

Bill Beagle
State Senator
5th District



Tom Sawyer
State Senator
28th District

Senate Bill 251
Financial Institutions Committee
Sponsor Testimony – Senator Bill Beagle & Senator Sawyer
November 16, 2011

Chairman Hughes, Ranking Member Kearney, and members of the Committee, On behalf of Senator Sawyer and myself we thank you for the opportunity to present sponsor testimony on Senate Bill 251.

Senate Bill 251 will provide sound oversight and security for Ohio's consumers through the creation of a regulating authority under the Ohio Department of Commerce. Due to a recent ruling by the Federal Trade Commission (FTC) concerning debt settlement companies or debt relief services, Ohio's current statutes in our opinion are no longer sufficient. Currently, debt settlement companies are only covered by Ohio's debt adjuster statutes O.R.C. 4710.01, which defines "debt adjusting" as;

"doing business in debt adjusting, budget counseling, debt management, or debt pooling service, or holding oneself out, by words of similar import, as providing services to debtors in the management of their debts, to do either of the following"

- (1) To effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor.
- (2) To receive from the debtor and disburse to the debtors creditors any money or other thing of value.

The FTC ruled that for-profit debt settlement companies could no longer charge an advanced fee for their services as well it prohibits those companies from disbursing the consumer's funds or any direct control of the consumer's funds. Also, the FTC ruling provided that the companies must make four specific disclosures informing the consumer the time it may take to see results, the cost, the negative consequences that could result, and key information about dedicated accounts if they are required. The FTC ruling additionally prohibited misrepresentations and also applied the Telemarketing Sales Rule with regards to inbound calls.

I have taken the time to inform you about what the ruling was from the FTC, because the legislation before of you is modeled after many of the same provisions. A few key provisions of Senate Bill 251 include:

- Prohibiting debt settlement companies from negotiating secured debt i.e. mortgages, auto loans, ect.
- Require debt settlement companies to register with and be licensed by the Ohio Dept. of Commerce.
- Require that debt settlement companies maintain a surety bond between \$10,000 & \$50,000 as determined by the Director of Commerce.
- Specify that **NO FEE** can be charged until at least one debt has been settled and the consumer consents to the fee for service contract.
- Specifies the way that fees may be calculated as allowed by the FTC.
- Continues to provide protections under the Consumers Sales Practices Act (CSPA).
- Provides for actions and penalties to be assessed by the Ohio Department of Commerce.

I would like to note that Senate Bill also stipulates that if a company is unlicensed the company is automatically deemed “unfair and deceptive” under this legislation and would be subject to both the provisions of the legislation regarding the Department of Commerce as well as Ohio’s current CSPA statutes. It is our hope that with this legislation we can begin to root out the disreputable debt settlement companies so that those with legitimate business interest in helping consumers can do so.

During this process we have met with numerous interested parties including the Attorney Generals Office and the Department of Commerce as well as Bill Faith from COHHIO, Linda Cook from the Ohio Poverty Law Center and Kathy Virgallito from Consumer Credit Counseling Service. We feel that we have made the appropriate changes based upon their concerns, which mostly centered on straightening the sections dealing with CSPA. We will also continue to sit down and discuss any further issues that may arise during the legislative process.

Senate Bill 251 is similar in scope to legislation in 14 other states, including legislation passed this year by Maryland, Texas, Colorado, and Missouri. Senate Bill 251 has the support of the American Fair Credit Council (AFCC). Also attached to this testimony you will find a fact sheet from the FTC regarding their decision concerning debt settlement companies.

Thank you again for allowing me to testify today. We urge your support of Senate Bill 251 and I would be happy to answer any questions you might have.



Federal Trade Commission News

Office of Public Affairs - Fact Sheet
www.ftc.gov

600 Pennsylvania Avenue, NW • Washington, D.C. 20580 • 202-326-2180 • opa@ftc.gov

Telemarketing Sales Rule Debt Relief Rule Fact Sheet – 7/28/10

Overview of the Final Rule

- **Scope:** The Final Rule applies to for-profit companies that sell debt relief services over the telephone, including credit counseling, debt settlement, and debt negotiation services that aim to reduce credit card or other unsecured debt.
- **Summary of the Final Rule:**
 - **Advance fee ban:** debt relief companies may no longer charge a fee before they settle or reduce a customer's debt.
 - **Disclosures:** debt relief companies will be required to make four specific disclosures to consumers, including how long it will take for consumers to see results, how much it will cost, the negative consequences that could result from using debt relief services, and key information about dedicated accounts if they choose to require them.
 - **Misrepresentations:** debt relief companies will be prohibited making misrepresentations, including specific misrepresentations commonly made in this area.
 - **Inbound calls:** the rule extends the Telemarketing Sales Rule to cover calls consumers make to these firms in response to debt relief advertising.
- **Effective Dates:** The advance fee ban provision will be effective on October 27, 2010. All other provisions will be effective on September 27, 2010.
- **Dedicated Bank Account for Fees and Savings:** As part of the advance fee ban, the rule specifies that debt relief companies may require that consumers set aside their fees and savings for payment to creditors in a "dedicated account" if the following five conditions are met:
 - the dedicated account is maintained at an insured financial institution;
 - the consumer owns the funds (including any interest accrued);
 - the consumer can withdraw the funds at any time without penalty;
 - the provider does not own or control or have any affiliation with the company administering the account; and
 - the provider does not exchange any referral fees with the company administering the account.

Debt Settlement Industry Background

- The GAO studied the debt settlement industry and identified allegations of fraud, deception and other questionable activities that involve hundreds of thousands of consumers.
- An industry trade association estimates that there are perhaps 1,000 firms that presently offer debt settlement services.
- Two industry trade associations estimate that their 250 member firms have 425,000 customers (combined).
- Based on information that one of the industry associations provided, nearly two-thirds of enrolled consumers, almost all of whom had paid in advance, dropped out of the programs within the first three years and did not get the services for which they had paid.
- The fees for an individual consumer are hundreds or thousands of dollars, depending on the amount of their debt and state law in their state of residence.
- The FTC's cases have helped over 475,000 consumers who have been harmed by deceptive and abusive practices by various types of debt relief companies.