2011 HOUSE JUDICIARY

HB 1038

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1038
January 5, 2011
12601

☐ Conference Committee

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will open the hearing on HB 1038.

Vonette Richter, Legislative Council: Neutral, explained HB 1038 (see attached). This bill is the product of the Interim Judiciary Committee. That committee was assigned the responsibility to review and study the feasibility and desirability of implementing the Uniform Debt Management Services Act, which was one of the recommendations of the Uniform Laws Commission. The committee reviewed this bill and they worked closely with the Dept. of Financial Institutions and Parrell Grossman, Consumer Protection and Antitrust Division, in the office of the Attorney General. Those two agencies took that Uniform Act and reviewed it; they came back to the committee with a recommendation that there were portions of that bill that they weren't comfortable with since other states were having issues with the Act. They prepared a bill draft using portions of that Uniform Act as well as implementing current law and I believe that they adopted into that bill draft, some legislation that was enacted in Illinois. That compilation of sources is what became the bill draft you have in front of you. The bill draft would create a new chapter to Title 13, it would become 13.11. That chapter begins in section 2 of the bill; actually section 2 is the remainder of that bill, creates a new chapter. The handout I gave you is the excerpt from the final report of the Judiciary Committee with all the background, and analysis of the testimony and committee considerations, as well as their review of the bill that you have in front of you. I will briefly go through the bill. This language was not drafted by Legislative Council. When I refer to a section of the bill, I am referring to the sections of this new chapter that were created. For example, on line 15 on the first page, it's 13.11.01, that's the new section one in that chapter. So I will refer to them by those sections and will try to point out the page numbers at the same time. Beginning with the first 3 or 4 pages, we have the definitions that would apply to this new chapter. A couple of definitions that are especially relevant to this bill is the definition on page 2, line 25 is the definition of Commissioner, that's the Commissioner of the Dept. of Financial Institutions, and that would be the agency that would be in charge of the regulation, licensing, and enforcement of the whole debt settlement provider process. On page 3, line 5, the definition that is subsection 6 is the definition of a debt settlement provider. As you can see, it means any person engaging in or holding it out as engaging in the business of providing debt settlement services in exchange for a fee or compensation. The subdivisions (e) through (h) which continue on the next page are those entities or professions that would be exempted from this act. The definition on page 4, line 4, which is the definition of debt settlement service, which defines what these services are that debt settlement providers provide; again there are exclusions

beginning on line 19 of those activities that do not fall under the definition of debt settlement service. Continuing on past the definitions, section 2 provides that it's unlawful for a debt settlement provider to do business in this state without a license. This is an important difference from the Uniform Act. I understand that they require a registration. This would be part of the licensing process. It also provides that debt settlement providers are deemed to be able to do business in the state, if the debtor resides in the state. The next sections 3, 4 and 5, which are pages 6 and 7, are the application process that this provider would have to go through to become licensed in ND, as well as the fees that they would have to pay for licensure and any bond requirements, the qualifications for the provider. The next three sections, 6, 7 and 8, which are essentially pages 7 and 8 of the bill, provides for the renewal of a license and any licensing reporting requirements. Sections 9, 10 and 11 of the bill provides for the authorization of the Commissioner to revoke, suspend or call for the surrender of the license, based on various violations. Section 12, which is in the middle of page 10, provides for the restrictions on advertising and marketing practices that the debt settlement provider can do while doing business in the states; limitations on what claims they can make regarding the services they can provide. Sections 13 and 14, provides for the contract records and trust fund requirements of the debt settlement provider. That takes us up to section 15 which is on page 12, in the middle; a requirement of good faith. The next section, customer service, requires this debt settlement provider doing business in the state, to maintain a toll-free communication system that is staffed during ordinary business hours. Section 17 requires the provider to make certain pre-sale consumer disclosures and warnings regarding the debt settlement process and how it might affect the consumer, including the verbatim language that must be provided to the consumer. As you can see on page 14, in all "caps" is the actual notice that must be given to a consumer, before they enter into a contract with a debt settlement provider. Section 19 lays out the elements that must be included in the contract between the two parties, on pages 15, 16 and almost down to the bottom of page 17 are the contract requirements. Section 20 provides for the consumer's rights to cancel the contract and the fees that consumers are entitled to have returned to him/her upon cancellation. It provides for the fees that can be retained based upon the amount of services that have been provided up to that point, and provides that any refunds required under that section must be made within 7 days after the notice of cancellation. Section 21 establishes the fees that a provider may charge the consumer, provides a maximum upfront fee of $100 and that a settlement fee may not exceed 15% of the savings. Section 23 gets into the penalties and prohibited acts and practices that would result in penalties for the provider. Sections 26 and 27, on the bottom of page 22, are the powers of the Commissioner in enforcing this act, their powers of investigation, serving cease and desist orders upon the company, the provider. The authority to suspend, deny, revoke, or condition any renewal of licensure. Section 27, which begins on line 25, on page 23, provides for the criminal penalties for violations of the chapter. If you will notice on page 24, line 5, subsection 3 authorizes the attorney general to also enforce the chapter; so both the commissioner and the attorney general would have enforcement authority under this bill. Section 28, line 11 provides for voidable contracts, the conditions under which a contract would become voidable and then the last section creates a private cause of action against the provider. That is a very brief overview of a very complicated bill.

Rep. Boehning: On page 23, lines 26-28, I know in administrative rules this last interim we were talking about fines and charging people with misdemeanors, felonies, etc. Is this

commission going to be able to charge these people with a class C felonies, is the court going to do it, or how is this going to be handled. Are we going to have a commission with one person, who would be able to charge the provider with the class C felony?

Vonette Richter: The attorney general has the power to do it as well as the commission.

Rep. Koppelman: I'm not sure if this relates to Rep. Boehning's question or not, but I think what he's driving at is the administrative rules committee had some concern and I think others in the legislature as well, about criminal penalties being assessed by rule, and I think it refers specifically to rule in the bill.

Vonette Richter: That's a good point. Maybe that would have to be an amendment that would have to be made that it couldn't be based on a rule.

Rep. Koppelman: I think this department, in particular, there's been a lot of discussion on the administrative rules committee in recent years, particularly about the fact that that office was creating policies that they treated as rules, and they were enforcing them as rules and of course, if they're not adopted as administrative rules, they don't carry the force and effect of law; so there was a lot of controversy – they were adopting rules at their national association. I think it advised and just enforced them as if they were part of the administrative code. So that would come into play, particularly with this agency as well.

Rep. Klemin: In response to Rep. Koppelman's question, I wasn't present at all the administrative rules committee meetings, but I think what you are really talking about is the securities commissioner, and not the Dept of Financial Institutions.

Rep. Koppelman: Okay.

Chairman DeKrey: Thank you. Testimony in support of HB 1038.

Parrell Grossman, Director, Consumer Protection and Antitrust Division, Office of Attorney General: (see attached testimony and exhibits). To add clarification to Rep. Boehning's question to Vonette Richter, I believe in this particular instance, if the Commissioner thought a rule or probably more likely a statute was violated, they would make a report to the local law enforcement , police department or sheriff, or the Bureau of Criminal Investigations, etc. The matter would be investigated and if a violation was determined to be found, it would be forwarded to a state's attorney for review, and the state's attorney would make a decision at that particular time on whether to prosecute or not. The reason I say "more likely" a statute than a rule, I think Rep. Koppelman raises the point about what would be the force of the rule, and technically under this language, yes, if it was a rule that was properly implemented by the Dept of Financial Institutions and approved through the legislative process, and the Dept of Financial Institutions felt strongly enough, I suppose they could refer that for investigation and possible prosecution. I simply see that as something that would be reserved. More likely, for a serious violation of this statute, we all know that state's attorneys have significant priorities with other types of cases and probably wouldn't act on something like this absent a very compelling case involving substantial loss to consumers. That is kind of my best guess. I hope that provides some clarification on

that particular point. I appear in support of this bill (went into testimony) (went through the suggested amendments).

Rep. Delmore: Have you ever worked with a TASC you eluded to, I think most of this committee got their printout that they sent. I went through some of it this morning. They seem to represent a lot of companies; have you dealt with the TASC or with specific companies under their prevue. What is some of the background/history?

Parrell Grossman: I have not specifically dealt with that entity, they reached out to us and wanted to have a discussion with Commissioner Entringer and the Attorney General's office. I believe we are going to have a meeting on Friday, January 7, 2011, and almost immediately after they made that call, they submitted their comments. I have some understanding of what they do through my experiences with the National Association of Attorneys General working with my colleagues throughout the country. They are really a trade association of debt settlement entities and their job is to put the best possible face or spin on debt settlement services. I am certain that they probably do have legitimate members who provide some legitimate debt settlement services. However, again, I ask you to bear in mind that the information provided in the GAO report suggests that these members aren't adhering. There are no real enforcement mechanisms. I suppose that they could dismiss you as a member. So as that trade association, I think they probably present it themselves to other attorneys general and this state attorney general, that they can resolve issues through self-regulation. They adopt these strict standards that their members adhere to and that we don't really need this legislation. I think is probably the jist of what their proposal is. Obviously, they don't like the ban on up-front fees. They would rather continue to be able to collect those fees and in that regard, we would remind you of the experiences of ND consumers, and consumers throughout the country, as very well detailed in that GOA report, suggests that consumer after consumer pays thousands of dollars, never gets any debt settlement services, never gets their money back. I don't have an intimate knowledge of that particular organization and we're happy to discuss it with them, but I expect that they would like ND to adopt the model rule.

Rep. Klemin: I have a couple of questions. One, as I understand it, the for-profit debt settlement providers are not currently regulated under ND law, it's only the non-profit counseling services, is that correct.

Parrell Grossman: I believe that is probably correct. The reason I say "probably" is because I think the definition of debt adjusting could be more clearly worded. I think they are probably regulated under the criminal statute in 13.06, but not regulated to the extent that there is any control or authority over the amount of fees or exactly what they do. I think they fall under that statute, if they are a for-profit and they can't do it; if they are a non-profit, then they could operate under 13.06.

Rep. Klemin: So what this bill would do then would be to allow those companies to actually do business legitimately in ND, provided they are licensed and follow the provisions of the statute that this would enact.

Parrell Grossman: That is correct. This bill does present an opportunity for for-profits to engage in debt settlement services in this state.

Rep. Klemin: In a service that right now appears that they are not authorized to do it in ND, but are doing anyway.

Parrell Grossman: That is correct; I don't recall the exact number of settlements we have engaged in, but one of the assistant attorney general's, Mrs. Ellen Alm, who works in my division has been working in this area. I think that probably in the last two or three months we have banned at least 10 of these companies from doing business, and reached settlements providing for consumer restitution. That is correct, currently they are doing it, but they are doing it illegally.

Rep. Klemin: I have heard on radio advertisements for these debt settlement companies that they are able to settle your credit card debt or other bills, and seen it on TV as well. Those are the companies we are talking about.

Parrell Grossman: That is correct. There just seems to be something very attractive to consumers with these ads. These ads are on the radio, television, and internet. They seem to suggest that you can simply resolve all of your financial problems by paying substantially less than the amount that you owe; for whatever reason, educated and uneducated consumers alike, seem to flock to these debt settlement companies. They plop down huge up-front fees, without a real understanding of what will happen. When I say "without a real understanding" I think they are told and they believe that, in fact, they will get results and it doesn't seem to be happening.

Rep. Klemin: This bill, as I understood the reading of it, would be to prohibit those types of up-front fees and then to allow the debt settlement provider to be compensated based on actual performance.

Parrell Grossman: That is correct, that is exactly what this bill does; bans the up-front fees and permits them to collect 15% of the amount saved.

Rep. Klemin: You had mentioned that there were 33 complaints and you've been in the complaint business for a long time, those 33 complaints – based on your previous experience, so you think that there are likely other consumers out there in ND that have been similarly defrauded who actually haven't filed a report.

Parrell Grossman: I believe there are many more consumers that have been defrauded by this. I really think it is the tip of the iceberg. Some of the individuals haven't even bothered to contact us, they have been referred to us through the bankruptcy court, or individuals who are engaged in providing consumer credit counseling services that have told consumers that they should contact the attorney general's office, you have been ripped off. You have been ripped off, you have been a victim of a scam and you should seek assistance. I am very confident that there are far more consumers who have been victimized and have contacted our office. I think, frankly, at that point they feel like they gave it a shot and they don't know what to do, so they turn to bankruptcy. I think many of them think that they might be viewed as having engaged in some sort of foolish agreement and are reluctant to come forward and say, "Look what has happened to me".

Rep. Maragos: I am having a little trouble matching up your proposed amendments here. Page 4, line 18, delete "or". Then replace the period with "or" and insert (3). Is that just a miss, that first delete "or". I don't see "or" on line 18.

Parrell Grossman: That is intended to address the debt settlement service, means in lines 4-18, take out the first "or" and add the second "or" after 18 and then add the next section. Just cross that out.

Rep. Onstad: You're talking about the fees. This legislation basically sets the maximum fee that can be charged by a debt settlement company, is that correct.

Parrell Grossman: Yes, that is correct.

Rep. Onstad: I think on that part, it states that $100 on the first line, on page 18, on the fees, a one-time enrollment fee of $100 and then it gets into section 3; it talks about the 15%. Is that $100 the maximum enrollment fee to be enrolled by a particular company and then the maximum they can charge is 15% of the savings?

Parrell Grossman: That is correct. Currently, they often times charge exorbitant up-front enrollment fees and then they may even charge them an on-going monthly fee and then there may be some percentage of the savings, or the debt that they reduced. This sort of sets that ceiling of saying, okay you can charge a one-time upfront fee of $100 and then after that you can collect no more than 15% of the savings. If you negotiated a $50,000 debt down to $25,000, you could charge 15% of that savings.

Rep. Koppelman: I have a few questions. First, on page 23, bottom of page, we discussed the rule issue briefly, but it talks about a commissioner's order. It says that any person that violates this chapter or an order of the commissioner under this chapter, etc. is guilty of a class C felony. I understand that the order would have to be in concert with what the chapter sets forth. I am not familiar with the kinds of orders that would be issued. So if the commissioner would issue an order, claiming to have authority under the chapter, and it would be something totally going beyond what the law says, are we giving a state government official the authority to sort of define what would constitute a class C felony, by ordering someone to do something and saying that I have the authority to do that because the legislature passed this bill. The wording seems a little problematic.

