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Introduction to TASC and Debt Settlement Issues and Testimony to Delaware House Bill No. 72 in Economic Development/Banking/Insurance/Commerce Committee

From Article at GetOutOfDebt.org

Introduction

TASC respectfully submits this additional comment letter to the proposed amendments to the Delaware Uniform Debt Management Services Act in House Bill No. 72 (HB 72). TASC supports strong consumer protection provisions in the bill, but the fee caps for debt settlement in HB 72 are significantly less than what nonprofit credit counselors may charge even though debt settlement is much more costly of a service to provide, so the fees will not sustain the service. TASC recommends using the recently adopted FTC rule language in lieu of the fee cap language in HB 72. The FTC rule permits the charging of fees only when an individual has approved and accepted a settlement on his behalf which provides extremely strong protection, especially when combined with all of the other protections offered by HB 72 including licensing, bonding, operational requirements, prohibitions, and strong enforcement provisions. Without the changes described below, this proposed regulation will function simply to drive debt settlement businesses out of whatever state adopts the bill. The below comment provides greater detail about the industry and support for TASC's position.

Summary of Comment

A. Introduction to TASC
B. Introduction to Debt Settlement
C. General Industry Comment
   1. The fee provisions in HB 72 are unfair.
      a. The FTC Rule regarding fees for debt settlement companies provides significant protection.
      b. It is too early to make a determination as to what an appropriate fee cap should be.
      c. HB 72 eliminates one option of charging fees that the FTC Rule expressly allows.
      d. HB 72 is more restrictive on fee caps than the original UDMSA when it should be less restrictive.
      e. The fee cap in HB 72 for debt settlement providers is much lower than what nonprofit credit counselors may charge in the bill.
      f. Debt settlement is a much more costly service to provide than credit counseling and should be paid more, not less than nonprofit credit counselors.

g. The benefit to an individual in debt settlement should be measured by comparing the total cost of the consumer's other options. Under such comparison, debt settlement compares very favorably without the need for the fee cap in HB 72.
h. A fee structure mandating fees as a percent of savings frequently fails to consider what would be in a consumer's best interest.
i. HB 72 further restricts the ability to collect fees even when deemed earned by the FTC Rule to the detriment of both consumer and provider.
j. HB 72's fees are not comparable to an attorney's contingency fee.

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From Article at GetOutOfDebt.org

A. Introduction to TASC

TASC is the leading national association of settlement companies. It was formed to provide operating standards for member companies and to promote effective and fair legislation affecting the industry. TASC's goals are to promote good business practice in the debt settlement industry, protect the interests of consumer debtors, and educate legislators and regulators at all levels of government with respect to the issues involved in the debt settlement industry. The mission of TASC is to encourage debt settlement companies to provide services in accordance with the highest professional and ethical standards in order to retain the confidence of the public, the credit industry and local, state, and federal government. The standards TASC upholds and promotes nationwide are available on its website at www.tascsite.org.

To help ensure that the above guidelines are in fact being followed by our members, TASC started two programs of self regulation – one is a secret shopping program performed by a third party company wherein the company calls each TASC member debt settlement company posing as a consumer. The shopper makes certain inquiries and evaluates the responses on a check list to gauge whether the company is abiding by TASC standards. The second program is also performed by a third party and involves an examination of each debt settlement company member's website to ensure that the advertising and statements made on the website are consistent with TASC standards. Companies who do not pass the examinations satisfactorily are notified of the issues and are shopped again shortly afterwards. Continued failure to meet TASC standards will result in revocation of that company's membership in TASC. TASC has terminated the membership of non-compliant companies as well as imposed discipline on other members for various violations of its standards.

TASC has supported stringent regulation for debt settlement companies on the state level that provides significant consumer protections including bills that have passed and become law in more than 10 states. The most comprehensive of these bills are the Uniform Debt Management Services Act (UDMSA), which has so far passed, with TASC's support, in 5 states: Tennessee, Utah, Nevada, Colorado, and Delaware; Rhode Island has enacted the UDMSA but

given the limitation in the legislation to only the percent of savings model, not a single debt settlement company operates in that state.

