National Consumer Law Center

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Oregon State Legislature
900 Court St. NE
Salem Oregon 97301

Re: Opposing HB 4141
Written testimony of Andrew Pizor

Dear Committee Members:

On behalf of the National Consumer Law Center, I encourage the Committee to **OPPOSE** House Bill 4141.

This bill will substantially weaken Oregon laws protecting financially strapped consumers and will expose consumers to predation by the "debt resolution services" industry. Debt resolution—more commonly known as debt settlement—is a wolf in sheep's clothing. It advertises relief, but it leaves consumers worse-off than before they signed up. Oregon should reject this bill.

Debt resolution services do more harm than good.
Debt resolution services (DRS) offer consumers a costly service that does more harm than good. They promise consumers that they will negotiate reduced payoffs on their unsecured debts. But there is no guarantee they can do so, and some creditors refuse to negotiate with a DRS.

When signing up, the DRS tells the consumer to stop paying any bills they have not already defaulted on, causing further harm to their credit score, and exposing them to lawsuits and increased debt collection efforts. The DRS requires the consumer to sign up for a special savings account with a third party and make a monthly payment into the account to cover the DRS's anticipated fees and projected settlements. The consumer must also pay a monthly service charge to the third party, even if no debts are settled.

A typical debt settlement plan requires 36 months of payments, but many consumers drop out to pursue other measures, such as working with their creditors directly or filing bankruptcy. Even when they do not drop out, and even if some debts are reduced, the DRS may only address the debts that are easiest to settle. By the debt resolution industry's own data, 77% of customers who complete the program are left with unsettled debts.[1] Those debts will be much bigger than when the consumer signed-up, especially if the debt was not in default originally.

The Federal Trade Commission's Telemarketing Sales Rule is the only federal law regulating DRSs. But it is very limited. It only applies to telemarketers—not internet-only companies, and the Rule has many gaps. Oregon's current law fills those gaps. HB 4141 would repeal important protections not found in federal law.

This bill includes many harmful provisions.
This bill weakens Oregon law in many ways. Some of the worst are:

- ***Allowing unlimited fees.*** Currently Oregon limits DRS fees to a percentage of what the DRS actually saves the consumer,[2] ensuring that both the DRS and the consumer have the same incentive—getting the biggest savings possible. But Section 14 of this bill would remove the fee cap and allow a DRS to charge a percentage of the debt *enrolled* (rather than savings). Under such an arrangement, the DRS gets paid the same fee no matter how bad a settlement is.

- ***Authorizing a DRS to lend or broker loans to their customers.*** Because debt settlement has such a high failure rate, some DRS have begun to arrange high-rate debt consolidations loans for their customers. After a few months of payments into the special savings account, the DRS will arrange a new loan to pay the debt settlement fees plus any settlements that they arrange. By financing the debt settlement fees at a high interest rate, consumers end up with even more debt. Section 13(2)(b) specifically authorizes this harmful practice.

- ***Legalizing conflicts of interest and potentially violating federal law***. Federal law prohibits most DRSs from requiring consumers to save funds in a special account unless the account is administered by an independent entity that "is not owned or controlled by, or in any way affiliated with, the [DRS.]"[3] But HB 4141

[1] Will S. Dobbie, Financial outcomes for debt settlement programs: Estimates for 2011-2020 (Jan. 15, 2021), available at https://aa4dr.org/reports/ (reporting that only 23% settle all their enrolled debt).
[2] Appendix A to OAR 441-910-0099.
[3] 16 C.F.R. § 310.4(a)(5)(C)(ii). This rule only applies to telemarketers, but most debt settlement companies qualify as telemarketers, so they are subject to the rule.

allows a DRS to own up to 20% of the so-called "independent" entity.[4]

- ***Allowing a DRS to give consumers dangerous advice.*** HB 4141 allows a DRS to advise consumers to default on legally valid debts. This self-serving practice hurts consumers and is unfair to law-abiding creditors who are usually willing to offer consumers the same settlement terms—without the high fees. Instead of prohibiting this practice, the bill merely requires a disclosure.[5]

- ***Granting a blanket exemption to DRS operated by attorneys.*** Some of the worst DRS have been run by attorneys.[6] They operate under what the industry calls the "attorney model." Under this model, a DRS claims to be a law firm because it is owned by one or more attorneys. They claim that all the customers are their "clients" and that their activities are exempt from state law—even though the attorneys do none of the work and the organization is otherwise identical to other, non-attorney led DRS. In contrast, Oregon's regulator has adopted a detailed rule that carefully identifies the circumstances under which attorneys are exempt.[7] HB 4141 would replace that regulation with an overly broad law that exempts virtually all attorneys, essentially welcoming scammers.[8]

- ***Allowing notices to be emailed to consumers who can't access email.*** The federal E-Sign Act[9] only allows businesses to send electronic documents when the consumer is able to access and read them. This ensures the consumer truly receives a copy of any electronic document that a state law says must be provided in writing. But HB 4141 is written in a way that would evade those consumer protections.[10]

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[4] HB 4141, § 12(1)(a)(C). The federal law is the Telemarketing Sales Rule (TSR), 16 C.F.R. § 310.4(a)(5)(ii)(C). If enacted, this new provision of Oregon law would be preempted by federal, but only for DRS subject to the TSR. A DRS that only uses the internet, for example, would not be covered by the TSR.

[5] HB 4141, § 3(1)(a)(F).

[6] *See, e.g.,* CFPB press release: CFPB and Seven State Attorneys General Sue Debt-Relief Enterprise (Jan. 19, 2024) https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-seven-state-attorneys-general-sue-debt-relief-enterprise-strategic-financial-solutions-for-illegally-swindling-more-than-100-million-from-financially-struggling-families/ ("SFS leads consumers to think that contracted law firms will negotiate lower payoff amounts. However, the firms serve as a façade, and SFS and its employees, who are not lawyers, conduct the debt-relief negotiations, if any take place.")

[7] OAR 441-910-0005.

[8] HB 4141, § 2.

[9] Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 to 7006.

[10] Under HB 4141, § 13(1)(a), consumers are entitled to receive a copy of their contract with the debt settlement provider. When a law requires something to be in writing, E-Sign says it may only be sent electronically under certain conditions, to ensure that the consumer is actually able to receive and read a copy in electronic format. E-Sign has been the law since 2000 and compliance has become routine on the internet and elsewhere. But some might interpret HB 4141 as eliminating the "writing" requirement.

Debt settlement is not a valid option. We urge you to keep Oregon's existing laws in place and to vote **against** HB 4141.

Thank you for your consideration.

Respectfully submitted,
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As a result, consumers could be scammed by fraudsters who could claim to have provided the agreement electronically without having actually done so.