Parrell Grossman: I certainly understand your concern there; it's possible that could be tweaked. I think what this contemplates is something like a cease and desist order, that the Dept. of Financial Institutions would have that authority as the attorney general does. In that particular case, when someone is engaged in illegal or fraudulent conduct, that government agency issues a cease and desist order. Then they have an opportunity to request a hearing on it and then even appeal that order if they have an unfavorable decision. In that particular case, that order may ban them from engaging in some violation without the proper license. So yes, this particular language then would suggest, that if an entity was told to cease and desist from engaging in that particular violation of HB 1038, or ultimately this chapter and they continued that conduct in violation of that order, again that commissioner of the Dept of Financial Institutions, could go to the state's attorney and say that we think this is something where you might want to consider criminal charges. So it

does give a fair amount of discretion in those particular cases. Without speaking for the Dept of Financial Institutions, if you wanted to limit that to a violation of the chapter, that is certainly something that you can consider. I think more and more, we are finding that these organizations are banned by other types of orders in which they have had the opportunity for a hearing to explain their conduct or to ask the particular agency not to issue that order, to modify that order. I wouldn't want you to think that these are orders that are issued wily-nily and now they violate them and now suddenly it's a class C felony.

Rep. Koppelman: But the language in the bill could imply that. So maybe we could tighten it up by saying "a cease and desist order" dealing with a portion of this chapter or something like that.

Parrell Grossman: I would be happy to visit with Commissioner Entringer and see if we can put something together that would address that.

Rep. Koppelman: On page 10, we're talking there about the advertising and marketing practices and so on. In the last item that's listed, item 3, is basically a disclaimer that I think you're proposing would be involved in any advertising. I'm concerned about the last sentence, with the first word "will". Not all creditors will agree to reduce principal balance and they may pursue collection including lawsuits. You don't know whether creditors will or won't agree so I'm thinking the word "may" should be used.

Parrell Grossman: I would not disagree with that. I wouldn't have a concern about that.

Rep. Koppelman: I'm looking at chapters 13.06 and 13.07 and looking at the bill. Can you explain, in general, how the two would interact, because we're not appealing 13.06 and 13.07. I think in the amendment you made a proposal for an amendment to the definitions in 13.07, but how would activity of various entities interplay when all of these would be on the books.

Parrell Grossman: I will try to explain that. If I didn't make that clear, our amendments are proposing to repeal 13.06; 13.06 is the legislation that really defines debt adjusting, albeit a rather poor wording definition that needs some fixing. That's the chapter that kind of defines what the concept of debt adjusting, and then it essentially says that you're prohibited from engaging in debt adjusting unless you're an attorney, etc. and there is the laundry list. One of those things is that essentially a non-profit entity engaged in services under 13.07.

Rep. Koppelman: One of the last things you covered was the fee structure that is in the legislation, the $100 advance. I, too, am concerned with consumers being defrauded by these kinds of practices. By the same token, I think the balance we strike is how much government regulation of private business we want to do and how specific should it be. So you say a $100 fee, that may be reasonable. When you talk about 15% that is allowable, do we want to get into the business of telling businesses what fees they can charge. If a company wants to charge 18% and that's agreeable to their client, should government be telling them they can't charge that amount. Is there another way to get at that without being so rigid and specific? There may be legitimate businesses out there who want to engage in

this business. That's why we are creating a regulation and a licensure, etc. If that's the case, are we being pretty specific or should we just outlaw the practices we don't like.

Parrell Grossman: That's a very difficult issue and it is somewhat of a philosophical issue. It's also a practical issue. Yes, there is no magic in that 15%, I think 15% was adopted because I think most statutes throughout the country that regulate consumer credit counseling services, with the non-profits and set up these payment plans, etc. that they are limited to the 15%. As far as I know, those entities have never complained about that.

Rep. Koppelman: You're talking about the non-profits.

Parrell Grossman: Yes, I was talking about non-profits. They are certainly different. I think it comes down to maybe there is nothing magical about 15%, but I think there is some benefit to imposing some caps because of the particular abuses by the industry in the past and I think somewhat because of the vulnerabilities of these individuals who are turning to this entity, that's located someplace in California, for help. Some of those individuals, in the end, might think that a 50% was great. That's really a decision you have to make as a legislature and I think in many regards, we've keyed in on 15% because it's what worked under the Consumer Credit Counseling statute. Could that be some other amount, yes? Could you choose not to impose the maximum amount, absolutely? I think that would be somewhat inconsistent with the practices of Consumer Credit Counseling services under 13.07.

Rep. Koppelman: First of all, this relates more to the enforcement side of it. To use the example you just used, if some company in California came in and offered this service in ND, when they don't have an office or presence here, would your office have difficulty prosecuting those companies. How would this be enforced in those kinds of cases.

Parrell Grossman: How we anticipate this would work is that the Dept of Financial Institutions would investigate it, determine there was a violation, they would probably put the company on notice, possibly try and initiate some sort of settlement. If they weren't able to do that, then I anticipate that they would turn to the attorney general's office, which provides legal services for them. That could be civil litigation division or the consumer protection division that would initiate that particular case. We provided the dual authority because I think traditionally the Dept of Financial Institutions probably hasn't invested as much in bringing enforcement actions per se. We have a lot of experience to do this and we were trying to plan for the possibility that, if there were a large number of these types of violations, then we would have the ability to help them with the prosecutions of those cases.

Rep. Koppelman: You don't see that being an issue in going after someone half-way across the country. I know that you have instances where you get complaints now, and I know sometimes it's like, how do we get at these people.

Parrell Grossman: Yes, it's always an issue. But I think most of the work we do in many respects, is going after out-of-state entities and our success does vary. There are many companies that will come to the table and will negotiate settlements in good faith and change their conduct. There are many companies which skip out, you can't reach the

principals, and they've spent all the money. Yes, it may create some enforcement problems, but one of the benefits of this legislation is that we now have the ability to ban them from advertising and soliciting in ND, and you now have the ability to notify consumers that they shouldn't do business with this particular company.

Rep. Koppelman: Are you able to address the fiscal note.

Parrell Grossman: Commissioner Entringer will be testifying next.

Rep. Klemin: I have a question about the enforcement. As I understand this bill, it does have a requirement for a surety bond in the amount of $50,000 or an additional amount as required by the commissioner by rule. So would that not be one source that could be looked at in the event of a violation, if you are unable to enforce it, they would be required to have the surety bond in order to do business here in ND.

Parrell Grossman: Absolutely. If one of these companies engaged in a violation, in particular, took $7,000 from a consumer, and didn't provide the services, I think the Commissioner of the Dept of Financial Institutions would be able to go against that bond.

Rep. Klemin: Requiring a surety bond of these companies is really not out of the ordinary. A lot of companies have to post bond in order to do business in ND in various respects.

Parrell Grossman: That is correct. Companies that do business as consumer credit counseling agencies under chapter 13.07 are required to have a surety bond or cash bond for the same type of conduct of dealing with consumer's money that's placed in trust. That is not unusual.

Rep. Klemin: It's my understanding from testimony that was given to the Interim Committee that some portions of this bill were taken from the current law in the state of Illinois. Do you know, did that 15% maximum fee, where did that come from, from Illinois law?

Parrell Grossman: I'm not absolutely certain on that. I don't know if asst attorney general, Erin Webb, in our office who drafted that, would recall that. I think maybe that is what Illinois uses, but I also know that that's a fairly common fee limitation throughout the country in regard to consumer credit counseling services or similar services dealing with this. I think Illinois uses that amount, but whether that is just something that Illinois initiated, I don't think so.

Chairman DeKrey: Thank you. Who is going to explain the fiscal note to us?

Robert Entringer, Commissioner, Dept. of Financial Institutions: Most of my testimony (attached) walks you through the bill; page 13 of my testimony talks about the fiscal note.

Rep. Koppelman: On the fiscal note, as a business person, when I look at $86,000 of income and $316,000 for expenditures I get concerned. This is obviously a losing proposition for your department; even though it's not general funds, as you pointed out. If the numbers flows just as you've set forth here, it looks like your department would be

taking a pretty good hit on special funds to make this happen. You've anticipated that, and in essence, other entities that pay your fees would be subsidizing this activity.

Robert Entringer: Without any other revenue sources, yes that's exactly what would happen. It would be subsidized, at least initially for the first biennium.

Rep. Koppelman: Just following up with that, you're asking for 1 FTE and a new person and lot of other stuff and that involves most of the costs. Is that really necessary. I'm not familiar with the staffing of your department. If this all goes into effect and you gear up and nothing happens, which might be the intent of the legislation. You've got a person sitting there and a lot of money being allocated and is there a way that your department could look at this and say, you will assign this to so and so who's expertise could handle it and they'll spend 20% of their time on it the first year, and see how it goes for the first biennium.

Robert Entringer: That is exactly what I would do. I do have one employee who will probably be retiring in this biennium. I would replace that individual. I would wait and see what kind of licensing activity we get and go forward. The biggest impact, out of the fiscal note, is the programming costs. That's what hits us the hardest. These are based on previous expenses we've incurred when we added a license. So, I don't know that these figures are accurate or how accurate they are.

Rep. Koppelman: Having served on Appropriations and watching what happens with ITD, and you're talking about programming and so on. When that agency began, there was this grand plan to say we're going to do all the IT activity within state government under one umbrella, and it's going to be streamlined and that will make it more cost efficient. We're a long way down the road from when that occurred. We're still talking about what I consider, I mean $85,000 for records management programming, is a lot of money. I'm sure there is software out there that can help you manage records, probably off the shelf, or maybe something in your office now. It's a related question and a little broader. Do you see a solution to that, is there a way to bring that all under control and make sure we're not spending so much money in that area.

Robert Entringer: We have looked at an off-the-shelf product to assist us with keeping track of all the entities we regulate, licensing, and our on-line applications and so on. Just a guesstimate from the company, was that that was about $400,000, and we seriously looked at trying to pay for that became quite a challenge. That would include banks, credit unions and all of the consumer entities we license. It would be split up amongst all those entities. We took the number of hours we were billed for during the last biennium when we made a change and applied the new fee schedule to that number of hours and did the same thing with the online application processing and that's how we came up with those numbers. We estimating it would take them about the same amount of time to do that. So they're not accurate, I don't have an estimate from ITD, but I would guess that this is pretty close.

Rep. Maragos: The revenue side, the $86,000 would be probably every biennium.

Robert Entringer: With the exception of the investigation fees which are a one-time fee, so we would have annual licensing fee, the $28,000 that occurs every biennium, because that

is doubled. The examination fees I would expect to increase assuming we have 35 companies licensed. So the revenue could go up.

Rep. Maragos: The $316,000 on the expenditure side, how much of that would be a recurring expenditure beyond this biennium.

Robert Entringer: Probably office supplies down through operating fees.

Rep. Maragos: So at some point, maybe down the road in the future, you'll recoup (maybe in 10 bienniums) you could recoup that $316,000, is that correct.

Robert Entringer: That's correct.

Rep. Klemin: What is the basis for the $400 for the license fee and the investigation fee?

Robert Entringer: We use the same fees that we charge the other entities that we regulate, like collection agencies, money-transfer groups.

Rep. Klemin: So this fee is simply a number that you put in based on what you charge for licensing other entities. But this fee could be higher, could it not, in order to recoup more of this expense.

Robert Entringer: Absolutely, I would love that.

Rep. Klemin: You talked about 35 companies; do you know how many of these companies there are out there in the country doing this kind of work.

Robert Entringer: No, the reason we used 35 in our licensing is, when we started with the interim committee, I surveyed the states that do regulate debt settlement, debt management companies and it seemed like 30-35 was a good number.

Rep. Boehning: The question I have, on the examiner fee - 6, to be completed. If you have 35 licenses and 35 investigations, you only have 6 exam fees, what does that include.

Robert Entringer: As far as expenses?

Rep. Boehning: What are the examination fees, are we sending someone out from the office to go test these people, what is the exam fee.

Robert Entringer: Yes we will be sending them out, my anticipation is that these companies are not going to be located in ND. So we would send someone to their location wherever that may be. So they are going to be billed for our travel, lodging, meals, and the salary hourly fees for the examiner to complete the examination.

Rep. Boehning: Wouldn't it be a lot better if we could have them set up in ND. Aren't there testing facilities or any online testing that could be used, instead of having someone go to their business, do you need a classroom setting in order to instruct them first.

Robert Entringer: We do complete off-site examinations, where we send you a request list and you send us all the information. Those aren't necessarily as effective as when you show up in person. So it would be my intent that we go there and examine them onsite. There are a lot of companies that we license, where we are now participating in multi-state examinations, because so many of these companies are just money transmitters. For example, many of them are licensed generally in all 50 states. They don't want 50 states coming, 50 different times throughout the year. So we will participate, send one person in to do an examination, produce one report, but our examiner is there to look for compliance with ND law, as well as financial information. So it just works better when you go onsite. To require them to set up an office in ND is a constitutional issue. I've tried to run that by the attorney general's office and they keep shooting me down.

Chairman DeKrey: Thank you. Further testimony in support of HB 1038. Testimony in opposition to HB 1038.

Marilyn Foss, general counsel for ND Bankers Association: (see attached testimony and amendments).

Rep. Koppelman: If I'm understanding what you're driving at here, in plain language, you're saying that if a debt settlement company is doing business and they make agreements with all the creditors with that debtor, and they agree to lower the amount due to the creditors, and the debtor begins to make payments through this debt collection agency, with this fund that's set aside, the debtor makes payments to the fund, that settlement company then parcels out the payments to the various creditors under whatever arrangements they made with them. Your concern seems to be that because that fund would be exempt from any liens or attachments, garnishments, whatever, that there could be a creditor out there that was absent from those agreements or maybe one of the ones that made an agreement but is violating it, would go out and sue that debtor and have a judgment against them and then be able to attach those funds. Is that what you're driving at?