B. Introduction to Debt Settlement

Debt settlement is an effective and needed debt relief option for consumers at a time when they need more options in managing their unsecured debt, not fewer options. Debt settlement does not involve mortgages, loan modification, foreclosure, or any other secured debt issues. Debt settlement serves those who cannot qualify for or afford other options such as bankruptcy[1] and traditional credit counseling[2]. Debt settlement is also effective when compared to these other debt relief options. The national rate of completion for confirmed Chapter 13 bankruptcy plans is 33%.[3] Nonprofit credit counseling companies historically have an approximate success rate of 21-26%[4]. Debt settlement completion rates for TASC members prior to the FTC Rule were higher – approximately 34.5%[5] and with the implementation of the ban on fees before settlement, may rise further still. Moreover, unlike credit counseling, even those who only complete part of the debt settlement program often benefit – for example, someone who had 10 debts coming into the program and now has 5 may leave the program comfortable that his debt is now at a manageable level. Nonprofit credit counselors often cite similar benefits of partial completion and have recently even used "completion rates" that are based on consumers completing 60% of the credit counseling program, however a failure of credit counseling programs often leads to a charge back of the concessions granted at the start of the program.

From Articles at Getoutofdebt.org

Another difference between debt settlement and credit counseling is that debt settlement is a reduction in principal of the debt, not just a reduction in the interest rate. TASC companies settled over $1 billion of debt nationwide in 2009 alone for approximately $400 million saving consumers approximately $600 million. In other words, these consumers paid creditors approximately $400 million in total satisfaction of $1 billion of debt owed.

C. General Industry Comment

1. The fee provisions in HB 72 are unfair.

The consumer protections offered by the 60+ pages of the UDMSA together with the prohibition against advance fees by the FTC rule are substantial protections for consumers even without the extra fee restrictions imposed by HB 72. Restricting the fees so drastically for debt settlement providers is unnecessary and, as shown below,

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[1] Demographic data provided by Freedom Debt Relief shows the average household income for its clients was $70,000 which is greater than the means test requirement for Chapter 7 bankruptcy

[2] Credit counseling monthly payments are often approximately 2.5% of the debt – the same amount as many individuals' minimum payments.

[3] "Bankruptcy by the Numbers: Measuring Performance in Chapter 13" by Gordon Bermant and Ed Flynn. Executive Office for the U.S. Trustees

[4] *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants*, Consumer Federation of America and National Consumer Law Center, April 2003

[5] TASC Comment Letter to FTC, October 2009.

are unfair compared to the fees for other debt relief providers. If HB 72 is unchanged, consumers in states where it is enacted will not have debt settlement as an option to manage their debts.

a. The FTC Rule regarding fees for debt settlement companies provides material and substantial protection.

TASC proposes that the FTC regulation on fees is appropriate and that no fee cap is needed in light of the complete consumer protection offered by the FTC language for the following reasons:

From Article at GetOutOfDebt.org

i. The FTC rule provides the following protections:
   (1) The fees must be clearly and conspicuously disclosed prior to the consumer entering into an agreement with the provider.
   (2) No fees are chargeable until a settlement is reached.
   (3) The consumer has another opportunity to reject the fees by rejecting the settlement. Until a satisfactory settlement accepted by the consumer is reached, the consumer pays no fees.
   (4) The consumer not only must approve of the settlement, but must affirm that approval by making a payment towards the settlement.

ii. The FTC rule imposes a fee structure that is limited in the timing of when a provider may collect fees. It also requires that fees must be proportionate to the debt settled, thus, protecting against fees being front-loaded in the program.

iii. Consumers using debt settlement services in unregulated states actually pay less than the fee caps in regulated states. Market forces do work especially when it comes to pricing. While critics may claim otherwise, when limited to the specific price of a product or service, it is hard to refute the evidence that competition sets the market price. As such, requiring a specific fee cap is unnecessary and concerns that fees will be unfairly high is unfounded.

b. It is too early to make a determination as to what an appropriate fee cap should be.

