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**Board Certified-Consumer Bankruptcy*

WRITTEN TESTIMONY OF ATTORNEY DAVE FALVEY

In Support of Raised H.B. No. 6482, An Act Concerning the Uniform Debt-Management Services Act.

Banks Committee Public Hearing

February 24, 2009

Senator Duff, Representative Barry, and members of the Banks Committee, thank you the opportunity to submit written testimony in support of Raised H.B. No. 6482, *An Act Concerning the Uniform Debt-Management Services Act.*

By way of introduction, I'm a consumer bankruptcy attorney and have been board certified for more than 10 years and in the practice of law for 27 years. I'm writing about my experiences my clients have had with debt settlement companies.

I am writing this letter in order for you to understand that Debt Settlement Companies are scamming the public and it's 'raining fraud and scam' in the marketplace. Every day, I have at least one client who comes to my office who has been scammed by a Debt Settlement Company. I concentrate my practice of law in the area of consumer finances and I can't emphasize enough how necessary it is to pass legislation to prevent Debt Settlement Companies from claiming that they aren't 'Debt Adjusters' under Connecticut's law. The Debt-Management Services Act will close this 'legal loophole' and hopefully you will put real penalties into this law in order to give it 'teeth'. Of course, a law without a penalty is no law.

There's considerable confusion in the marketplace between Non-Profit Debt Management Companies and For-Profit Debt Settlement Companies because their names sound so similar. A 'Debt Management Company' helps consumers repay their credit card debt and the consumer repays 100% of their debts. A 'Debt Settlement Company' settles your debts for approximately 50% of the amount owed. Non-Profit Debt Management Companies are called under Connecticut law 'debt adjusters' and you can go the Connecticut Department of Banking and view approximately 30 licensed and bonded Debt Management Companies.

The Non-Profit Debt Management Company (also, called Credit Counseling) collects money and holds it in a trust account and the trust account is regulated by law which states that money has to be paid to creditors every month and again, under our law this company is called a 'debt adjuster'.

The Debt Settlement Companies arranges for the consumer to open a 'savings account' in the consumer's name. The Debt Settlement Company is given a Power of Attorney by the consumer to access his/her savings account. Every month, money is withdrawn electronically from the consumer's personal checking or savings account and deposited into a 'savings account' at another bank. The Debt Settlement Company then electronically withdraws money from the consumer's savings account and deposits the money into its office account. Since there is no trust account, the Debt Settlement Company argues that they are not a 'Debt Adjuster' but a 'Debt Negotiator' because the banking statute only regulates 'trust accounts' and not individual savings accounts. However, as a practical matter, even though the 'savings account' is technically in the name of the consumer, not one of my clients has had the ability to access their account and withdraw money. But the Debt Settlement Company can access that account and withdraw money without any problem. The present law allows the Debt Settlement Company claim that

they aren't 'Debt Adjusters' under Connecticut law and; therefore, they argue, they don't have to be licensed and bonded by the Banking Commission. Obviously, this is what is called a 'legal loophole'. The Debt Management Services Act would clearly close this 'legal loophole' and bring their activities withing the jurisdiction of the Banking Department. I understand that there are states where the Debt Management Companies have to be licensed by the state. And, of course, most states don't require licensing. Therefore, with this 'legal loophole', a major business has been created through the use of this 'loophole' and which is unregulated. Therefore, they consumer is being gouged with exorbitant fees. I called this the latest 'get rich quick scam' in America since the Ponzi Scheme was invented.

The Uniform Debt Management Act which you are considering has been drafted in order to stop the fraud and scam being committed everyday, 24 hours per day through the medium of direct mail, television and, of course, the Internet. If you go to Google and type in 'Debt Settlement Fraud', you will be introduced to the Federal Trade Commission's website and the numerous actions it has been taking against these scam artists. Unfortunately, due to my schedule conflicts, I can't possibly attend your hearing.

It is my understanding through my research that TASC (The Association of Settlement Companies-the Trade Group for Debt Settlement Companies) and found at www.tasc.org is raising considerable money to lobby against the full impact of the Debt Management Services Act because if this Act becomes law, they will no longer be able to charge outrageous fees under this law.

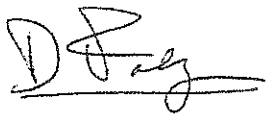
The manner in which these unscrupulous telemarketing scam artists are making their money is by charging all their large fees up-front before they start any work for the client. And they know that **only 5 out of a 100 clients will complete their debt settlement plan.** There's a completion rate of 5% and the drop rate (consumers dropping out or off the Debt Settlement Plan) from these companies which is very high. The drop-rate for Debt Settlement Companies is a closely guarded secret but I assure you that it is very high. And there are companies literally raking in millions of dollars annually for their boiler room operations. They prey on peoples' fears of filing bankruptcy and they prey on the good and honest nature of people who sincerely want to pay their debts during this hard financial times but these people can't meet the standard of paying 100% of their debts.

You see these Debt Settlement Companies advertising every day of the week on television and not one of them comes under the jurisdiction of the Connecticut Banking Department or at least that's their position because they will tell you that they aren't 'debt adjusters' because technically they don't 'hold in trust' the consumer's money. Yet, my clients will tell you that as a practical matter, the money which they send to these companies can't be released to them even though accounts are supposedly set-up in their names.

If you wanted, I believe that some of my clients would be willing to come before you to give testimony but I simply haven't had enough time to organize this type of effort due to the fact that my clients would have to take time-off from work to come before you. I would suggest that you hold hearings in the evenings around the state on this issue and I'm certain that you'll get an earful on all the scamming which is rampant.

Thank you for your consideration of ths measure.

Very truly yours,



Dave Falvey

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