Marilyn Foss: That is certainly one of the things I am driving at. But one of the problems with this bill is that we all assume that there are things in it like money has to be paid to a creditor, that's not in it. We assume that we're talking about consumer debt but that's not the way the definitions seem to work. When you are in the business of representing creditor interests, you learn that people who, for whatever reason, are not paying their obligations, or in this case, you have a money judgment against somebody that you're trying to collect and they don't want to pay it. They are pretty clever at using the laws to not pay. In this state, for instance, in bankruptcy, has adopted the approach that we use state exemptions in bankruptcy. This creates an unlimited exemption. The 8th Circuit Court of Appeals, in a recent decision, talked about how the Court doesn't disapprove of pre-bankruptcy planning and interprets state exemptions very broadly. I am highly concerned then about, not only, how this would apply in state court proceedings, but in bankruptcy court proceedings because of the way the exemptions work, and because it is unlimited. There actually is no requirement in this bill that monies in this fund get paid to a creditor or released and available within a reasonable period of time.

Rep. Koppelman: If those loopholes were tightened, in other words, if there was a provision in the bill that would require that the monies go to the creditors, as whatever

agreements might be proposed, and that those concerns you mentioned would be dealt with, would you favor that or do you just want to get rid of the inability to attach those funds in general.

Marilyn Foss: In theory, tightening the bill could improve it a lot. When you create an exemption of this nature, because these companies are disreputable, you are actually encouraging people to go to use the services of these companies and to incur fees instead of working with your creditors directly, and I, at least, in trying to think of acceptable ways to tighten the language regarding that exemption, haven't come up with a solution for the problem of being able to prefer creditors with this kind of language in the bill.

Rep. Klemin: I just wanted to go through how you think this might work under the bill with the trust fund account that's not being subject to attachment. On page 11, on lines 18 and 19, it says that all these funds received by the debt settlement provider, constitutes trust funds. Then, at the bottom of that page, starting on line 28, it says that it must be deposited in a bank, in an account in the name of the debt settlement provider-designated trust account, or by some other appropriate name indicating that the funds are not the funds of the debt settlement provider. As I read this, it says a debt settlement provider is establishing a trust account, into which funds from a consumer or many consumers can be put into the same trust account. Now, if someone was going to attach or attempt to levy on that trust account for money that may have been put in by a particular consumer, how would anyone know what was in there for that consumer without some kind of discovery of the debt settlement provider, because if the funds are all consolidated from many consumers in the same account. How could you actually levy on it?

Marilyn Foss: I am presuming that since this is a statutorily created trust account that rules that apply to trustees might also apply to these accounts, which do not just generally allow comingling of funds of various beneficiaries. So that might be one issue to be resolved; but at least without specific authority to do the comingling, but in terms of required discovery on the debt settlement provider, I would agree that may be likely if they are using comingled accounts, it probably would require discovery of the debt settlement provider but I don't see that as preventing an accounting as it were, of whose money belongs to which consumer. You are executing on the fund, and I think if there is a provision in here talking about the funds continuing to belong to the debtor and that certainly is appropriate and if you were, you would be doing discovery in aid of execution. I don't really see that that would prevent you from serving a levy; as you serve a levy on a bank, you just say give me the money, you owe such and such. I serve a levy on a debt settlement provider and say pay over whatever you owe, for the money that belongs to "Joe Debtor". I do not do complicated collection work, so that's just my take on it.

Rep. Klemin: I guess I can see more readily somebody doing a levy on the debt settlement provider, who is holding those trust funds, but I just don't see how you can do it on the bank and say give me all the money in this trust account, because I have a judgment against one of many different debtors. But by analogy, let's say, landlords who rent out apartments in buildings. As you know, we have a statute that requires security deposits to be deposited in a bank or other financial institution and that there is supposed to be interest paid on those security deposits. It is my understanding that, especially larger landlords that collect security deposits don't have an individual account in the separate name of each tenant at a

bank; rather they comingle those funds into essentially a trust account, and they keep records of whose money is in there on their own books. The bank doesn't know potentially which tenant has a security deposit or not. They just know that the landlord has an account there where he puts security deposits. How could a creditor levy on a security deposit account like that to get at money that may have been put there by just one tenant? I don't see how that could happen.

Marilyn Foss: I think you would probably do it by garnishing or levying on the landlord; the person who holds the account. My issue with this is not concerned with the problems that banks would incur if people are trying to execute on the trust account. Those problems might occur, but that is not the focus of my concern with the bill. My concern is setting up a law that says it provides a mechanism for a person who owes another person money to set aside money in an account in an unlimited amount with no fixed obligation to pay it and keep that money from your creditors. That is my concern, not that banks are going to be harassed by executions against the trust account.

Rep. Klemin: It just seems to me, like whether this language is in here or not in here, the mechanics of how this trust account works would be the same. I'm not sure; maybe this language isn't needed and wouldn't have any effect on the bill at all.

Marilyn Foss: That's actually my view, that if the language is removed, the structure of supervision and regulation for debt settlement providers is in place and what happens to the monies that are set aside and simply handled under the laws we now have for execution and exemption.

Rep. Koppelman: If your amendment were adopted and the bill would pass, and if there is no limitation on attachments, where an agreement has been made, and let's assume what the bill intends that there would be some legitimate operators doing honest business in this field and so, theoretically, they would go out and make agreements. Let's say that they made agreements with most of the creditors, but there were one or two creditors that didn't agree, but let's say that 90% of the creditors that this debtor had, did agree. So they said, alright, of these people have all agreed to reduce their debt by 10% and agree that because the debtor has agreed to make payments in X number of dollars on a regular basis, that money would then go into this trust account, set aside for that purpose. The debt settlement company, if they are legitimate would make those payments, etc. So there is an account at the bank, but there are a couple of other creditors hanging out there that didn't agree, not playing ball with that debt settlement company, and they want to get their money. They know this account is there. Creditors can be crafty, they know this account is out there, and they know they didn't agree, so in good faith the debtor has made payments, the company has made settlements; the companies who have those settlements are expecting to be paid and this creditor hanging out here, who wasn't a part of any of that process, says I know there is an account there, they come to your bank and say I want all that money because this debtor owes me money. That's hardly a fair scenario. So I assume that is why this is in the bill, is there another way to avoid that kind of circumstance.

Marilyn Foss: I would say that the way to address that, if you are in the position of consumer who owes debt and a creditor who wants to get paid, and doesn't want to be

coerced into that by the prospect of allowing the debtor to set aside money through the chapter 13 process of the bankruptcy court. In hearing this discussion, both here and elsewhere, the more I listen to it, the more it does seem to me to be somebody's notion that this is a private chapter 13 sort of arrangement. But we have a process to essentially force everybody to the table, debtor and creditors alike, under the federal consumer bankruptcy laws.

Chairman DeKrey: Thank you. Further testimony in opposition.

Greg Tschider, Mid America Credit Union Association: We support the bill; we think it's a great idea except that we have the same problem that Ms. Foss talked about. I've been around a few years, a number of years ago; we had a situation where an individual owed millions of dollars. They had some property, though, that was free and clear and they quickly liquidated it and generated $350,000 in cash. At that time, because of our exemption laws under ND law that money would have been lost to creditors, but instead the debtor went to MN, which at that time had an unlimited homestead exemption, and bought a house for $350,000 so that nobody could touch it. What does that have to do with this? If you're the same person or corporation or whatever entity you have, you can take that $350,000, give it to these debt settlement people and they would hold it, and hold it, and hold it until the consumer business got exactly what they wanted out of the creditors. If they couldn't, they could leave the money there, there is nothing in the bill that says that it has to be dispersed after 12 months, 24 months or what have you. Or you could take the money and then run to a different state that has an unlimited homestead exemption, like Texas, or you could end up filing bankruptcy. The moral of the story is that there are no controls here. This is a safeguard, this is an exemption. Worse yet, if you do file bankruptcy, the bankruptcy court could say that under this law, there is a new exemption under ND law and all of that money is protected. Well, isn't that generous. The bottom line is, we have a good bill that serves a good purpose. I've had people call me complaining about how they've been ripped off, especially by out-of-staters. If the people had only come and talked to me first, I might have been able to structure something for them. But these out-of-state companies have no conscience, they rip these people off and so a poor consumer loses $3,000-4,000. They can't afford to hire an attorney in California to pursue these people. So I think the bill really has merit. Credit Unions certainly support it to protect consumers. I don't know that we need to protect business, corporations. I would like to see the definition of person changed so that we truly are talking about individuals. But I think the section that Ms. Foss referred to, is a trouble spot for us because I really don't think it solves the problems that we're concerned with.

Dana Bohn, ND Farm Credit Council Executive Director: Opposed to same sections as Ms. Foss and Mr. Tschider (see attached).

Rep. Koppelman: With all the exemptions, in the sense, that if a lawyer was working on a bankruptcy, for example, and says let's try to settle your debts before you file for bankruptcy. They are kind of engaging in this service and so they are exempt under this bill from licensure. A credit institution, you wouldn't typically be engaged in the business of trying to settle all of someone's debts and negotiating with other creditors, so why do you need exemption under this.

Dana Bohn: We are actually already exempt, we're kind of in that catch-all thing, but we just want to make sure that we wouldn't be excluded.

Rep. Koppelman: Why do you need to be?

Dana Bohn: Why do credit unions need to be? It's just to make sure that there is no misunderstanding or misinterpretation should you ever get to that point, that it's very clear that we are not in the business of debt settlement or debt management.

Chairman DeKrey: Thank you. Further testimony in opposition.

Don Forsberg, Executive Vice President of Independent Community Banks of ND: I'm going to make a brief comment, that is "me too" to the concerns on page 12, section 2, we too, see it as a potential for misuse. While we strongly support the legislation, we have many of our customers and community bankers that are concerned about losing monies to these organizations for their deceptive and false advertising. We do wholeheartedly support the vast majority of this bill. I wasn't aware of this bill until just recently and so didn't attend the interim meetings, so I don't know what is behind each of these sections. That section gives us a great deal of concern.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing. I will appoint a subcommittee, chaired by Rep. Klemin, Rep. Koppelman, and Rep. Onstad.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1038
January 19, 2011
13094

☐ Conference Committee

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will open the hearing on HB 1038. What are the committee's wishes in regard to HB 1038.

Rep. Klemin: You had appointed a subcommittee consisting of myself, Rep. Koppelman, and Rep. Onstad. The subcommittee met and reviewed the amendments that were proposed by the Attorney General's office that were presented at the hearing. We also reviewed amendments that were proposed in writing by the organization that represents the debt settlement providers; The Association of Settlement Companies (TASC). We also considered a proposed amendment that the ND Bankers Association and other lenders had requested to remove the provision relating to the money that is held by a debt settlement provider would not be subject to lien or attachment. I passed out the proposed amendments to HB 1038. This includes the amendments requested by the AG's office, it also includes a definition of a person in the bill. The bill, the way it originally read, was what a person is not, and since the term "person" was used in various places in the bill, we deemed it appropriate to also define person, and that's on page 5, line 10. If you look at the amendments, page 7 line 2 of the amendments, TASC had requested an amendment to delete a provision that if a person had been disciplined in respect to a license, that the commissioner could not issue a license. It really wasn't set out in here very well a to what, if a person had been disciplined, if he had completed the discipline and had been rehabilitated and so forth, the mere fact that there had been some previous discipline, which did not result in a felony or misdemeanor, then we didn't think that would be an appropriate reason to deny it in and of itself, to deny an application for license. Another amendment from TASC was on page 10, line 27. All we did there, was change the word will to may, not all creditor may agree to reduce principle balance, that same change was made in a couple of other places, on page 12, line 29, page 14, line 18. Page 18, line 26 there was a limitation there on line 26 that the settlement fee couldn't exceed an amount greater than 15% of the savings; in looking at that, it was the opinion of the subcommittee that nobody's going to do these in ND for 15% of the savings and so we, after negotiation with the AG's office, increased that to 30% so that they could charge a debt settlement fee not to exceed 30% of the savings. I should also

mention that on page 18, line 23, we took out the provision that they could charge a one-time enrollment fee of no more than $100. It was pointed out by TASC that that might conflict with FTC requirements; so we took that out so that they can't charge any up-front fees, not even the $100. Page 19, beginning on line 9, the association also suggested that we take out a provision allowing a provider to accept voluntary contributions. They can't solicit voluntary contributions in the bill, but then it goes on to say that they can accept voluntary contributions. That association thought that wasn't very good procedure and we agreed with it so we took it out. On page 19, line 19 the association also had a recommendation to delete the language on line 19, beginning with the word "unless the" and then lines 20 and 21, so that you take a power of attorney that authorizes a provider to settle a debt they can't do that if there is no qualification to that, it just makes it a lot easier if it's black and white and not get into the "unless" type of situation and that association recommended that change. On page 20, line 20 we added some language from the association recommended, after the word "debt" on line 20 or is part of a payment plan, the terms of which were included in the certification, that upon completion will lead to full settlement of the debt and we agreed with that one. The one that had the most controversy was on page 12, at the top of the page, lines 1-3, subsection 2, as you will recall from the hearing on this, the lenders, the Bankers Association, credit union, farm credit services, etc. they are all united in that independent community bankers, they had a concern that this created an unlimited exemption under ND law, a new one and we already have numerous exemptions under ND law that can be applied and those have been recently studied in some of our interim committees and the exemptions have been increased, sometimes 100% of what they were and so the conclusion of the subcommittee that there are sufficient exemptions now to protect almost all of these people. We don't need to give them another unlimited exemption under ND law. It also was my impression that, while they really supported this bill, they were likely to go in and oppose it if we didn't take it out, since it really seems to be covered by other state law, the AG conceded the point and we removed that section from the bill. That's really the sum of the amendments. We included the consideration of everyone that had proposals for amendments. We did not adopt all of those that TASC wanted; they had a number of others that basically would have taken a lot of good things out of this bill that we didn't include. I move the amendments.

Rep. Koppelman: Second the motion.

Chairman DeKrey: Voice vote, motion carried.

Rep. Delmore: On page 19, line 21, why you took out more than 50% of the principle amount of the debt owed.