Debt settlement programs are typically approximately three (3) years in length but the new Rule has only been in effect for just over four (4) months. The fee structure is completely untested and insufficient time has passed to fully evaluate the model and what an appropriate fee cap would be. No data exists to evaluate the programs yet and there are many variables that affect the fee and the cost of providing the service that have yet to be measured. For example, individuals may stay in the program if they see better success in settling their debt. However, they may also cancel at a more frequent rate because they have nothing vested in the program. Another potential variable is

that creditors may be more willing to settle with providers who operate according to the new federal rule. However, they may also realize that providers are not getting paid and make it even harder to survive by refusing to settle. Other variables include changing creditor policies/settlement rates or individuals "working the system" to deal directly with creditors after the individual has received significant benefit from the provider's services without paying for them.

c. HB 72 eliminates one option of charging fees that the FTC Rule expressly allows.

HB 72 only permits fees to be charged as a percent of savings. The FTC Rule expressly permits a provider to calculate compensation based on either a percent of savings or a flat-fee model, requiring only that the same mechanism be employed for all debts in each consumer's program. In its initial Notice of Proposed Rule Making issued on approximately August 9, 2009, the FTC originally proposed only permitting the percent of savings model. Its Final Rule, released a year later, specifically allowed for the flat fee. This change from the original proposal acknowledges, among other things, that some certainty of cash flow is necessary for a business to survive, as well as recognizing the role and value of the marketplace in allowing consumers to choose the model which best suits their goals.

From Article at GetOutOfDebt.org

The requirement that fees be clearly and conspicuously disclosed at the time an agreement is executed, the ability to cancel an agreement at anytime, and the restriction on charging any fee until a settlement is obtained and accepted by the consumer means that the consumer always gets to choose what is in his or her best interests, regardless of which fee model is used. Consumer choice is a real protection especially when you are dealing with educated consumers[6].

d. HB 72 is more restrictive on fee caps than the original UDMSA when it should be less restrictive

HB 72 restricts the fees beyond what fees were allowed in the UDMSA prior to the FTC Rule even though the FTC Rule placed significant constraints on how and when fees could be collected for debt settlement services. With the extra constraints imposed by the FTC, the amount of the fee permitted should be relaxed, not further restricted.

One Commissioner, in discussing HB 72's fee caps with TASC recently, expressed that the FTC Rule did not change any aspect of the amount of the fee, just the timing of it, and therefore should not have a great impact on providers. This reflected a fundamental misunderstanding of how the service is performed and how a business finances its operations - the change affects everything. Significant work is performed before settlement offers are obtained and before a client accepts the settlement (See

[6] Demographic data from Freedom Debt Relief shows that 60% of its clients have at least some college level education

point 1.f. for more detail). Pre-FTC Rule, debt settlement providers would be paid as services were rendered. Now, providers will perform significant services at a cost to the provider without being paid. A substantial number of clients will inevitably cancel after receiving services and without paying for them, and that loss must be made up by higher fees. TASC has lost 70% of its membership since the FTC Rule was finalized even with no fee cap. HB 72's fee cap would put the rest out of business.

e. **The fee cap in HB 72 for debt settlement providers is much lower than what nonprofit credit counselors may charge under the Act.**

From Article at ColoradoDebt.org

Under the fees permitted in the bill *nonprofit* credit counseling companies can charge up to almost three (3) times more than debt settlement. Presumably, nonprofit fees just cover the cost of operations since they should not make any profits. That is why they get tax-exemptions. It follows that it is not possible for debt settlement companies to sustain operations at the fee caps in HB 72[7].

Comparison of the fees using $10,000 of debt:

(i). The cost of a nonprofit credit counseling program under Delaware law and the Uniform Debt Management Services Act (UDMSA) for a consumer who successfully completes the program:

(1) monthly fees of $3,050[8]
(2) payments to creditors at 15%[9] interest of $14,275[10]
(3) fair share at 8%[11] of payments of $1,140
(4) total payment including fees = $17,325
(5) total fees = $4,190.

