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Ohio House of Representatives
Financial Institutions Committee

Re: Opposing HB 534—A Bill to License Debt Resolution Companies

Dear Committee Members:

I am a Senior Attorney at the National Consumer Law Center. At NCLC we have long studied the for-profit debt resolution business. We have concluded that it is very harmful to consumers and that those who try it are more likely to be left worse off than when they started. In fact, there is evidence that 3 out of 4 consumers who try debt resolution will end-up owing more money than before they enrolled.¹ For that reason, **we urge you to oppose HB 534.**

How it doesn't work: Debt resolution companies encourage consumers to enroll tens of thousands of dollars of unsecured debt. Then they tell the consumer to stop paying those bills and stop communicating with the creditor. They require the consumer to pay hundreds of dollars per month—that they could have used to pay their bills—into a dedicated savings account. There is also a monthly charge for that dedicated account. The money in the account will be used to pay settlements and the debt adjuster's fees.

Next, the consumer must endure months of debt collection calls, a plummeting credit score, and sometimes lawsuits, before the debt adjuster tries to settle any of the consumer's debts. How long depends on how much time it takes to save up enough money to pre-pay the adjuster's anticipated fee and the anticipated settlement amount. At least 6 months to the first settlement is common.

¹ See Leslie Parrish, A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households, 18 Cityscape 55, 63-64 (2016) (finding that "threshold for a positive financial benefit" from debt settlement after accounting for all associated costs is "settling at least five of six debts."); Will S. Dobbie, Financial Outcomes for Debt Settlement Programs: Estimates for 2011-2020 (Jan. 15, 2021) (industry research showing only 23% settle all enrolled debt and 74% settled only about half their debts).

When the time comes, the adjuster does not negotiate or haggle with the creditor, it just sends the creditor a standardized letter saying the consumer offers to pay a percentage of the amount due. This percentage is simply the same amount the creditor normally offers consumers directly, when no adjuster is involved. If the creditor agrees—and many refuse to deal with debt adjusters—the adjuster takes its fee from the dedicated account and sends the settlement amount to the creditor. So the consumer has paid the same amount he or she would have paid by calling the creditor directly plus a large fee. Then the consumer must start saving again for the next settlement.

Most consumers drop out for one or more of many reasons: they cannot afford the monthly payments; they realize that their creditors will not deal with debt adjusters, and that the adjuster is taking their money for no work; they are compelled by debt collection harassment and lawsuits to deal with their creditors directly; or they realize that bankruptcy offers a much faster, cheaper, and more effective option. Very few people who enroll in debt resolution settle all their debts.² The industry keeps their drop-out rate secret, but there is evidence that it reaches 70%.³

At the end, most consumers will find that their financial situation is worse than when they started the debt resolution program. Their credit score will be ruined. They will owe taxes on the debts that settled. And the debts that did not settle will have swelled from late fees, interest, and other fees. The combination of taxes + dedicated account fees + fees on settled debts + payments on settled debts + the amount due on debts that did not settle will likely be more than they owed when they first enrolled.

Legislators should not allow this to happen to Ohioans. For-profit debt resolution is an inherently flawed business model. The Federal Trade Commission's 2010 Debt Relief Services rule addressed only one of many problems. Contrary to the industry's claims, the FTC's rule *did not* make for-profit debt resolution safe, nor did it eliminate the need for strong consumer protections—or an outright ban. HB 534 will hurt Ohioans.

HB 534 has no real protections and some parts of the bill will actively harm consumers.

² About 23% according to industry data. Will S. Dobbie, Financial Outcomes for Debt Settlement Programs: Estimates for 2011-2020 (Jan. 15, 2021).

³ See Preliminary Report of Temporary Receiver, Consumer Financial Protection Bureau v. Stratfs, LLC, No. 1:24-cv-00040-EAW-MJR at 36 (W.D.N.Y. Jan. 31, 2024) (70% dropout rate); In re Kinderknecht, 470 B.R. 149, 159 (Bankr. D. Kan. 2012), objections overruled sub nom. Parks v. Persels & Assocs., LLC, 509 B.R. 345 (D. Kan. 2014) (operating as Care One) (68% dropout rate); FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,484 (August 10, 2010) (65% dropout rate).

There are many problems with HB 534:

- **Licensing will not help.** HB 534 primarily addresses licensing, but licensing is not enough. Without strong protections, regular audits, and the funding needed for investigations and enforcement, licensing risks becoming an empty gesture that gives a government seal of approval. Licensing, without more, will leave Ohioans worse off.
- **The bill hamstringing the designated regulator.** HB 534 fails to give the Superintendent of Financial Institutions the tools needed to properly regulate this industry. The bill fails to give any substantive rulemaking authority, so the Superintendent will not be able to address new abuses or loopholes that may become apparent. Similarly, the annual data reporting requirement does not require the information needed to identify companies that leave their customers worse off or to evaluate the effectiveness of debt resolution overall.
- **The bill includes a gaping loophole for attorneys.** HB 534 completely exempts attorneys from even the bill's weak protections. This is a problem because a significant number of disreputable debt resolution operators have used the veneer of a law firm to evade state regulation. This practice is so common that it even has a name—the “attorney model.” The Consumer Financial Protection Bureau shut down one such operator in the case of *Consumer Financial Protection Bureau v. Stratfs, LLC*.⁴ But there are many others.