Rep. Klemin: TASC said this is a prohibited act, a provider may not take a power of attorney that authorizes the provider to settle a debt. Then we had some qualifying language that would allow it under certain circumstances. TASC in their comments

recommended that that be deleted because an FTC prohibits using a power of attorney to obtain pre-authorization of a settlement.

Chairman DeKrey: We will take a voice vote, motion carried. We now have HB 1038, as amended before us.

Rep. Delmore: I move a Do Pass as Amended and Rerefer to Appropriations.

Rep. Kingsbury: Second.

Chairman DeKrey: The clerk will call the roll on HB 1038 as a Do Pass as Amended with a Rereferal to Appropriations.

12 YES 2 NO 0 ABSENT **CARRIER: Rep. Klemin**

DO PASS AS AMENDED WITH REREFERRAL TO APPROPRIATIONS

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Amendment to: HB 1038

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues		$0		$85,950		$151,530
Expenditures		$0		$173,907		$93,099
Appropriations		$0		$0		$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This House Bill will require Debt-Settlement Providers to be licensed and regulated. This will have no fiscal impact to the general fund however will have a negative impact to the special regulatory fund.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Department of Financial Institutions is a self-funded regulatory agency and the revenue from the licensing will be deposited into the regulatory fund. The expenditure will include operating expense and programing cost for implementation of online licensing.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

License 35 per year @ $400 $28,000
Investigation fee 35 @ $400 $14,000
Exam Fees 6 to be completed $43,950
(includes motel, air fare,
Meals and salaried hours)

Total Revenue 2011-2013 $85,950

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Office Supplies	308
Travel	24,750
IT Telephone	893
Printing	2,224
IT Data Processing	17,160
Postage	667

Professional Dev (Schools)	3,174
Professional Services (Legal)	7,674
Operating Fees & Ser	1,407
IT Record Mgmt programming	85,650
On Line Application programming	30,000
Total Expenditures	$173,907

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This bill does not include any appropriation in the executive budget. The Department of Financial Institutions will ask to increase appropriation House Bill 1008 for the operating line item if this bill passes.

Name:	Joan Becker	**Agency:**	Department of Financial Institutions
Phone Number:	701-328-9958	**Date Prepared:**	01/26/2011

FISCAL NOTE

Requested by Legislative Council
12/15/2010

Bill/Resolution No.: HB 1038

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues		$0		$85,950		$151,530
Expenditures		$0		$173,907		$93,099
Appropriations		$0		$0		$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This House Bill will require Debt-Settlement Providers to be licensed and regulated. This will have no fiscal impact to the general fund however will have a negative impact to the special regulatory fund.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Department of Financial Institutions is a self-funded regulatory agency and the revenue from the licensing will be deposited into the regulatory fund. The expenditure will include operating expense and programing cost for implementation of online licensing.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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(includes motel, air fare,
Meals and salaried hours)

Total Revenue 2011-2013 $85,950

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Travel	24,750
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Total Expenditures	$173,907

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This bill does not include any appropriation in the executive budget. The Department of Financial Institutions will ask to increase appropriation House Bill 1008 for the operating line item if this bill passes.

Name:	Joan Becker	**Agency:**	Department of Financial Institutions
Phone Number:	701-328-9958	**Date Prepared:**	01/06/2011

PROPOSED AMENDMENTS TO HOUSE BILL 1038

Page 1, line 4, after "fund" insert "and section 13-07-01 of the North Dakota Century Code relating to the definition of consumer credit counseling service"

Page 1, line 4, after the semicolon, insert "to repeal chapter 13-06 of the North Dakota Century Code relating to the regulation of debt adjusters;"

Page 1, after line 12, insert:

"**SECTION 2. AMENDMENT.** Subsection 1 of section 13-07-01 of the North Dakota Century Code is amended and reenacted as follows:

13-07-01. **Consumer credit counseling service – Definition.** As used in this chapter "consumer credit counseling service" means a nonprofit corporation ~~engaged in he business of debt adjusting as defined in section 13-06-01~~ whose agreements contemplate that debtors will liquidate their debts by structured installments or creditors will reduce finance charges or fees for late payments, default, or delinquency. For purposes of this chapter a nonprofit corporation means an entity that is:

a. organized and properly operating as a not-for-profit entity under the laws of the state in which it was formed;

b. exempt from taxation under the Internal Revenue Code, 26 U.S.C. Section 501; and

c. not owned, operated, managed by, or affiliated with a for-profit entity."

Page 3, line 11, replace "the" with "this"

Page 3, line 17, after "credit union," insert "farm credit system institutions,"

Page 4, line 1, after "person" insert "currently", and replace "chapter 13-10" with "any chapter administered by the department of financial institutions or registered with the attorney general's office"

Page 4, line 11, remove "or"

Page 4, line 18, replace the underscored period with "; or

(3) Offering to provide advice or service, or acting as an intermediary between or on behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the current outstanding balance of the tax obligation."

Page 4, line 24, remove "or"

Page 4, line 31, replace the period with "; or

(4) A nonprofit corporation engaged in consumer credit counseling services under chapter 13-07."

Page 5, line 10, after "Person" insert "means an individual, corporation, limited liability company, partnership, trust, firm, association, or other legal entity. The term"

Page 7, line 2, remove "disciplined with respect to a license or"

Page 8, line 5, replace "registered" with "licensed"

Page 10, line 27, replace "will" with "may"

Page 12, remove lines 1 through 3

Page 12, line 4, replace "3" with "2"

Page 12, line 10, replace "4" with "2"

Page 12, line 29, replace "will" with "may"

Page 14, line 18, replace "WILL" with "MAY"

Page 18, line 23, remove ", except for a one time"

Page 18, line 24, remove "enrollment fee of no more than one hundred dollars"

Page 18, line 26, replace "fifteen" with "thirty"

Page 19, line 9, remove "A provider may accept voluntary"

Page 19, remove lines 10 through 12

Page 19, line 19, remove ", unless the"

Page 19, remove line 20

Page 19, line 21, remove "more than fifty percent of the principal amount of the debt owed a creditor"

Page 20, line 20, after "debt" insert "or is part of a payment plan, the terms of which are included in the certification, that upon completion, will lead to full settlement of the debt"

Page 22, line 3, after "law" insert "in this state"

Page 23, line 26, remove "or any rule or order of the commissioner under this chapter or which engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful"

Page 24, after line 25, insert:

"**SECTION 4. REPEAL.** Chapter 13-06 of the North Dakota Century Code is repealed."

Renumber accordingly.

11.0225.02002
Title.03000

Adopted by the Judiciary Committee

January 19, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1038

Page 1, line 4, after "fund" insert "and section 13-07-01 of the North Dakota Century Code, relating to the definition of consumer credit counseling service"

Page 1, after line 4 insert "to repeal chapter 13-06 of the North Dakota Century Code relating to regulation of debt adjusters;"

Page 1, after line 12, insert:

"**SECTION 2. AMENDMENT.** Section 13-07-01 of the North Dakota Century Code is amended and reenacted as follows:

13-07-01. Consumer credit counseling service - Definition.

As used in this chapter, "consumer credit counseling service" means a nonprofit corporation whose agreements contemplate that debtors will liquidate their debts by structured installments or creditors will reduce finance charges or fees for late payments, default, or delinquency. For purposes of this chapter, a nonprofit corporation means an entity that is:

1. Organized and properly operating as a nonprofit entity under the laws of the state in which it was formed;

2. Exempt from taxation under the Internal Revenue Code [26 U.S.C. 501]; and

3. Not owned, operated, managed by, or affiliated with a for-profit entity."

Page 3, line 11, replace the second "the" with "this"

Page 3, line 17, after the fourth underscored comma insert "farm credit system institutions,"

Page 4, line 1, after "person" insert "currently"

Page 4, line 1, replace "chapter 13-10" with "any chapter administered by the department of financial institutions or registered with the attorney general's office"

Page 4, line 11, remove "or"

Page 4, line 18, replace the underscored period with "; or

(3) Offering to provide advice or service, or acting as an intermediary between oron behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the current outstanding balance of the tax obligation."

Page 4, line 24, remove "or"

Page 4, line 31, replace the underscored period with "; or

(4) A nonprofit corporation engaged in consumer credit counseling services underchapter 13-07."

Page 5, line 10, after "Person" insert "means an individual, corporation, limited liability company, partnership, trust, firm, association, or other legal entity. The term"

Page 7, line 2, remove "or disciplined with respect to a license"

Page 8, line 5, replace "registered" with "licensed"

Page 10, line 27, replace "will" with "may"

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Page 14, line 18, replace "WILL" with "MAY"

Page 18, line 23, remove ", except for a one-time"

Page 18, line 24, remove "enrollment fee of no more than one hundred dollars"

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Page 19, line 9, remove "A provider may accept voluntary"

Page 19, remove lines 10 through 12

Page 19, line 19, remove ", unless the"

Page 19, remove line 20

Page 19, line 21, remove "more than fifty percent of the principal amount of the debt owed a creditor"

Page 20, line 20, after "debt" insert "or is part of a payment plan, the terms of which are included in the certification, that upon completion, will lead to full settlement of the debt"

Page 22, line 3, after "law" insert "in this state"

Page 23, line 26, remove "or any rule or order of the commissioner under"

Page 23, remove line 27

Page 23, line 28, remove "provision of this chapter to be unlawful is"

Page 24, after line 25, insert:

"**SECTION 4. REPEAL.** Chapter 13-06 of the North Dakota Century Code is repealed."

Renumber accordingly

11.0225.02002
Title.03000

Adopted by the Judiciary Committee

January 21, 2011

YR
1/24/11
1038

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1038

Page 1, line 3, after "6-01-01.1" insert "and section 13-07-01"

Page 1, line 4, after "fund" insert "and the definition of consumer credit counseling service; to repeal chapter 13-06 of the North Dakota Century Code, relating to regulation of debt adjusters"

Page 1, after line 12, insert:

"**SECTION 2. AMENDMENT.** Section 13-07-01 of the North Dakota Century Code is amended and reenacted as follows:

13-07-01. Consumer credit counseling service - Definition.

As used in this chapter, "consumer credit counseling service" means a nonprofit corporation ~~engaged in the business of debt adjusting as defined in section 13-06-01~~whose agreements contemplate that a debtor will liquidate the debtor's debts by structured installments or that a creditor will reduce finance charges or fees for late payments, default, or delinquency. For purposes of this chapter, a nonprofit corporation means an entity that is:

1. Organized and properly operating as a nonprofit entity under the laws of the state in which it was formed;

2. Exempt from taxation under the federal Internal Revenue Code [26 U.S.C. 501]; and

3. Not owned, operated, managed by, or affiliated with a for-profit entity."

Page 3, line 11, replace "the" with "this"

Page 3, line 17, after the fourth underscored comma insert "farm credit system institution,"

Page 4, line 1, after "person" insert "currently"

Page 4, line 1, replace "chapter 13-10" with "any chapter administered by the department of financial institutions or registered with the attorney general's office"

Page 4, line 11, remove "or"

Page 4, line 18, after "debt" insert "; or

(3) Offering to provide advice or service, or acting as an intermediary between or on behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the current outstanding balance of the tax obligation"

Page 4, line 24, remove "or"

Page 4, line 31, after "requirement" insert "; or

(4) A nonprofit corporation engaged in consumer credit counseling services under chapter 13-07"

Page 5, line 10, after ""Person"" insert "means an individual, corporation, limited liability company, partnership, trust, firm, association, or other legal entity. The term"

Page 7, line 2, remove "or disciplined with respect to a license"

Page 8, line 5, replace "registered" with "licensed"

Page 10, line 27, replace "will" with "may"

Page 12, line 1, remove "Such funds are not subject to attachment, lien, levy of execution, or sequestration by"

Page 12, remove lines 2 and 3

Page 12, line 4, remove "3."

Page 12, line 10, replace "4." with "3."

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Renumber accordingly

Date: 1/19/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1038

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0225.02002 · 03000

Action Taken: ☑ Do Pass ☐ Do Not Pass ☑ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt		✓			
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos		✓			
Rep. Steiner	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1038: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1038 was placed on the Sixth order on the calendar.

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2011 HOUSE APPROPRIATIONS

HB 1038

2011 General Discussion

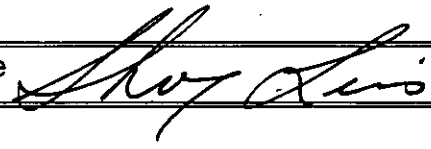
(Check appropriate box)

- ☐ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: February 2, 2011

Government Operations

Recorder Job Number: 13875

Committee Clerk Signature 

Minutes:

Chairman Thoreson opened the general discussion.

Chairman Thoreson: We have one bill that has been referred to us by the Judiciary Committee which is HB1038. We've had some discussions with leadership about where we're looking to go here. What I'm asking the committee members to do is if you can start looking through some of these budgets that we've heard; identify priorities where you think we can have a discussion with those agencies and look at where we can trim some things. I think we should find areas that could be changed or reduced in some manner; when we say reduced, we're not talking about a reduction in budgets. We're talking about the percentage of increase. I would open it up at this time, for any discussion.

Chairman Thoreson: Representative Dahl you've been working with the Judicial branch. You met with them today; are you planning on doing any further meeting in subcommittee with them?

Representative Dahl: Not at this time, but, I am going to ask for a little more information on some specific items in their budget. We'll see from there if there are further questions that need to be addressed in the subcommittee.

Chairman Thoreson: I think that is important on some of the IT issues that they brought forward and some of the other lines that we get a little more detail as to what it is they're

looking to do with those items. The other thing in that budget to note is the fact that the salary line is at a different percentage than most other agencies. So, we need to get an idea of what kind of numbers we're talking about if we were to bring them in line with other budgets throughout state government.

Representative Brandenburg: A question that I don't think I have answered yet. I see an increased cost coming with DOT dealing with IT. Their system's getting old; they're going to have to do something with that. I think we may need to get them both in here and find out where they're going with that.

Chairman Thoreson: This would be the department at ITD you think?

Representative Brandenburg: I think there's some places there rather than spending extra money; it sounds to me like we have a problem there.