(ii). The fees and cost of a debt settlement program for a consumer who successfully completes the program using the fee cap of 30% of savings [assumes a 50% settlement based on the balance at time of enrollment]:

(1) fee at 30%[12] of savings = $1,500[13]

[7] TASC is only aware of one provider who has publically stated it is able to sustain operations at the fee levels in HB 72. However, this provider also performs debt management services and a client who ends up in its debt settlement program has likely already paid the provider significant fees for other services prior to starting in debt settlement.
[8] 60 mths x $50 + $50 set up per UDMSA
[9] Testimony of nonprofit credit counseling agency at a committee hearing in Salem, Oregon, February 9, 2009 – the credit counselor stated she was unable to obtain concession rates better than 16% for her consumers; *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants*, Consumer Federation of America and National Consumer Law Center, April 2003 -- average of concession rates was approximately 13%
[10] Based on module of $10,000 debt amortized at 15% interest for 60 months run on Bankrate.com
[11] Fair share payments are those paid by creditors to nonprofit credit counseling services as compensation for obtaining payments on their behalf. 8% rate was taken from page 2, lines 41-43 of H.P. 895, Legislative Document No. 1289, 124th Maine Legislature – comment by Uniform Law Commission
[12] HB 72 30% of savings
[13] ($10,000 - ($10,000 x 50%)) x 30% = $1,500

(2) payment to creditors – $5,000[14]
(3) total payment including fees = $6,500.
(4) **total fee of $1,500** is almost one-third of nonprofit fees.
(5) debt settlement will also perform significant work for consumers who cancel and do not pay the provider under the new FTC rule.

f. **Debt settlement is a much more costly service to provide than credit counseling and should be paid more, not less than nonprofit credit counselors.**

From Article at GetOutOfDebt.org

Debt management and debt settlement are two different services albeit both in the debt relief industry. Since debt settlement is a much more costly service to provide, the fees need to be greater to compensate for this extra expense. HB 72 does the reverse and as such does not allow sufficient fees to sustain operations for debt settlement providers.

Debt settlement is a much more labor intensive service than debt management in large part because debt management plans are prearranged, set payment plans that primarily involve making monthly payments. Debt management can be highly automated with the use of electronic payment systems. Debt settlement plans are very individualized plans involving individually negotiated deals with circumstances that change constantly throughout the plan. CareOne, who is not a member of TASC but is a company that performs both debt management and debt settlement, states that it takes more than four times as much work to perform debt settlement. TASC further knows of debt management providers who hire one-tenth of the staff required to administer debt settlement plans for the same number of clients. Additionally, at least with respect to nonprofit providers, credit counselors receive "fair share" subsidy payments from creditors. A more detailed list of services performed by debt settlement providers is attached as **Exhibit A**. This list illustrates the labor intensive nature of debt settlement services.

Further, debt settlement providers often provide significant services to individuals who end up not paying for those services. Providers will have provided significant customer service, financial education, counseling and negotiation services without being paid. Individuals may cancel from programs at any time and reject settlement offers even if such offers are reasonable.

g. **The benefit to an individual in debt settlement should be measured by comparing the total cost of the consumer's other options.**

The way HB 72 defines an individual's "savings" in debt settlement skews the fee cap to look much higher than it actually is and the definition ignores the time value of money. HB 72 measures "savings" or the amount the consumer benefits from the program as

[14] ($10,000 x 50%) = $5,000

the difference between the principal debt when the consumer comes into the program and the payment made at settlement. If HB 72 applied to the United States national debt, and if the U.S. could pay off its debt in three years at what it owed today, HB 72 would place zero value on that transaction stating that the U.S. received no benefit. But the U.S. pays $400 billion a year in interest. So really the U.S. would benefit by $1.2 trillion over those 3 years (and trillions in future interest).

The total cost of a credit counseling plan is likewise is much greater than just the principal amount of the debt because (1) there is no reduction in principal and (2) interest continues to accrue and is paid as part of the service. If HB 72's treatment of debt settlement were applied to credit counseling, credit counseling would be providing a negative benefit. Because debt settlement involves a reduction in the amount owed, it provides significantly greater consumer benefit even including fees. For instance, if there was a 50% reduction in principal and a fee of 25% of principal (only paid if the consumer accepts settlement), the total consumer cost for debt settlement would equal $18,750 compared to $37,180 for credit counseling (see chart below). The below chart illustrates the cost of other debt relief options. The true benefit of debt settlement should be compared to these numbers and not to the balance of debt an individual enrolls at the beginning of a program.