The bill also includes a number of provisions that will actively harm consumers:

- **The bill discourages better alternatives.** The licensing exemption does not apply to credit counseling services that attempt to provide debt resolution. That will discourage nonprofit credit counselors from providing a low-cost (or free) service that could compete with the for-profit industry.
- **The bill allows unfair fees.** The bill allows debt resolution companies to collect their full fee on a debt after the consumer makes just one payment on an installment-plan settlement. This common practice enables debt resolution companies to drain the consumer's dedicated account to pay fees after settling a small debt, and makes future settlements harder. It also allows the licensee to collect its full fee on a debt even if the settlement later proves unsustainable and the consumer re-defaults.

⁴ *Consumer Financial Protection Bureau v. Stratfs, LLC*, No. 1:24-cv-00040-EAW-MJR (W.D.N.Y.).

- **One of the required disclosures is wrong.** The bill mandates a disclosure that is deceptive at best, and that many consumer advocates would call blatantly false: that “the licensee is the consumer's advocate.”⁵ In reality, the debt resolution industry aggressively sells its services with inflated promises. Its goal is to maximize its own profits, often to the detriment of consumers. The required disclosure falsely implies that debt resolution firms act in their customers’ best interest. In truth, they are under no such duty.
- **The bill allows a blatant conflict of interest.** HB 534 expressly allows a licensee to act as a credit arranger—a loan broker—for consumers. This is relevant because some debt resolution companies arrange loans that can be used to pay not only settled debts but also the debt resolution company’s fee. Such loans often have double-digit interest rates and made debt resolution even more expensive than it already is. A settlement paid through one of these loans will likely be more expensive than the original debt.

The bill is missing some of the most important protections.

While no law could make for-profit debt resolution safe for consumers, there are a number of safeguards that could reduce the harm. In addition to fixing the problems described in the preceding section, we recommend the following:

- **Cap fees at a reasonable percentage of *savings* and prohibit settlements that cause the consumer to pay more than the original debt.**

There are two parts to this recommendation:

1. We recommend a law prohibiting fees over 10% of the amount saved on any settled debts, measured as the difference between the balance due at the time of enrollment and the settlement amount. At least 15 states cap debt resolution fees⁶ and at least 8 of those states specifically require the fee to be calculated as a percentage of savings. Tying fees to savings (rather than the enrolled amount of the debt) ensures that the debt resolution company’s interests are aligned with what the consumer expects—the bigger the savings, the better for both parties. As shown in the example below, allowing fees that are calculated as a percentage of the balance owed at the time of enrollment allows licensees to get paid for bad work.

⁵ Proposed Sec. 4710.08(C)(11).

⁶ Some of these states allow calculating the fee as a percentage of the *original* debt amount at enrollment, which results in a higher fee, even for bad settlements.

2. The total paid to the debt resolution company to settle a debt—fees + the settlement—should never exceed the amount of the enrolled debt.

For example, if a debt is \$10,000 at enrollment and the contract calls for a fee calculated as 25% of the enrolled amount of the debt, the debt resolution company will take \$2,500 from the consumer's dedicated savings account, no matter what the final settlement is. The company gets paid the same, even if the settlement only reduces the debt to \$9,000. In that case, the consumer ends-up paying \$11,500 to settle the original \$10,000 debt. That is unfair and should be illegal.

- **Ban licensees from advising or encouraging consumers to default on their debts.** While defaulting may increase a negotiator's leverage, that does not justify the harm it causes, especially given that there is no guarantee that the creditor will settle rather than suing. It is also unfair to honest businesses and may even be tortious interference with a contractual relationship. Chase Bank, for example, has successfully sued a number of debt adjusters for telling customers to stop paying their credit card bills.⁷
- **Prohibit debt adjusters from enrolling consumers until they have undergone independent credit counseling.** Debt resolution companies cannot be trusted to impartially determine whether a consumer can afford debt resolution or would be better served by bankruptcy or other relief. Consumers should first undergo counseling by an independent, nonprofit credit counselor.
- **Require better recordkeeping and annual data reporting.** Without adequate data collection, the regulator designated in the bill, the Superintendent of Financial Institutions, cannot do its job. Licensees should be required to report their dropout rate. A high dropout rate indicates a problem that should be investigated. Furthermore, when assessing debt resolution, the single most important question is whether it causes consumers more harm than good. The most effective way to answer that question is to compare the total amount of debt enrolled by an individual consumer with the total amount of those debts when the consumer completes or leaves the program. If the consumer's total debt burden is lower, after accounting for all fees, then the debt resolution service may have provided a measurable financial benefit.⁸ But if the value of any savings on settled debts is less than the cost of accretion (the accumulation of interest, late fees, over-limit fees, and the like) on unsettled debts + charges for debt resolution services + taxes owed

⁷ See, e.g., *Chase Bank USA N.A. v. Consumer L. Ctr. of DelRay Beach LLC*, 2015 WL 4556650, at *4 (D. Del. July 29, 2015); *Chase Bank USA, N.A. v. Allegro L., LLC*, 2013 WL 3149461 (E.D.N.Y. June 19, 2013).

⁸ This measurement will not address other risks of debt resolution, such as increased collection activities, harm to credit scores, and the related emotional toll.

on canceled debt, the debt adjuster should be required to give the consumer a refund, or lose its license.

Conclusion

Overall, we urge you to vote against HB 534. This bill will ultimately harm Ohioans. It *does not* provide them with a new way to help themselves. Instead, it only legalizes the deceptive business of selling cement life preservers.

Thank you for the opportunity to testify on this matter.

Respectfully submitted,

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