Chairman Thoreson: Tomorrow morning we have the highway patrol back in to work on some details within that budget. The clerk can get hold of DOT and ITD to see if they would be available after floor session tomorrow. Anything particular that you're seeing that raises a red flag or concerns you?

Representative Brandenburg: We that their system is old and they need to something. I'm not sure that they're both in agreement in the direction they need to go.

Chairman Thoreson: If we can keep both sides together is the most important thing; because, we've seen time and again where agencies go off on their own or without guidance from their IT people and maybe don't end up with the most value for their dollar.

Representative Klein: Like Representative Brandenburg mentioned, I'm still not satisfied with the ITD interface with some of the departments. It seems to me there's some duplication of effort going on.

Chairman Thoreson: I think that's something we're seeing through a lot of these budgets; is, the IT issue. I think we still need to get some answers. One area that concerns me and I know looking at the Judicial branch, there's an issue where they identified when IT was in last week. In some of these cases, where different agencies were using DSL service and going directly to the vendor and paying for it; now their being asked an additional fee on top of that for administrative purposes of that service. Representative Kempenich, are there any specific areas that we need to start looking at?

Representative Kempenich: What I think we need to do, on them any, is get into their spend down report a little bit. We'll have to contact their office or OMB to get some spend down reports for the highway patrol.

Joe Morrissette, Office of Management Budget: We can work with the agency to get that information.

Representative Klein: The other thing is there's some bills floating around yet that directly tie into that. We need to wait until all that comes together.

Representative Kempenich: I guess one of the things we're going to have to is focus on these areas; the $120.00 a month isn't going to solve the problem. The problem is not everyone is at the same level and they're going to have to base it on some type of performance.

Chairman Thoreson: Are you seeing a specific language or policy you want to see in HB1012?

Representative Kempenich: They have 29 empty positions. I think they want us to tell them how to do it.

Chairman Thoreson: They hire managers to do exactly that to manage there.

Representative Brandenburg: I would have to think over in western North Dakota there's probably so many more CDL's being done; you're probably doing 10 to 15 per day. Based on the workload, maybe, something can be based on how many tests you're giving a day versus how many hours you're working a day.

Chairman Thoreson: Where we can look at the workload in each region of the state and make it work towards the areas where the biggest demand is.

Representative Glassheim: I may not be following the concerns but I certainly wouldn't want to hamper their ability to retain employees in the oil patch.

Chairman Thoreson: They're facing such an increased pressure because of the private sector; obviously, better wages and now benefits. More money helps but I don't know if it's the absolute only thing we can do to keep people.

Representative Glassheim: Maybe you could go 3 days a week in Jamestown and move them for 2 days to Dickinson.

Representative Kroeber: I've visited with Representative Klein; and I have HB1008 for financial institutions. I have that ready to present to subcommittee and to full committee if you want. Keep in mind that this is a special funded self-supporting agency with no general fund dollars. If the chair of full appropriations wants to get some bills out; I'd be ready to provide that.

Chairman Thoreson: I did ask the chairman if he wanted us to start moving bills out of the subcommittee. He said not quite yet, but, be prepared to.

Representative Kempenich: What we're looking at on aeronautics that was brought up the other day. They have an old airplane and he was looking at a new airplane. We have 4 old aircraft around; the Attorney General has one, a baron, the Dot has a

Cheyenne. All these planes, other than the one aeronautics has, have over 10,000 hours on them. What we started a discussion about, I want him to put together is to get a scheduler; he has one that he hired as a full time temporary, and that we replace those 4 with 2 airplanes and get a scheduler. The highway patrol has a 206+ and we have airplanes all over the place in each agency. I'm going to propose we change that and we get someone that's scheduling.

Chairman Thoreson: So you'd go from 4 planes to 2?

Representative Kempenich: Go from 4 planes to 2 planes; the game and fish has a 185; they're all 5 or 6 years old. If we got 2 utility planes, like he was talking about, on the used side; then we talk to some of these lease outfits, that we talk to them and buy a seat or buy some hours; instead of owning a jet.

Chairman Thoreson: There's fractional owners where we can buy a percentage.

Representative Kempenich: We don't get into that, all we need to do is buy hours; we can cut our costs down, we cut our usage down; instead of having them sit in hangers. They're costing money whether they're flying or sitting now matter how you look at them. Truthfully, I don't think we're using these planes enough; DOT probably has the most legitimate thing, but, that's only e or 4 months out of the year; and then, it sits the rest of the year also. We're trying to get a handle on our maintenance and where we're at with that.

Representative Dahl: Something else to think about, if the highway patrol has an airplane and they need to use it for some kind of emergency; and you only have 2 planes.

Representative Kempenich: There's going to be a plane sitting on the ground at any given time. It isn't like these guys are actually flying them; there's pilots sitting on call. Highway patrol has a pilot, DOT has a couple pilot; and the thing is, if you're going to go to this level and upgrade the fleet, if they're sitting in the hangar it's a waste of time.

Representative Klein: The other thing we asked is to give a list of how many hours these planes are being used each month; and give us that information so we have an idea.

Chairman Thoreson: And that's by agency; how much each one's using? So, you would reduce the number of planes; but, upgrade planes that have less hours available on them.

Representative Kempenich: We'll see what Mr. Taborsky comes with; he's going to be gone next week. I told him if he can get something to me by the end of the week. Mr. Taborsky made a comment that as an operator he didn't know if he would go the jet route. I think those Caravan's would suite most of the state of North Dakota would do within the boundaries of the state of North Dakota. Representative Carlson told me that

if we can keep this within a budget, I think it would be better if we just bought them; instead of paying that interest money. And then, amortize the amount over 10 years.

Chairman Thoreson closed the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

HB1038
February 8, 2011
Recorder Job# 14182

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to create and enact Chapter 13-11 of the North Dakota Century Code, relating to the regulation of debt-settlement providers; to amend and reenact subsection 1 of section 6-01-01.1 and section 13-07-01 of the North Dakota Century Code, relating to the financial institutions regulatory fund and the definition of consumer credit counseling service; to repeal chapter 13-06 of the North Dakota Century Code, relating to regulation of debt adjusters; and to provide a penalty.

Minutes:

Chairman Thoreson opened the hearing on HB1038. The clerk noted all members were present.

Representative Duane DeKrey: The policy of the bill is, we've all listened to TV and radio and they run the same commercials over and over; I owe the IRS over $600,000.00 and I settled for $200.00. It's all scams; there are a very small handful of debt settlement companies out there that are legitimate. What this does, is goes after the ones that aren't legit. They contact people and they get them to give them their numbers and then these companies say they're going to go to bat for them. What they do is, they run up their debt thousands of dollars more and they do nothing for them. They tell them to quit paying their bills; then someone who was scared that they were going to end up in bankruptcy, ends up in bankruptcy; because the debt settlement company breaks them and does nothing about their debt. It's a rampant problem and it's probably one of the more unreported problems. Because, people are embarrassed that they get hoodwinked by this; and so, they don't want to tell anyone about it. What the bill will do, is it will give the Attorney General the authority to license these companies; they have to pay the licensing and they can monitor them and see that they're doing some kind of service for the client. It also sets a percentage. The way they are supposedly supposed to work; they get the credit card company to relieve you of 50% of your debt; then they would get to keep up to 50% of the money to get the credit card company to reduce your debt. There is an association of debt settlement companies that did come in and work with us on the bill. They said that 50% is the floor, that they would never work for less than 50%.

Representative Glassheim: I see 30%.

Representative DeKrey: Maybe I got my percentage wrong.

Representative Klein: Did this come out of the interim committee?

Representative DeKrey: I don't know if it came out of the interim committee; but, I know it was supported by the Attorney General's office. They're the one that brought the bill to us.

Representative Dahl: A company that does not register with the state and continues to operate.

Representative DeKrey: I would be a violation of law.

Representative Dahl: Would that be a class C felony?

Representative DeKrey: I believe so. The purpose is to put them out of business. So only the actual legitimate ones would be left.

Chairman Thoreson: Section 4 is a repealer; do you know what chapter 13-06 is that's repealable?

Representative DeKrey: I'm not certain what that is; we'll have to check into that.

Representative Kempenich: These counselors try to negotiate but they may try to help.

Representative DeKrey: We also don't like to get into the middle of business; it's kind of like the payday loan business. You may not agree with the business; but, they do provide a service and people are willing to pay for it.

Representative Thoreson: In that situation North Dakota has kind of been a shining star; that we have gone and regulated and watched over the payday loan industries.

Representative Kempenich: I see that they're talking about 35 companies; are these the legitimate ones?

Representative DeKrey: We questioned the fiscal note because they thought they had 35 companies register; and we thought that was a little high. But the Attorney General's probably knows better what's out there; they're the ones that with their consumer fraud division get all the complaints. What few complaints they do get; because, it goes largely unreported because people are so embarrassed that they get sucked into this that they don't want to tell anyone.

Representative Brandenburg: If you could explain that some of these people that do this; what do they do on the part that's illegal?

Representative DeKrey: They promise a service that they don't deliver. They promise that they're going to reduce their credit card debt and that they're going to work with the IRS. They get the people to agree to this and then they get into their credit card and charge them fees for providing all these services; but then they do nothing on the other end about contacting creditors and working with creditors to see if they can get their debt reduced.

Representative Brandenburg: What kind of penalties are we going to put on these people so that we can clean it up?

Representative DeKrey: A class C Felony is what's in the bill. If it can be proven that they haven't executed their duties.

Representative Kroeber: Obviously a 25 page bill has to be a model legislation from some place?

Representative DeKrey: If it is, I'm not aware from where it came from.

Representative Kempenich: I just googled debt settlement. There's 2.97 million references to debt settlement.

Robert Entringer, Commissioner, North Dakota Financial Institutions: See attached testimony 1038.2.8.11A.

Chairman Thoreson: When you say you based it on previous experience, have they done similar types of work in this area or is that just there billable hours?

Robert Entringer: We added a license type for money transmitters 2 sessions ago. They came in and upgraded our records management system to allow us to add that license type and they also upgraded our online application.

Representative Klein: Do you foresee any problems with handling this with your present FTE's or do you need additional help? Is there an FTE involved in this?

Robert Entringer: In the original fiscal note we had an FTE, but, we took it out based on a suggestion from the judiciary committee. We're going to wait and see how many licensee's we have before we go forward with an FTE.

Representative Klein: Do you have to go out and do some verification at sites or is this all done online with the system you'll have in place?

Robert Entringer: We anticipate having to go out to these locations and review the files at their locations.

Representative Klein: Are there any of these that you're aware of in the state or are most of them from out of state that do this sort of thing?

Robert Entringer: To my knowledge they're all out of state.

Representative Dahl: I had a question on page 2 of your testimony you noted that you need about $85,650.00 to update your system which is a data base. It sounds like you use to track other pertinent information for all the matters that you regulate; so, is this $85,000.00 just specific to this program or is this $85,000.00 going to update other portions that you regulate?

Robert Entringer: It would be specific to add this license type to that program.

Representative Kempenich: What I'm trying to understand is how you're going to get these 35. Are these 35 a known factor right now?

Robert Entringer: The 35 licensees was based on an estimate. We surveyed other states that do license debt settlement providers and most of them were in the 30 range for actual licensed entities. I would anticipate because the trade association is aware of this bill this legislation that they will notify their members and that will spur them on to be licensed.

Representative Kempenich: Do they have to register in the state right now?

Robert Entringer: They currently have to register with the Attorney General's office to do this. It's a registration rather than a license; so, I couldn't tell you how many are registered by the Attorney General's office.

Representative Brandenburg: Are there states that are doing the same kind of program?

Robert Entringer: Are you asking if this is model law?

Representative Brandenburg: Is this something that's working someplace else?

Robert Entringer: What we were asked to do by the interim committee is develop a bill; so, what we did we took model legislation. We looked at Illinois law and based it using our existing statutes from other licensees; we modeled the bill based on our existing statues, drawing from both the model legislation and the Illinois law as well as our law.

Representative Kempenich: Your fiscal note, they took the FTE out but left the money; so, it looks like it's up to your discretion whether you're going to fill that position. Why not just leave the FTE in?

Robert Entringer: I thought it would be more palatable.

Chairman Thoreson: You did say you wanted to evaluate where you're at with this to see the number of providers that are coming forward?

Robert Entringer: Exactly.

Robert Entringer: We'll absorb it with the existing staff and if we need an FTE we'll come in next biennium and ask for an additional FTE.

Testimony continued.

Chairman Thoreson: Would that be travel out of state?

Robert Entringer: Yes, it would be.

Chairman Thoreson: So you basing this on airfare, lodging and food?

Robert Entringer: Exactly.

Testimony continued.

Representative Glassheim: I note that you anticipate in the next biennium that revenues will exceed expenses. Are your projects pretty accurate?

Robert Entringer: That would be accurate. The major expenditures in the fiscal note is the programming costs. With those going away in the next biennium it should be self sufficient.

Representative Klein: I'd like to have the rep from the Attorney General's office.

Representative Klein: I'm interest in what the penalties will be and how you're going to assess the infraction.

Ellen Alm, Assistant Attorney General, North Dakota Attorney General's Office: The Attorney General's office will have joint enforcement authority with the department of financial institutions. It would be a violation of 51-15; which is our consumer fraud law. It provides for certain enforcement authority for the attorney general; we can bring actions to enforce any violations and the remedies that are provided there injunctive relief, restitution, civil penalties up to $5,000.00 per violation, attorney's fees and costs, and any other relief that the court might find appropriate. If we do get some complaints, this is the remedy that we would have.

Representative Kroeber: How many do we have registered with the Attorney General's office now?

Ellen Alm: Yes and no. The one's that are registered now are only nonprofit. It's a consumer credit counseling under 13-07. The way it's setup now under 13-06, debt adjusting, as long as debt settlement falls in that definition, is technically banned in the state of North Dakota. The problem with that statute is it primarily a Class A misdemeanor; there's no other enforcing authority. It would fall on the State's Attorney primarily to enforce any violations of that statute. There's some exceptions in there and that includes nonprofits and those are registered to our office. The for profits are not registered.