From Article at GetOutofDebt.org

$25,000 debt	**Debt Settlement**	**Credit Counseling**	**Debt Consolidation Home Equity Loan[1]**	**Pay Minimum Due @ 2.5% of Balance**
Months to pay off debt	36	60	120	565 Mo | 47 Yrs
Interest Rate	0	13%[2]	9.00%[3]	21.00%
Monthly Fees	0	$3,050.00[5]	$1,500.00[6]	
Fair Share by Creditor to nonprofit CCCS		$2,730.00[7]		
Total fees	**$6,250.00[4]**	**$5,780.00**	**$1,500.00**	
Interest[8]	**0[10]**	**$9,130.00[8]**	**$13,000.00[8]**	**$57,377.37[8]**
Amount of Debt on Day 1	$25,000.00	$25,000.00	$25,000.00	$25,000.00
Total Cost:	**$18,750.00**	**$37,180.00[9]**	**$39,500.00**	**$82,377.37**

[1] Assumes good credit and sufficient home equity.
[2] Testimony of nonprofit credit counseling agency at a committee hearing in Salem, Oregon, February 9, 2009 – the credit counselor stated she was unable to obtain concession rates better than 16% for her consumers; *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants*, Consumer Federation of America and National Consumer Law Center, April 2003 – average of concession rates was approximately 13%.

h. **A fee structure mandating fees as a percent of savings frequently fails to consider what would be in a consumer's best interest.**

Sometimes a lower settlement is NOT in the consumer's best interest. Because the consumer may not be able to afford to pay one lump sum, a lower settlement offer may not do the consumer any good. Sometimes the consumer is better off taking a higher settlement but that is paid over a longer period of time (because of the consumer's cash flow). Yet limiting fees to a percent of savings essentially tells providers NOT to explore these types of arrangements and thus are not in the consumer's best interest. Again, an individual can choose to accept or reject any settlement and thus accept or reject any fees that she has to pay under the FTC Rule which should be the best protection for the consumer: consumer choice.

i. **HB 72 further restricts the ability to collect fees even when deemed earned by the FTC Rule to the detriment of both consumer and provider.**

The FTC deems the fees for debt settlement services earned once an individual accepts a settlement and makes at least one payment towards that settlement. In contrast, HB 72 limits the collection of fees for installment payments to equal payments with each installment. For instance, if a $4000 debt was settled for $2,000 payable in 10 installments of $200, the fee must be collected one-tenth with each payment.

The FTC Rule recognizes that a debt settlement provider's work is fully performed at the time the settlement is finalized in having provided client service and support, negotiations and settlement work. The payment of the settlement itself after the first payment is very little work or may be entirely controlled by the individual himself. Unlike debt settlement, credit counseling/debt management plans involve very little advance work because the credit counselors have prearranged agreements with creditors that have predetermined sets of criteria. The main service provided by credit counseling debt management plans is sending out the monthly payment to creditors

[3] Per Bankrate.com for Denver, Colorado area – Wells Fargo Bank – January 2011

[4] Assumes a fee of 25% of debt ($25,000 x 0.25).

[5] 60 mths x $50 + $50 set up per UDMSA

[6] Assumes 10 year loan and total fees 6% of loan value

[7] 8% of client payments fair share - See page 2, lines 41-43 of H.P. 895, Legislative Document No. 1289, 124th Maine Legislature.

[8] Interest calculated by using Bankrate.com or CNNMoney.com calculators, does not include potential late fees, penalties, other costs.

[9] $25,000 principal + $9,130 interest + $3,050 fees = $37,180. Fair share comes out of the principal/interest payment.

[10] The 50% settlement figure is based off of debt at time of enrollment and any interest accrued is factored into the settlement percentage for this example. Similar numbers can be calculated using accretion rates and corresponding settlement percentages

From Article at GetOutOfDebt.org

pursuant to the plan.

