

Testimony in Support of SB 120
David Leuthold on behalf of the American Fair Credit Council

Senate Insurance & Financial Institutions Committee
Tuesday, Sept. 19, 2017

Good morning Chairman Hottinger, Vice Chair Hackett, Ranking Member Brown and members of the Senate Insurance and Financial Institutions Committee, my name is David Leuthold and I am here to voice strong support for SB 120. 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 am a founding member and serve on a voluntary basis on the board of the American Fair Credit Council, the trade association for the debt settlement industry. I'm also the founder 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 honored 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 are 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 suddenly eliminated and quickly found myself unable to cover my credit card and other obligations. I sat back and looked at my options, enrolling in a credit counseling program or filing for bankruptcy, and they were bleak. My income was neither sufficient nor steady enough to enroll in a credit counseling plan and I did not have the money to pay an attorney to file for bankruptcy, nor did I really want to use that option.

Credit counseling can 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 typically have prearranged agreements with creditors to get late fees waived and interest rates reduced, but the consumer must commit to repay the entire debt over a maximum of 5 years. In essence they take over management of your debts. You send in one monthly payment to the credit counseling company and they pay your creditors while retaining a monthly fee for their services. The fallout rate for credit counseling is normally around 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 debts are still there and higher interest and late fees begin to accrue again. In addition, whatever fees have been paid by the consumer before dropping out of the program are nonrefundable.

Regarding bankruptcy. I'm also not here to suggest that bankruptcy should be avoided in every instance, but we all know the stigma 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.

With debt settlement, we work one-on-one with creditors to reduce the principal owed on our clients' accounts. Our average client has \$30,000 of 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. Most all of our clients are already behind on their payments when they come to us.

Up until 2010 most debt settlement companies charged upfront and monthly fees. Unfortunately there were some companies more interested in collecting fees than settling debt. So the FTC passed the Telemarketing Sales Rule, which included strict guidelines for debt settlement that include a prohibition on upfront fees. We now earn a fee only as we negotiate a settlement on each individual account, the settlement is accepted by the client and the client makes a payment 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 debts, an estimate of the amount of money it will cost to settle the debts as well as the possibility of any tax liability for excusing or discharging the debts.

We have heard time and again from our critics – mainly the credit counselors, bankruptcy attorneys and groups representing low income families – that there should be 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. For example, 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. Three years later the Maryland Commissioner of Financial Regulations reported to the state legislature that debt settlement had saved Maryland consumers over \$30 million, while receiving a total of just 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 and that most of the complaints were against law firms and not debt settlement providers. I have included that report as an attachment to my testimony.

At the federal level debt settlement is also regulated by the Consumer Financial Protection Bureau, which in 2011 set up a complaint portal for consumers to lodge complaints against any financial services company. 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 American 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. Even when a client does not fully complete the program at least a number of their accounts have been fully settled. .

There has also been a lot of focus over the years by critics of debt settlement over the fees we charge for the services we provide. In most instances a client pays 21% of the amount of debt enrolled. For example, if someone brought us \$1,000 in debt, we settled it and the client accepted the settlement, our fee would be \$210. This would be the fee even if, by the time we settled the debt, interest and other fees may have increased the debt to \$1,200, for example. Our 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 upfront 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. In addition, I could be wrong, but, if I had around \$35,000 of debt I could not afford to repay in full, and a credit counseling program would cost me in total around \$44,000 and a debt settlement program would just cost me around \$28,000, I really wouldn't care how much went to the creditors and how much was paid to the debt settlement company.

So, in summary, I believe these actual facts show that the allegations leveled by many of our critics are unwarranted.

Now, regarding this proposed bill. SB 120 ensures that Ohio residents can utilize debt settlement services upon the effective date of the legislation. Current law (ORC 4710) is unclear with regard to debt settlement and was essentially 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 counselors the bill makes it clear that as long as we comply with the federal Telemarketing Sales Act, then we are exempt from those current 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 strictly prohibited from doing.

Mr. Chairman and members of the committee, I strongly urge you to support SB 120 to 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.