



SENATE COMMERCE COMMITTEE

DECEMBER 15, 2022

TESTIMONY IN SUPPORT OF SENATE BILL 2989

Chairwoman Pou, Vice-Chair Cryan and members of the Senate Commerce Committee:

Thank you for the opportunity to testify this afternoon in support of S2989, legislation that would enact a licensing regime for the debt resolution industry in New Jersey. My name is Steven Boms, and I am the Legislative Director of the American Fair Credit Council, the trade association that represents America's leading debt resolution companies.

New Jersey is one of the only states in the country that prohibits debt resolution companies from offering their services to its citizens. All of New Jersey's neighboring states permit our member companies to operate, and therefore you and your constituents may see advertising for our companies on television or the radio. Unfortunately, New Jersey residents cannot access the services of our members due to legislation that was enacted in the 1970s, long before the federal government imposed stringent regulations on the industry.

S2989 would enable New Jersey consumers in financial hardship to access an additional option to address their unmanageable unsecured debts and would align New Jersey with the vast majority of states across the country. And the consumer impact is significant. Nationwide, the nearly 80 AFCC member companies resolve more than \$3 billion in unsecured debt annually, saving consumers more than \$1.6 billion each year. Across the country, AFCC member companies are currently helping hundreds of thousands of families manage difficult financial situations within a highly regulated environment.

Amidst a growing debt crisis that has been exacerbated by historically high inflation and recovery from the Covid-19 pandemic, AFCC member companies work with consumers who have experienced a financial hardship to achieve reductions in the amount that they owe to their unsecured creditors. This service provides debt resolution clients with much-needed relief from the threat of ruinous litigation or destructive bankruptcy and confers a certain peace of mind. Debt resolution should be seen as the opportunity for consumers in financial crisis to restructure their debt obligations in a dignified and efficient manner, in all cases with the participation and consent of their creditors. Said differently, debt resolution can be thought of as a private sector alternative to bankruptcy.

Unfortunately, there are few options available to consumers in financial distress. For those Americans who have, for example, suffered a loss of income or incurred significant, unforeseen medical expenses and can no longer afford to pay their unsecured debt, personal bankruptcy is too often the only path available. As many New Jerseyans can personally attest, the long-term financial consequences of filing bankruptcy are significant and can substantially limit the future economic opportunities of the filer for up to a decade. And this assumes that the consumer can meet the means test of the bankruptcy code, which many consumers cannot.

By the time a consumer reaches out to a debt resolution provider, they are typically delinquent on at least one – and, frequently, most – of their credit cards, and owe tens of thousands of dollars to multiple creditors. Our members’ customers are not looking for an easy way to skip their bills: in the midst of significant financial hardship, they are committed to resolving their obligations by paying what they are able to afford. Debt resolution offers a way of meeting a moral obligation: the opportunity to pay something, if not everything, in a dignified and economically reasonable manner. To be clear, debt resolution is not the most appropriate option for every individual or family that is in debt. Bankruptcy may be appropriate for a certain set of families who are in acute financial hardship and credit counseling may be appropriate for others, who may be able to navigate their financial challenges with a less intensive program. In fact, only about 12% of individuals who contact AFCC member companies actually meet the suitability criteria of our member companies and enroll in a debt resolution program.

The debt resolution industry is tightly regulated at the federal level by the Federal Trade Commission’s (“FTC’s”) 2010 amendments to the Telemarketing Sales Rules (“TSR”) which modernized this industry and, frankly, resulted in many smaller and less professional entities leaving the marketplace. Under the revisions to the TSR, debt resolution companies are barred from assessing their customers any fees or accepting any compensation of any sort until: 1) a settlement on an account has been reached; 2) the consumer has accepted the settlement; and 3) the consumer has ratified his/her acceptance by making a payment to the creditor towards the settlement. To be clear, this test must be met for each individual debt enrolled in a debt resolution program before any fee may be collected for that particular account. Debt resolution is therefore one of the only products in the financial marketplace whose providers, by federal law, must deliver the benefit of their service to their customers before they are legally permitted to charge for their service. For this reason, the interests of a debt resolution company and its clients are aligned. We are paid only when our client accepts an offered resolution. Clients know the cost of the service prior to the start of the work and pay it only once they’ve agreed to a resolution of an individual debt. The federal rules also allow consumers to withdraw from a debt resolution program at any time, for any reason, without penalty.

The 2010 TSR amendments, which banned advance fees, were a sea change for the industry, resulting in a shifting of all economic risk to the debt resolution service providers. The data demonstrably shows our value to consumers: an independent study published earlier this year found that debt resolution, on average, saves consumers between 30 and 35 percent of their total

enrolled debt levels – **including** fees. And, importantly, under the FTC rules, debt resolution customers have the right to reject any proposed settlement at any time, for any reason. The TSR also requires that any funds deposited by a consumer in a debt resolution program be kept in an FDIC-insured account that the consumer controls at all times. Debt resolution service providers *never* touch consumer funds.

New Jersey implemented a statutory framework prohibiting our industry from working with its citizens in the 1970s. New Jersey's Debt Adjuster's Law has not been revisited since the imposition of the stringent federal regulations of the TSR in 2010, despite the vast majority of states across the country, including New Jersey's neighbors, such as Maryland, Delaware and Pennsylvania, having revisited their own laws and regulations to permit their citizens to take advantage of the critical services the AFCC's member companies provide. While it is true that consumers in New Jersey may currently access non-profit credit counseling services, these programs do not offer consumers the ability to reduce their overall debt load; instead, they provide consumers with a longer time horizon with which to pay the full amount they owe, perhaps at a reduced rate of interest. For consumers who enroll in debt resolution programs, significantly more assistance is required to help them out of their financial hardship.

S2989 would modernize New Jersey law to allow New Jerseyans to have one more tool in their toolbox to deal with their unsecured debt and would provide, for many, a path to avoid personal bankruptcy. The bill would both ensure harmonization with the federal framework and would provide the New Jersey Department of Banking and Insurance with oversight and licensing authority over the industry. An identical bill was released unanimously by both the Assembly Financial Institutions and Insurance Committee and the Senate Commerce Committee, with certain amendments mirroring the federal regulations, in a previous session.

As the consumer debt crisis continues to worsen across the country and New Jersey, we hope the committee will release S2989. I would be very happy to answer any questions you may have.