HB 72 restrictions prevent flexible arrangements that are to the benefit of both consumer and provider. If a provider made a settlement involving 2 payments and wanted to take the fee at the end of the 2nd payment HB 72 prohibits it. If a client was in month 3 of a 6 month ongoing installment settlement and wanted to take a settlement offer for a second installment settlement of 8 months, there would be an overlap of 3 months when the client was paying on two settlements. In order to take this deal, the provider may be willing to defer fees until the settlements no longer overlapped, but HB 72 would prohibit that kind of arrangement. Or the provider may settle a client's last debt for an installment of 12 months, and the client wants to pay the fees in two payments and be done with it. HB 72 also prohibits that arrangement. There are many examples of how providers work with the consumer's payment schedule that would be a win-win for both. This section prohibits these kinds of flexible arrangements even though the provider has done its job in getting a settlement the consumer wants. The result is providers might not explore settlement options that would otherwise be in the consumer's best interests. TASC recommends this language in HB 72 be stricken.

From Articles at GetOutOfDebt.org

j. The fee structure is not comparable to an attorney's contingency fee.

(i) The attorney is paid costs in addition to fees.

(ii) The attorney is not forced to charge a contingency fee.

(iii) An attorney's fee is not capped.

(iv) An attorney may place a lien on any future recovery for work performed by that attorney. A debt settlement provider has no right to fees for work performed even if the work performed leads up to a settlement after termination of the agreement.

(v) An attorney charging a contingency fee takes a fee on the entire recovery, not just the incremental benefit the individual realizes. For instance, an attorney gets a cut of actual damages like lost wages, medical bills etc. that are "out of pocket" losses an individual may have suffered.

(vi) The fees are not only taken from damages as of the date the client signed up with the attorney. For instance, if the client continues to incur medical bills and/or lost wages during the representation, the attorney's fee is part of that as well.

(vii) An attorney collects his or her contingency fee from a recovery of money that is paid in trust to the attorney. A debt settlement provider must pursue fees from the client.

2. The true story and statistics about complaints.

The industry's opponents have always cited significant complaint volume as support for their positions yet relied only on individual cases or anecdotal evidence. Recent

statistical evidence shows the contrary.

a. An FOIA request made to the FTC regarding the volume of complaints against debt settlement companies reveals very few complaints. In response to the request, the FTC provided a breakdown of complaints by company for 2009 of the Top 100 complaint targets in the category of "debt negotiation/credit counseling" complaints. There are no debt settlement companies in the Top 20, and the highest number of complaints received by any debt settlement company is 47 compared to the 3209 complaints received by the highest listed company, HSBC. In fact, the top four listed companies were all large banks. Debt settlement companies appear to comprise less than 20% of the number of companies on the list and constitute approximately 5% of the total number of complaints. (See attached **Exhibit B** - FTC response to FOIA request).
b. Likewise, Maryland Attorney General statistics received pursuant to an FOIA request by another organization, USOBA, reveal that once the complaints against Richard Brennan and his law firms[15] are removed (who was shut down, disbarred and jailed after enforcement action was taken against him), only approximately 71 complaints over a three (3) year period were made against for profit debt settlement companies, or an average of 20 complaints a year. (See attached **Exhibit C** - summary of results of FOIA request by USOBA).
c. The BBB statistics also show relatively low numbers of complaints. According to the BBB's 2009 data, debt settlement ranked 117th in number of complaints. Industries rated worse include at #3 banks, #6 collection agencies, #15 credit card companies and #86 credit counseling. (See attached **Exhibit D** - 2009 BBB complaint statistics report).

So, even before the FTC rule was promulgated, there was not a significant complaint volume. Now with the FTC rule, there is significant protection in place. Thus, while TASC supports strong regulation, it is not necessary to impose overly burdensome restrictions.

3. Myths about debt settlement.

Critics have additionally attacked debt settlement by using the following arguments:

a. Debt settlement takes advantage of uneducated, low income individuals.
FACT: Debt settlement clients are not usually low income individuals. In order for an individual to need debt settlement services, the person generally has had a decent paying job to qualify for enough credit to get in trouble. Most companies do not take clients with less than $10,000 in debt and some have an even higher threshold. The average debt in a debt settlement program ranges

[15] Brennan would not be covered by the UDMSA as a licensed attorney at the time of his actions.