Representative Kroeber: Will the nonprofits continue to be registered or will they have to go through financial institutions now to be licensed?

Ellen Alm: They will still be registered to our office as long as they fall into the exception in this bill. Nonprofits that are engaged in consumer credit counseling will not be registering through the department of financial institutions. They will follow the old system but they have to be a true nonprofit and that's why we're also amending 13-07 to clarify the definition of a nonprofit.

Representative Kroeber: The $400.00 for nonprofit might be quite a burden for licensure.

Ellen Alm: Yes.

Representative Kempenich: Why did you change on page 12 and 14; change will to may?

Chairman Thoreson: Do you know which lines we're looking at?

Representative Kempenich: It's the amendments and one's on page 12 line 29 and another ones on page 14 line 18.

Ellen Alm: Commissioner Entringer told me that it's a suggestion from the industry because not all creditors will agree to settle debt.

Representative Kempenich: I'm still struggling with the numbers. What you've seen in the past has it been more of a reactionary type situation with the companies?

Ellen Alm: That's kind of how the violations will come about. That's how we would know; it would be consumers complaining, then we would take actions based on that. There is no other way of finding out. They won't self report and I think during last year we had about 11 enforcement actions we had started against companies that were based on consumer complaints that we received.

Representative Kempenich: There's 2.9 million that reference debt settlement on Google; does anyone do any due diligence on these companies?

Robert Entringer: We do use Google searches, if you Google payday lenders; because we license those also, you'll get more than 2.9 million, we have 80 companies licensed. Trying to find someone through a Google search; once you get the web address, if they're not legitimate, they register through a domain. It's very difficult to track those companies, we do use Google to track them if we can. We hear the ads and we'll contact the radio station to try and get information from them. We're planning on getting information from other states for information on the companies they already have licensed.

Representative Kempenich: If they're advertising in the state that's probably the biggest contact.

Robert Entringer: Exactly.

Speaker Drovdal: I'm curious where the authority comes to regulate these companies that are not located in the state of North Dakota especially in relationship to off shore companies. Where does that authority come from and is it enforceable?

Robert Entringer: We have in our statutes a provision that if you're engaging in an activity with a citizen of North Dakota, you're doing business in North Dakota and that's our nexus. We've been challenged based on the interstate commerce clause; that has failed in pretty much every instance; because there's tests under the interstate commerce clause. If you make it more difficult to do business in your state then you're violating the interstate commerce clause, I believe is one of the tests.

Speaker Drovdal: That was the same challenge in quail versus North Dakota and the ruled that North Dakota is cumbersome on the quail; therefore, we had no authority. The courts have ruled just opposite that in the cases of regulation. Is that what you're saying?

Robert Entringer: Yes.

Representative Kempenich: The fiscal note after the amendment still has the money in it. The amendment fiscal note still has the funds in it; you want them left there?

Robert Entringer: What we eliminated was any expense associated with an FTE. I think it reduced the expenses from about $310,000.00 to $173,000.00.

Representative Brandenburg: I'm trying to understand; in order for a debt settlement company to do business in the state; they're going to have to pay a fee to the state. What is that fee?

Robert Entringer: $400.00 and $400.00 investigation fee; that's a one time fee.

Representative Brandenburg: It be a total of $800.00.

Robert Entringer: For the first year, correct.

Representative Brandenburg: If they don't pay that fee and they do business in the state; then they're subject a Class C felony?

Robert Entringer: That's correct.

Representative Brandenburg: Do you have any idea how many are in the state now doing business?

Robert Entringer: I don't.

Representative Brandenburg: There has to be a problem in the state because the bill's here. Why is this bill here?

Robert Entringer: The reason the bill's here is because they are doing business in the state and as Representative DeKrey indicated, the majority of the time you contact a debt settlement company to settle your Discover, Visa, etc; and that's what's called your enrolled debt. You pay them a fee upfront, the way it's currently structured and essentially they don't do anything for you.

Chairman Thoreson: I just noticed something on the fiscal note; when we make up the total revenue for the 2011-2013 biennium, it says license 35 per year at $400.00, $28,000.00. But then right below it it says an investigation fee of 3500 @ $400.00 is $14,000.00?

Robert Entringer: That's an annual license fee.

Representative Kempenich: On the fiscal note also, it looks like you just have your operating costs is what these revenue and expenditures are; isn't it? You said to add an FTE would be about $310,000.00?

Robert Entringer: Correct. To absorb the salary and benefits it would increase the expenditures to about $310,000.00.

Representative Kempenich made a motion for a "Do Pass" motion.

Representative Kroeber seconded the motion.

A roll call vote was taken 7 Yea's 0 Nay's 0 Absent

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1038
2/10/11
14399

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Regulation of debt-settlement providers; financial institutions regulatory fund and definition of consumer credit counseling service; regulation of debt adjusters; provide penalty.

Minutes:

Chairman Delzer: This is out of GO. Who is the carrier?

Vice Chairman Kempenich: I am. This bill came before our sub-committee. This bill deals with debt-settlement companies. The financial institution wanted to put some rules around these companies. Most of them aren't domiciled in ND, but they figured that they would have possibly 35 companies that would have some fees and regulatory costs, that would apply to do business in the state. The amendments took off the fiscal note so there isn't any fiscal impact. We really didn't do anything to the bill. They had an FTE in there but they pulled that out. I move a Do Pass on engrossed HB 1038.

Rep. Thoreson: Second the motion.

Chairman Delzer: They removed the FTE, but you're saying that all of the dollars were removed.

Rep. Kempenich: It was stated that there might be some income coming in, the $173,000; but they said that there wouldn't be any expenditures out of it.

Ch. Delzer: The costs that were related with the fiscal note were removed by the amendments put on by the Judiciary Committee.

Vice Chairman Kempenich: The fiscal note says that there is $173,000 in some operating, but that all came out with the amendment and it's still following through.

Chairman Delzer: That is from the head of financial services.

Vice Chairman Kempenich: Yes

Representative Nelson: We should do more of this, bringing up revenue without expenses. This is from the financial institutions. How can we bring in revenue and not have expenses.

Vice Chairman Kempenich: I don't think it will work because every institution that they will be dealing with is out of the state of ND. It's going to be voluntary. The way it is amended right now, he had travel in there; he had in there an FTE that would travel to their location out of state and do an interview and test. Now the FTE is gone, there's no way they are going to voluntarily do this.

Representative Nelson: If it's not going to work, and we're still going to go into it, is there any harm that can occur?

Vice Chairman Kempenich: No, there isn't anything that can occur. I think they had 35 institutions that probably would be legitimate, that probably would come in voluntarily to do business in ND. Most of those are non-profit organizations. They wanted the language so they could do this, if somebody voluntarily came into the state and wanted to be legitimate. But those aren't the ones that you're going to have problems with.

Chairman Delzer: If you expect that 35 will probably license themselves and that's the reason for the $85,000, but they do not expect that any of them will have to be investigated so there would no expenditures.

Vice Chairman Kempenich: Exactly.

Representative Kaldor: Was this in a policy committee?

Vice Chairman Kempenich: Yes it was.

Rep. Kaldor: Did the policy committee agree with your amendment.

Rep. Kempenich: It wasn't our amendment. We didn't do anything with it. They figured 35 would pay in and they pulled the expenditures out of there. It's all a volunteer operation.

Chairman Delzer: Rep. DeKrey, from the Judiciary Committee, came to the hearing and stated that they made these amendments, but they didn't change the fiscal note. By rule, it had to come to our committee.

Representative Glassheim: I thought they had taken the FTE out, but they were still going to use their existing staff. The costs of record management and IT for $85,000; travel to examine the books of even the good organizations will be expended. You have to examine the books or there's nothing happening. I don't remember the discussion that there weren't fiscal expenditures. I understood that they came and said there's no FTE, they'll eat that cost for the first two years and see. I think we have to do something.

Vice Chairman Kempenich: He said there would be no fiscal impact with the way it got amended. They were going to use existing staff and funds that came in voluntarily.

Representative Skarphol: In looking at this Fiscal Note, I fully understand why I've never been asked to work in a bank, because if you look two-thirds of the way down under #3 and

you look at licenses, 35 per year at $400 for $28,000 and then you look at the next one, investigation fee, 35 per year at $400 is $14,000.

Rep. Kempenich: One figure is for one year of the biennium, and the other one is for two years. We did ask that question in section 2.

Representative Skarphol: If this is revenue and it says exam fees six to be completed which includes motel, air fare, meals and salary; is that being paid by the six that are being examined, is that where the revenue comes from. If you're buying air fare, paying for a motel and meals, and salaries, that is an expense not revenue.

Vice Chairman Kempenich: Well it's to the company, though.

Rep. Skarphol: That's what I am asking, is that what the anticipated cost to the entity is going to be charged for these exams.

Rep. Kempenich: Yes, that's what it is. That's why I don't think this is going work.

Chairman Delzer: Further discussion? We have a Do Pass before us as the policy committee amended it. The clerk will call the roll for a Do Pass.

21 YES 0 NO 0 ABSENT

DO PASS MOTION AS AMENDED FROM POLICY COMMITTEE IS CARRIED.

CARRIER: Rep. Kempenich

Date: 2-8-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1038

House Appropriations Government Operations Division Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Rep Kempenich Seconded By

Representatives	Yes	No	Representatives	Yes	No
Chairman Thoreson	X		Representative Glassheim	X	
Vice Chairman Klein	X		Representative Kroeber	X	
Representative Brandenburg	X				
Representative Dahl	X				
Representative Kempenich	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Representative Kempenich

If the vote is on an amendment, briefly indicate intent:

Date: 2/10/11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1038

House Appropriations Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kempenich Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 21 No 0

Absent 0

Floor Assignment Rep. Kempenich

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1038, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1038 was placed on the Eleventh order on the calendar.

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1038

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1038
March 8, 2011
Job Number 15091

☐ Conference Committee

Committee Clerk Signature Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to regulation of debt settlement providers

Minutes: Testimony attached

Chairman Klein: Opened the hearing on House Bill 1038.

Vonette Richter, Legislative Council: She handed out written testimony and report that was given to the Judiciary Committee. Stated that the bill was intended to be introduced in the 2009 session and there were some issues that some of the affected parties had regarding who would administer the licensing structure and some of the other details. It was turned into a study during this past interim, during the process they heard testimony from the Attorney General's office and the Department of Financial Institutions regarding the Uniform Act and all of those parties had concerns about the Uniform Act as it was drafted. The committee was asked to take the bill and modify it to make it workable in North Dakota. A team from the Attorney General's office and the Department of Financial Institutions brought a draft in before the committee which was a combination of North Dakota state law and some of the Uniform Law and some laws from other states. The version that came out of that committee was a modified version of the Uniform Law. That is what was introduced. She then goes through some of the highlights of the bill.

Chairman Klein: Asked if they had any rules or laws that regulated this organization before this committee went into this in depth study and created this.

Vonette: Said that there are some enforcement tools that the consumer protection division currently uses.

Senator Andrist: Said that by the fiscal note you expect to have 35 registrations under this chapter and asked if these people were private for profit or non-profits, or a mix of both.

Vonette: Said that as she understands they are for profit.

Senator Nodland: Stated that the majority of these are out of state.

Vonette: Said that was correct.

Robert J. Entringer, Commissioner, Department of Financial Institutions: Testimony Attached.

Chairman Klein: Asked if the travel dollars were for all the agencies out of state.

Bob: Said that was correct and they weren't aware of any debt settlement companies located in North Dakota so they would be traveling out of state to conducts the examinations.

Chairman Klein: Asked what they did before.

Bob: Said he believed they were registered with the AG's office and they had to provide a bond of five thousand dollars.

Chairman Klein: Said that they would now over see this area of business in North Dakota.

Bob: Said that was correct, it would be shifted to their agency and it would become a license rather than just a registration.

Chairman Klein: Asked if they envision the revenue eventually would off-set the expenditures.

Bob: Yes they expect it will be a net expenditure in the first biennium because of the programming costs. The budget was increased to account for the fiscal note.

Senator Nodland: Asked what they are looking for.

Bob: Said they would be reviewing the contracts and making sure they are complying with what is set forth in the statute and looking at the fees, making sure they are complying with the fee limitations. He said the bill requires a trust fund be established so when the consumer gives money to the debt settlement provider the money is in there and is being saved for the settlement of the consumers debts. At a minimum that is what they will be looking at.

Chairman Klein: Asked if there was uniformity.

Bob: Said there was uniformity

Questions

Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division: Testimony Attached and Proposed Amendment.

Senator Schneider: Asked if the Village was a credit counseling center or debt settlement.

Parrell: Said that it is a credit counseling center.

Senator Schneider: Asked what the difference was.

Parrell: Said that a debt settlement company will try to resolve your debt for a lump sum payment significantly less than the original amount, the consumer credit counseling agencies will work with the consumers in trying to set up a payment plan in dispersing payments to pay that entire amount of the debt.

Wesley Young, TASC: Testimony Attached. He stated that they deal only with unsecured debt, no mortgages.

Chairman Klein: Stated that fees were the issue and asked if they were to address the issues, one being the federal law which takes care of the concerns that they have and the second being the thirty percent cap. He asked if his idea was to remove the cap.

Wesley: Stated that in Texas and Colorado they have taken the federal law and plugged it in. So you have all of your protection, licensing, oversight, do's and don'ts, enforcement, plus you have the federal rule, law in place. He said that there are some exemptions under the federal law and this would take away those exemptions.

Chairman Klein: Asked in removing the cap where does that end up for the consumer.

Wesley: He said he would answer it in two parts; for the consumer before the federal rule in states where there were no regulations fees were actually lower than like in Colorado where they had a fee cap. The market will help determine the cap. Number two, the fees are going to be disclosed up front and can't change during the program. The consumer knows what they are and can cancel out of the program and not owe a dime that is the extra protection for the consumer. Lastly it is difficult for them to give a number as to what would be an appropriate fee write now. The federal law took effect in October of last year. They have been doing this new program for four months, out of a three year program. He said that all the companies are losing money this year and don't know if they will make money next year. That is why there is such a large drop off in the number of companies in the industry. They are trying to figure out what an appropriate fee would be. If they had to give a number of what the fee would be it would be twenty five percent of the enrolled debt. He said because these are three year programs it works out to be eight percent APR a year.

