

According to the most recent statistics released by the Federal Reserve, the average Ohio consumer has approximately \$5,000 in outstanding credit card debt. This is fairly typical of most Americans across the country. While there is no shortage of options available to consumers today to get into debt, there are, unfortunately very few options available to consumers to assist them in getting out of it. 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 actually qualify to have their debt discharged, when, in reality, more than half of Chapter 13 bankruptcy filers across the country are unsuccessful.

There are some alternatives available, however; for some consumers in financial difficulty, credit counseling may be a viable alternative. But 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 last 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.

Based on an independent analysis, 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 cards, and owe tens of thousands of dollars to multiple unsecured creditors, including credit card issuers, medical debt servicers and private student loan providers. 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 has been federally regulated by the Federal Trade Commission (“FTC”) since 2010, under the FTC’s 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, were a sea change for the industry that saw many bad actors eliminated almost overnight. 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 last 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 S.B. 68 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 only to non-profit 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, significantly complicating the ability to offer debt settlement services to Ohio consumers.

S.B. 68 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 S.B. 68 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 this bill were to be enacted, the AFCC would require, as it does across the country, that its members in Ohio be accredited and undergo rigorous third-party audits to ensure compliance with best practices. And, of course, all debt settlement service providers would be subject to federal regulation by the FTC, as well as oversight by the Consumer Financial Protection Bureau, 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. Fortunately, a recent Ohio Supreme Court ruling in the *Watkins Global* case unambiguously concluded that the provision of debt settlement services in the state does not constitute UPL. Accordingly, enactment of S.B. 68, in parallel with the FTC's federal rules for debt settlement, would permit Ohioans in financial hardship the opportunity to access a meaningful tool to address their unsecured debts.

Amidst ever-increasing levels of unsecured consumer debt, Ohioans need more, not fewer, options available to them to resolve their burdens. Given the stringent federal regulatory framework that has been applied to the debt settlement industry for the last decade, 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 the committee to once again pass S.B. 68 and would be happy to respond to any questions you may have.