From Article at GetOutOfDebt.org

from $20,000 to $30,000 usually comprised of 6-7 credit cards. Debt settlement clients often do not qualify for Chapter 7 bankruptcy because of the means test (that they make more than the median level of income for the State) and have usually experienced some financial hardship such as a divorce, job loss, or medical issue that created the financial problem

b. There is no reason to use a debt settlement provider since an individual can negotiate his or her own debt.
   FACT: Ironically, this attack is usually posited by nonprofit credit counselors whose services usually consist of budget planning and a debt management plan involving, at best, concessions of reduced interest rates and a payment plan of equal monthly payments over 5 years. While debt settlement can be done by an individual himself, debt settlement clients usually are in a situation where they are seeking assistance with their debt and do not want to do it on their own. Further, negotiating down the principal of a debt is more difficult than asking for a reduction in interest and the process of debt settlement involving individual negotiations is much more complex than setting up a credit counseling payment plan. Debt settlement providers also provide an expertise and knowledge that helps provide an advantage in many ways including knowing who to contact, when to negotiate, tendencies of certain creditors and the many changing policies of creditors.

From Article at GetOutofDebt.org

c. Debt settlement causes individuals who would otherwise pay their debts timely to default on their debt.
   FACT: USA Today reported in March 2010 that creditors wrote off over $80 billion in credit card debt in 2009 alone. The reasons are many including job loss, health problems, divorce, and rising costs of other debts such as mortgages. However, some of the problems are a result of creditors own actions or changing policies. Increased interest rates or increased minimum payment requirements imposed by creditors often result in debts that were formerly affordable for a consumer to become overwhelming. For example, if a creditor lowers a consumer's credit limit, his debt to available credit ratio goes down which hurts his credit score. A creditor now uses this lower credit score as a basis for raising interest rates. Another creditor may also see the lower credit rating or adverse action by other creditors and follow suit. So it ends up being a domino effect and consumers cannot afford their debt payments anymore even though nothing much has changed in terms of their income or payment history. Whatever the reason, millions of Americans are unable to pay their debts and are dodging collection calls with or without debt settlement.

d. Debt settlement is not effective because interest and late fees continue to accrue.
   FACT: Interest and late fees do accrue, but interest accrues with any debt relief option a consumer may choose. Some critics have misrepresented the problem – (See TASC Response to CRL). Interest and late fees do not continue to accrue

for the life of the debt – once the debt is charged off (typically when debt has been 6 months late) the debt is written off and usually the contractual terms expire[16]. Again, the debtor would normally have experienced the same charges regardless of the debt settlement program. Further, critics demand the need to measure "success" of the client as of the time the client enrolls in a debt settlement program, and thus claim that fees should be reduced to a level so low that the consumer realizes significant savings off of his or her original balance. The problem is that position fails to consider the time value of money and the consumer's other options. In every option, interest is a significant cost. See chart in 1(d) above.

TASC continues to advocate that given the combination of (1) strong regulation of all other matters through licensing, and (2) the prohibition of charging fees until a settlement is reached that the consumer previously agreed to, together is comprehensive consumer protection that negates the need for a hard fee cap. Note in unregulated states, fees are actually lower because of competition.

4. **Testimonials by consumers who have been helped by debt settlement.** TASC has numerous testimonials in favor of debt settlement and positive testimonials greatly outweigh the negative testimonials. As an example, the FTC sought comment on its proposed rule and received approximately 200 consumer testimonials regarding debt settlement of which only 4 were negative and of those, 3 of the negative comments focused on creditors. Attached as **Exhibit E** are just a few examples of positive testimonials. Also see www.consumercreditrights.org for video and audio recordings of consumers who have had positive experiences.

From Article at GetOutOfDebt.org

D. Specific Comment and proposals regarding HB 72

TASC proposes the following amendments. Additions noted by underline and deletions by strikethrough.

1. Section 2402A, subsection (1)(B)(iv). Definition of "affiliate"

(iv) ~~subject to adjustment of the dollar amount pursuant to Section 32(f), a person that receives or received more than $25,000 from the entity in either the current year or the preceding year or~~ a person that owns more than 10 percent of, ~~or an individual who is employed by or is a director of, a person that receives or received more than $25,000 from~~ the entity in either the current year or the preceding year;

[TASC Comment: The definition of "Affiliate" in this subsection includes an entity that "receives or received more than $25,000 from the entity in either the current year or the preceding year

[16] The debtor may still incur collection charges.