February 22, 2011

Good morning. My name is John Daetwyler, and I serve as General Counsel and Corporate Secretary for Cornerstone Financial Education, a non-profit agency providing money management education, credit, housing, and bankruptcy counseling services here in Austin. Cornerstone's services have been approved by the U.S. Department of Housing and Urban Development, and by the Executive Office of the U.S. Trustees. My agency is also a member of the Association of Credit Counseling Professionals, or ACCPros, and it is also on their behalf that I offer this testimony. I would first like to thank the Chairman and Members of the Committee on Business and Commerce for allowing me to appear today.

ACCPros is a trade group formed specifically to promote the best practices of the debt relief profession. Our association is currently comprised of more than thirty agencies, both non-profit *and* for-profit, and although our members are primarily credit counseling organizations, we are open to settlement companies as long as they abide by all state and federal laws, particularly the Federal Trade Commission's revised Telemarketing Sales Rule (TSR), which prohibits the taking of fees in advance of settlement. That prohibition, which is not present in SB 141, is the reason our organization is strongly opposed to this proposed legislation.

The FTC specifically included an advance-fee ban in its revised TSR as a result of numerous consumer complaints about abusive settlement company practices, which typically involved the assessment of very high enrollment and monthly fees. In the FTC's July 29, 2010 release regarding its Final Rule, Chairman Jon Leibowitz stated, "This rule will stop companies who offer consumers false promises of reducing credit card debts by half or more in exchange for large, up-front fees. Too many of these companies pick the last dollar out of consumers' pockets—and far from leaving them better off, push them deeper into debt, even bankruptcy."

The Better Business Bureau has also taken aim at this abusive practice. In a March 2009 BBB web article, the BBB states, "…[C]onsumers who paid for debt negotiation services found out that the company never contacted their lenders, but instead, took their money and ran. Because the debt negotiation company made it sound like they had everything under control, the consumer stopped talking directly with their lenders and ended up slipping deeper into debt. Relying on debt negotiation firms could also put a dent in a consumer's credit report."

The goal of the bill should be to adequately protect the consumer rights of Texans and prevent them from being placed in a position of predation. The doomsday cries of the settlement companies stating that some settlement companies will go out of business if they have to change the way they assess fees must be balanced with the general welfare of consumers. There are several settlement companies that already operate on the so-called "success-fee" or contingency fee basis (that is, a fee is taken *after* the settlement

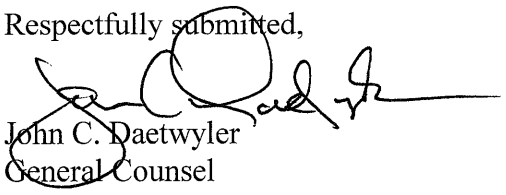
has been secured). It is the common practice in most reputable industries to be paid only after successfully providing the consumer with its services. Companies operating in this more traditional manner are quite capable of operating without experiencing undue hardship. Furthermore, as more states pass legislation banning the taking of advance fees, in an effort to become consistent with the existing federal rules, many more settlement companies will simply need to make the adjustment in order to continue doing business.

While ACCPros readily acknowledges that there are circumstances when debt settlement is a viable option for consumers to consider, we feel that any legislation that allows for advance fees, whether SB 141 or any bill that may be submitted as a substitute, must *not* be recommended by this Committee.

It should also be noted that a new version of the Uniform Debt Management Services Act is now in circulation, and it has been revised to include the same advance-fee prohibitions that are present in the FTC's rules. ACCPros urges the Committee to delay consideration of SB 141, or any substitute, and to instead consider the new UDMSA. Such could easily be accomplished within this legislative session, and we would be willing to participate in any working group deemed necessary to expedite that process.

I would like to thank you again for the opportunity to provide testimony today on this important issue.

Respectfully submitted,



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