Chairman Klein: Asked if Minnesota continues the program at thirty five percent, how would they address the fact we wouldn't be mirroring them.

Wesley: Said the problem with Minnesota is the law was passed prior to the federal law passing which has changed the landscape entirely. He said he doesn't know how many companies they have registered there.

Senator Nodland: Asked if he knew how many companies there are in the United States.

Wesley: Said that there were one to two thousand but the number has come down about seventy five percent.

Senator Nodland: Asked what percentage of those are members of his organization.

Wesley: They have about sixty members.

Senator Nodland: Asked when they discuss contracts with these people if they give them any advice. Do they suggest that they seek legal counsel?

Wesley: He said all the laws require that a financial analysis be done and all of their options be reviewed. He talked about everything they would go through with the client.

Senator Nodland: Asked how they identify their clients.

Wesley: Said that they are screened out for various reasons. He said they gather information and the initial consultation came be very lengthy, they get enough information.

Parrell: He said the case that they discussed the Attorney General did not agree with it. The federal law only applies to telemarketing sales. Internet sales are not telemarketing sales.

Wesley: Said they were asking for the Federal rule to be put into 1038. If you did that you would get ninety eight percent of what the Attorney General is asking for.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1038
March 15, 2011
Job Number 15421

☐ Conference Committee

Committee Clerk Signature Sara Liebold

Explanation or reason for introduction of bill/resolution:

Relating to regulation of debt settlement providers

Minutes: Discussion

Chairman Klein: Said the issue from the gentlemen from the debt service provider...what we are attempting to do is regulate these guys. They are from out of state companies... the question is how much should we them have? The Attorney General has suggested they get (starting out at 30% and the Attorney General suggested doing 20%). What does the bill say? Gentlemen from Texas suggested we take all caps off so when they are helping with credit collection/cards. Original Legislation said 30% of what they save you.

Senator Schneider: Wes said it is different from an attorney's fee. Not sure that it is all that different. If these individuals represent someone and save them ten thousand dollars, that is a ten thousand dollar benefit to them as well. A contingent contract would get three thousand...I don't know how it would be different. I do think it is important to have some cap on this group. The state bar regulates the attorney's fees can be and/or charge. There is no such organization for debt settlement providers...we need to stand in the gap as legislators and protect these people who are in desperate circumstances. The Attorney General's office has done remarkable work on this.

Senator Laffen: In general I have nervousness as this is a growing industry and lets people go out to spend too much on credit cards and then figure out a way to not have to pay the bill. If this industry, I would be concerned that we would be developing this mentality that you don't have to pay all your bills. Just get some company to get you out of a portion of it. Overall, I am not sure this industry is good for the overall credit industry. I sympathize with those who need help...it seems it does need some regulation on our part.

Senator Nodland: The fees are on page 19 item 3 under line 17 & 18. Amount would not exceed the amount greater that 30% of the savings. This was the most fraud they have ever worked with...consumer fraud...this is really cleaning it up and we can make it more difficult in the next session if need be. They have illuminated some of these companies in the U.S. as states are starting to clean this up. I think it is a good bill.

Senator Murphy: Isn't always the case where they save the consumer money...isn't it sometimes consolidating debt, and give them a payment to make it easier?

Chairman Klein: These groups that you see on TV when you have debt of twenty thousand dollars...call us, we can help you. Sometimes they take the money you give them up-front and you never hear from them again. The state is going to regulate this through the Attorney General's office and he usually gets the complaint from the consumer who has been jilted by these organizations. We have legislation here that would provide for thirty percent of the recoverable amount of money so these companies are able to negotiate down that you only owed ten thousand dollars of the twenty thousand dollars will allow this debt presentment organization to take the thirty percent... they get three thousand dollars...is that correct?

Senator Nodland: Ten percent of the savings if the original debt was twenty thousand dollars, they get it down to ten thousand dollars ...it would be three thousand dollars.

Senator Andrist: The question we have to ask, if these people provide a good service to the North Dakotans...will they provide the service with a cap of thirty percent are they going to provide this service if we don't give them a larger percentage of the recovery? It is a mixed service they provide and thirty percent could be a good beginning and wait two years and they come back and say they can't do it for this...so why are we doing this?

Chairman Klein: I would have felt more comfortable if the gentleman form Texas would have suggested that he could go to fifty percent rather than...it should be completely gone. That isn't much negotiation.

Senator Larsen: The individual from Texas or anybody in testimony did they say how much they charge? Are they charging over thirty percent ....thought it was more like ten percent?
I don't remember the fees they are charging.

Chairman Klein: I don't recall but do recall under this legislation, they can't charge any dollars up front...when they come to an agreement with a credit card companies, that if the debtor does not say "go for it" they still can't collect any money from them.

Senator Nodland: That is correct. The department of Finances will examine yearly. Now they are being treated like a bank in ND and examined every year to see that they are operating up and up. This is a tough bill...but a good bill.

Chairman Klein: This bill will have a fiscal effect until the Financial Institutions get their arms around examining these people who are doing these businesses. We don't have any in North Dakota?

Senator Nodland: That is correct.

Senator Laffen: It appears they came from the group who submitted the bill. This is mostly just clean up...language.

Chairman Klein: Starts with page seven line twenty three...discussion of the amendment.

Senator Nodland: I move to adopt the amendment for engrossed HB 1038.

Senator Murphy: Seconded the motion.

Chairman Klein: There has been a motion and a second, discussion? Committee we are going to hold onto this to double check...Erik check on this and we will take a fifteen minute break and continue with this HB 1038 when we come back.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1038
March 15, 2011
Job # 15423

☐ Conference Committee

Committee Clerk Signature Eva Lietzke

Explanation or reason for introduction of bill/resolution:

Relating to regulation of debt settlement providers

Minutes: *Vote*

Senator Klein: Second meeting called to order Tuesday, March 15, 2011 for HB1038. Meeting on the motion and clarified the amendments on HB1038 were correct that he had the ones we handed out were the correct ones. The ones he had attached to his testimony were incorrect because he had it on the wrong version. He asked if there were any more discussion on the amendments. The clerk calls the roll on HB1038.

Clerk: Roll call vote. 7-0-0

Senator Nodland: I move Do Pass on HB 1038 as amended and rerefer to Appropriations

Senator Larsen: Second the motion.

Senator Klein: Asked for Discussion. The Clerk will take the roll on Do Pass as amended and rerefer to Appropriations on HB1038.

Clerk: Roll call vote. 7-0-0

Senator Klein: Passed.

Senator Nodland carries the bill.

11.0225.03001
Title.04000

Adopted by the Industry, Business and Labor Committee

March 15, 2011

3-15-11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1038

Page 7, line 23, remove "have not been"

Page 7, replace lines 24 through 26 with ":

(1) Have not been convicted of a felony;

(2) Have not been convicted of a misdemeanor involving dishonesty or untrustworthiness; or

(3) Have not been the subject of an adverse finding or adjudication in a license disciplinary or other administrative proceeding concerning allegations involving dishonesty or untrustworthiness"

Page 8, line 3, after "commissioner" insert "unless the commissioner determines the violation is not material"

Page 16, line 25, replace "void" with "voidable"

Page 24, line 26, replace "**Voidable**" with "**Void**"

Page 24, line 28, remove "individual may void the"

Page 24, line 28, after "contract" insert "is void"

Page 24, line 29, after "and" insert "the individual may"

Page 24, line 31, replace "voidable by the individual" with "void"

Page 25, line 1, replace "If an individual voids a" with "For a void"

Renumber accordingly

Date: 3/15/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1038

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Parrell D. Grossman Amendment

Date: 3/15/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1038

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☑ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Nodland

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1038, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1038 was placed on the Sixth order on the calendar.

Page 7, line 23, remove "have not been"

Page 7, replace lines 24 through 26 with ":

(1) Have not been convicted of a felony;

(2) Have not been convicted of a misdemeanor involving dishonesty or untrustworthiness; or

(3) Have not been the subject of an adverse finding or adjudication in a license disciplinary or other administrative proceeding concerning allegations involving dishonesty or untrustworthiness"

Page 8, line 3, after "commissioner" insert "unless the commissioner determines the violation is not material"

Page 16, line 25, replace "void" with "voidable"

Page 24, line 26, replace "**Voidable**" with "**Void**"

Page 24, line 28, remove "individual may void the"

Page 24, line 28, after "contract" insert "is void"

Page 24, line 29, after "and" insert "the individual may"

Page 24, line 31, replace "voidable by the individual" with "void"

Page 25, line 1, replace "If an individual voids a" with "For a void"

Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1038

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

HB 1038
March 24, 2011
Job # 15943

☐ Conference Committee

Committee Clerk Signature Rose Laning

Explanation or reason for introduction of bill/resolution:

A bill which relates to the regulation of debt-settlement providers; relating to the financial institutions regulatory fund and definition of consumer credit counseling service; also relating to the regulation of debt adjusters.

Minutes: See attached testimony - # 1.

Chairman Holmberg called the committee hearing to order on HB 1038. Roll call was taken. **Sheila M. Sandness** - Legislative Council; **Lori Laschkewitsch** - OMB.

Senator Grindberg (waiting for someone to testify) Sheila, are you planning to give an overview of this bill? **Sheila M. Sandness**: I wasn't prepared to.

Senator Wanzek: Was this the bill that **Senator Nodland** carried? (will call down to IBL)

Chairman Holmberg asked if the Legislative Council can explain the bill?

Sheila M. Sandness: I can't really explain the content of bill, but I can tell you that it came out of legislative management – the judiciary committee. It had a fiscal note attached to it, however the amount that was in the original fiscal note, the agency identified it as not being included in their bill. That amount has now been put into the agency's appropriation bill. As far as background information, I'm afraid that's all that I can provide.

Chairman Holmberg: So we were holding financial institutions (HB 1008) for HB 1038. We didn't add anything to financial institutions, did we? We still have the bill. We haven't done anything with it. Oh, the House added the money, so the money is in 1008 for 1038. Then why are we having it? Because it had a fiscal note? **Sheila M. Sandness:** That is correct.

Senator Krebsbach: I'm looking at the two fiscal notes that we have; one dated 12/15/11 and one dated 1/26/11 and I fail to see any differences between the two fiscal notes.

Sheila M. Sandness: That is correct. I think what happened is that they attached the fiscal note because the fiscal effect was the same in the bill as amended. However, we should have probably asked for another fiscal note because the fiscal note says that the Department of Financial Institutions will ask for an increase in the appropriation in HB 1008 for the operating

line item if the bill passes. At that point, they were still asking for the money. However, since then, the money has been put in their bill. The fiscal note provides a brief description of the bill, it says that it will require debt settlement providers to be licensed and regulated.

Chairman Holmberg: We won't pass on the bill. No one has appeared. I hate to pass out a bill when we don't have the benefit of someone. Who is the carrier of the bill? Who did Judiciary assign as the carrier of the bill? It should say on the committee report.

Chairman Holmberg: Call Jerry (Klein) and see who the carrier is.

Senator Krebsbach: This is the first engrossment with Senate amendments so we must have adopted amendments.

Chairman Holmberg: The floor did and then it was on the floor for final passage.

Senator Jerry Klein entered the room. HB 1038 deals with preferred debt settlement providers. We've had a couple of payday lenders and then this group. The attempt here was to provide oversight – on those folks who say 'when you have $20,000 of credit card debt, call us'. These folks are non-resident licensees. With the banking commissioner and along with the peril at the Attorney General's office – consumer division, we are trying to get a handle on those folks. Only allowing them up to 30% of the recovery money, however, those are the caps we put on, the banking commissioner is going to be kind of the hammer here, he's going to be licensing these folks and that's where he needs a couple of bucks. I just saw the fiscal note. We sent it on down and I was hoping he'd be here to explain why he needs that money to get all these out of state guys licensed. There are quite a few of them. Most of those folks don't like what we've done because we've set the cap at 30%. The gentleman from Dallas wanted it unlimited. Just kind of an overview, I thought they'd be here defending why they needed the cash, but that's what the bill did.

Chairman Holmberg: The HB 1008, the House added an amendment to add $173,907 of special funds for operating expenses associated with the estimated cost of implementing HB 1038. The fiscal note is already in the budget.

Robert J. Entringer, Commissioner, Department of Financial Institutions
Written testimony # 1
Testified in support of HB 1038

I apologize. I was not aware the bill was up for a hearing this morning. I don't have prepared testimony, but my understanding is that Senator. Klein brought over my testimony with regard to the fiscal note. If you have questions regarding the bill, I can certainly answer that or give you a general overview of the bill.

Chairman Holmberg: Give us a general overview of the context.
Robert J. Entringer: The genesis of this bill – we were asked by the interim judiciary committee to come up with a proposed draft for debt settlement service providers. We were asked to look at the uniform bill and we took that bill and also looked at legislation that Illinois had recently enacted with regard to the same type of companies as well as our existing statutes. We did not draft a uniform bill for interim committee. The bill as amended is what you

have in front of you today. It is not a uniform act. What it does is it places the licensing authority with the Department of Financial Institutions for debt settlement service providers. They are defined on page three of the bill.

Essentially, its those ads that we've all heard on radio or seen on TV where these companies offer to settle consumer debts. Generally, it's unsecured consumer debts for a fee. Presently, the only regulation regarding these companies is in HB 1307. It's just a registration. They provide a bond, I think of $5,000 to the Attorney General's office. Other than that, the Consumer Protection Division acts on complaints with regard to these companies. There is very little enforcement capabilities. So this changes it from a registration to a licensing process and places the enforcement with the Department. Much of the bill is patterned after the Uniform Act as well as the State of Illinois and the legislation they passed. In a nutshell, that's pretty much what it does. I'd be happy to answer any other questions.

Senator Wardner: The dollars – why do you need them?

Robert J. Entringer: The money, primarily, is used to update our records management data base. That's about $115,000 of it. The rest of it is examination fees, most of which will be recouped through revenue generated. The bill allows us to set a fee for those examinations so most of that would be recouped, but there is some additional expenses; printing costs, and that type of thing.

Chairman Holmberg asked if this was any relation to the companies that advertise on television a lot "It's my money and I want it now?" Is this debt settlement or is this something different? Money that is supposedly owed you that you contact them.

Robert J. Entringer: I'm not familiar with that ad, but that probably isn't debt settlement. Debt settlement is essentially credit cards is what they deal with primarily. The other thing this bill does include is the Ronnie Deutsch's of the world, the attorneys that will settle your tax debts. It encompasses that as well. Rep. Klemin wanted to include that in the legislation, so the House amended it include that as well. It deals with unsecured consumer debt as well as tax obligations. That does not strictly relate to consumer debt; that would also include small business.

Chairman Holmberg: Any additional questions? Thank you for coming over. You don't have to apologize much because at this time of the session it's hard. This is the second bill in a row where it was an orphan.
Chairman Holmberg closed the hearing on HB 1038. He asked the committee for their recommendations on the bill.

Senator Wardner moved Do Pass and re-refer it back to IBL.
Senator Wanzek seconded.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0

The bill goes back to Senate Industry Finance and Labor and Senator Nodland will carry the bill.

Date: 3-24-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1038

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Wardner Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment goes to JBL Nodland

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1038, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1038 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1038

EXCERPT FROM 2009-10 JUDICIARY COMMITTEE REPORT

REGARDING HOUSE BILL NO. 1038

PROVIDED BY: VONETTE RICHTER, LEGISLATIVE COUNCIL

JANUARY 5, 2011

UNIFORM DEBT-MANAGEMENT SERVICES ACT STUDY

The Uniform Debt-Management Services Act was among the 2008 recommendations of the North Dakota Commission on Uniform State Laws for introduction in the 2009 legislative session. Before the 2009 legislative session, concerns were expressed by members of the commission, the Attorney General, and the director of the Department of Financial Institutions that before the uniform Act is introduced for adoption in North Dakota, a determination should be made as to which state agency would be the most appropriate agency for the administration and enforcement of the Uniform Debt-Management Services Act. It was noted that the Uniform Debt-Management Services Act is a complicated Act that will require additional staffing and budget to implement. Because of these concerns, it was recommended that a study of the Uniform Debt-Management Services Act be conducted to address these concerns before introduction.

The Uniform Debt-Management Services Act has been adopted in Colorado, Delaware, Missouri, Nevada, Rhode Island, Tennessee, and Utah.

Background

The National Conference completed the Uniform Debt-Management Services Act in 2005. The uniform Act is intended to provide the states with a comprehensive Act governing these services that will allow for the national administration of debt counseling and management in a fair and effective way.

Uniform Debt-Management Services Act Summary

The Uniform Debt-Management Services Act may be divided into three basic parts--registration of services, service-debtor agreements, and enforcement.

Registration

The Uniform Debt-Management Services Act provides that a service may not enter an agreement with any debtor in a state without registering as a consumer debt-management service in that state. Under the uniform Act, registration requires submission of detailed information concerning the service, including its financial condition, the identity of principals, locations at which service will be offered, form for agreements with debtors, and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft, and the like in an amount no less than $250,000. The service also must provide a security bond of a minimum of $50,000 which has the state administrator as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in a state. A satisfactory application results in a certificate to do business from the administrator. A yearly renewal is required.

Agreements

In order to enter agreements with debtors, the uniform Act requires a disclosure requirement respecting fees and services to be offered and the risks and benefits of entering such a contract. The service must offer counseling services from a certified counselor, and a plan must be created in consultation by the counselor for debt-management service to commence. The contents of the agreements and fees that may be charged are set by the statute. The uniform Act provides for a penalty-free three-day right of rescission on the part of the debtor. The debtor may cancel the agreement also after 30 days but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days.

Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. The uniform Act contains strict accounting requirements and periodic reporting requirements respecting funds held.

Enforcement

The uniform Act prohibits specific acts on the part of a service, including misappropriation of funds in trust, settlement for more than 50 percent of a debt with a creditor without a debtor's consent, gifts or premiums to enter an agreement, and representation that settlement has occurred without certification from a creditor. Enforcement of the uniform Act occurs at two levels--the administrator and the individual level. The administrator has investigative powers, power to order an individual to cease and desist, power to assess a civil penalty up to $10,000, and power to bring a civil action. An individual may bring a civil action for compensatory damages, including triple damages if a service obtains payments not authorized in the uniform Act, and may seek punitive damages and attorney's fees. A service has a good-faith mistake defense against liability. The statute of limitations pertaining to an action by the administrator is four years and two years for a private right of action.

Banks as regulated entities under other law are not subject to the uniform Act, as are other kinds of activities that are incidental to other functions performed. For

example, a title insurer that provides a bill-paying service that is incidental to title insurance is not subject to it.

North Dakota Statutory Provisions

There are several areas of North Dakota law which may be impacted by the enactment of the Uniform Debt-Management Services Act. North Dakota law regarding debt adjustment and consumer credit counseling services are contained in Chapters 13-06 and 13-07. Chapter 13-06, which relates to debt adjusting, provides that unless exempted, any person who engages in the business of debt adjusting is guilty of a Class A misdemeanor. Section 13-06-03 provides for exemptions from the prohibition on debt adjusting, including situations involving debt adjusting incurred incidentally in the lawful practice of law in this state; banks and fiduciaries; title insurers and abstract companies; judicial officers or others acting under court orders; nonprofit or charitable corporations or associations engaged in debt adjusting; situations involving debt adjusting incurred incidentally in connection with lawful practice as a certified public accountant and licensed public accountant; bona fide trade or mercantile associations in the course of arranging adjustment or debts with business establishments; any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for services offered in adjusting the debts; and licensed and bonded collection agencies.

Chapter 13-07, which was enacted in 1993, provides for the regulation of consumer credit counseling services. Under Section 13-07-01, a consumer credit counseling service is defined as "a nonprofit corporation engaged in the business of debt adjusting as defined in section 13-06-01." Section 13-07-02, which sets forth the contract requirements in an agreement between the consumer credit counseling service and the debtor, provides that a consumer credit counseling service may not enter an agreement with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and that the debtor will be benefited by the plan. Section 13-07-06 authorizes the consumer credit counseling service to charge an origination fee of up to $50. Section 13-07-07 prohibits a consumer credit counseling service from taking a confession of judgment or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding. This section also authorizes the Attorney General to receive and investigate complaints against a consumer credit counseling service. The remaining sections in this chapter set forth the surety bond, trust account, and accounting requirements for a consumer credit counseling service.

Testimony and Committee Considerations

The committee received extensive testimony and assistance from the Department of Financial Institutions and the Consumer Protection and Antitrust Division of the Attorney General's office.

The committee received testimony regarding the feasibility and impact of enacting the Uniform Debt-Management Services Act, as well as testimony regarding consumer protection services that are being provided by the state. The testimony indicated that other states have reported problems with some debt-management companies. According to the testimony, there are debt-management companies that lead consumers to believe the company can settle the debtor's debt for less than one-half of the debt owed. It was noted, however, when the company cannot deliver what has been promised, the debtor suffers. The Uniform Debt-Management Services Act would regulate debt-management companies.

Nonprofit consumer credit counseling services companies that do business in the state are required to register with the Attorney General. The registration process includes the posting of a bond. Actions that have been taken against consumer credit counseling services companies were the result of the companies' failure to post a bond or contact the Attorney General's office. According to the testimony there are about 25 consumer credit counseling services companies registered in the state; however, about 15 to 20 companies may be doing business in the state without following the bond and registration requirements. Complaints regarding consumer credit counseling services companies are received by the Attorney General's office. It was noted that there are three to five enforcement actions per year against consumer credit counseling services companies. According to the testimony, most of the consumer credit counseling services companies, which are nonprofit, are legitimate.

The testimony indicated the Attorney General has received few complaints from consumers regarding debt-management services companies in the state; however, it was noted that the office has received complaints from bankruptcy trustees regarding these companies. According to the testimony, the deceptive practices among debt-management services companies have become a real problem over the past several years. The industry is ripe for abuse because the industry targets consumers who are desperate for help, and the Uniform Debt-Management Services Act may be a proactive way to prevent problems before they get to North Dakota. It was also noted that current law regarding consumer fraud is very broad and would allow the Attorney General to take action if needed; however, a specific law may allow the Attorney General to move more quickly against a company. According to the testimony, the Uniform Debt-Management Services Act would meld current consumer credit counseling services laws with the debt-management regulations. The testimony indicated that the topic of regulating debt-management companies is one of concern to consumer protection offices throughout the country. It was noted, however, that many of the states do not like the uniform Act because it does not provide enough consumer protection.

The committee also received testimony regarding the appropriate agency to administer the Uniform Debt-Management Services Act. According to the testimony, while both the Attorney General and the Department of Financial Institutions are willing to administer the regulation provided for in the uniform Act, the Department of Financial Institutions would be the more appropriate agency. The testimony indicated that the regulation of debt-management services companies in other states is typically done by either a consumer fraud department or a banking department.

Testimony from the Department of Financial Institutions indicated that there are concerns about some of the provisions in the Uniform Debt-Management Services Act. The testimony indicated that one of the concerns is whether to require licensure of both for-profit and nonprofit companies. According to the testimony, if the state is going to regulate the industry, both types of companies should be regulated. The testimony indicated that the department would prefer licensing over registering as a method of regulating debt-management companies because when a license is issued the license can be revoked for violations. It was estimated that there may be 100 to 200 companies that potentially could be licensed under the uniform Act. It was suggested that any legislation should address the collection of fees and the department's ability to issue enforcement actions that are consistent with other entities that the department licenses. It was noted that significant resources for licensing, bonding, and monitoring will be needed to regulate the debt-management services industry. It was estimated that two to three FTE positions would be necessary to handle the regulation of the debt-management services companies that would be licensed in the state. The testimony indicated that the goal is to have a law that provides for accountability but that allows legitimate companies to do business.

During the course of the committee's study, the committee considered a bill draft relating to the regulation of debt-settlement providers. According to testimony, the bill draft incorporated some of the provisions of the uniform Act but also included provisions modeled after current North Dakota consumer protection laws, as well as provisions contained in Illinois debt-settlement provider legislation. Testimony in explanation of the bill draft indicated the changes were made to the uniform Act to make the legislation more workable for North Dakota consumers. It was noted that the uniform Act only requires registration of the debt-management companies; however, the bill draft would require licensure. Another distinction noted between the uniform Act and the bill draft was that the uniform Act allows for the regulation of either for-profit or nonprofit companies, or both; however, the bill draft would require the regulation of both types of companies. The testimony noted that the regulations in the bill draft do not apply to professions such as lawyers and accountants because those professions are already regulated and licensed by their respective licensing bodies. The bill draft retained private rights of action which would allow a person to sue a company in civil court. Under the bill draft, the Department of Financial Institutions would be responsible for the regulation of the debt-settlement companies, and the Attorney General would be given enforcement authority.

The testimony indicated that the bill draft is consistent with other state laws. It was noted that many of the provisions of the Uniform Debt-Management Services Act are included in the bill draft but are located in different sections. The committee reviewed several documents that detailed the distinctions between the Uniform Debt-Management Services Act and the bill draft.

Other testimony regarding the bill draft indicated that even if a federal law is enacted on debt-management services, a state law is helpful because a state is usually able to react much more quickly than the federal government.

One committee member expressed concern about the bill draft and its deviations from the Uniform Debt-Management Services Act. It was noted that the area of debt management is very complicated, and the state's laws will not be uniform if the bill draft is adopted. It was noted that while the intent of uniform laws is to attain uniformity across the country, a state does not have to adopt uniform Acts, and a state can change a uniform Act to suit the state's needs. Concern was expressed about the effect this bill draft would have on a company located in another state if the other state adopted the uniform Act and North Dakota did not.

Recommendation

The committee recommends House Bill No. 1038 to provide for the regulation of debt-settlement providers.

HOUSE JUDICIARYCOMMITTEE
REPRESENTATIVE DUANE DEKREY, CHAIRMAN
JANUARY 5, 2011

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of Attorney General Wayne Stenehjem in support of House Bill 1038.

This legislation providing for the regulation of debt settlement services is legislation that introduced by the Judiciary Interim Committee after a study of debt settlement practices and the Uniform Debt Services Management Act. The Attorney General recognizes the importance and benefit of uniform laws. However, the conduct and problems of fraudulent debt settlement service providers has rapidly outpaced the well-intentioned model legislation proposed by the National Conference of Commissioners on Uniform Laws in 2008. The Attorney General ultimately could not recommend to the Judiciary Committee or this Legislature the adoption of the model act without significant changes. In my 17 years with the Attorney General's Office I cannot recall any model uniform law that raised more discussion amongst my colleagues, the directors of Attorneys General Consumer Protection Divisions throughout the nation, due to concerns that the debt settlement model legislation simply did not meet the needs of actual fraud or industry abuse. I'm not certain of the states that have adopted the uniform law. I believe it is a very small number, perhaps less than 5 states.

Due to the rampant debt settlement fraud, this matter has been a topic of frequent discussion for Attorney General Stenehjem and other attorneys general throughout the country. He is particularly concerned about the consumer fraud in this industry. In 2010 Attorney General Stenehjem ramped up consumer protection enforcement in this area and has been working closely with the Department of Financial Institutions in a plan to more effectively protect North Dakota consumers. New legislation is the most important component in enforcement efforts. For this reason the Attorney General is supporting enhanced legislation which incorporates many of the model law provisions.

Before detailing some of the financial concerns with debt settlement companies the Attorney General wants to inform you that debt reduction and debt settlement companies are some of the worst offenders of North Dakota's do not call laws. They often utilize pre-recorded messages without providing caller identification or use fictitious "telephone numbers" for which it is difficult to determine the source of the calls, often originating from outside the country. The calls are not necessarily made directly by the debt adjusting entities, but are made by entities seeking clients on their behalf.

I want to briefly inform you of the North Dakota complaints and enforcement. In 2010, the Attorney General's Consumer Protection Division (CPAT) received approximately 33 complaints against companies that sold services categorized as "Debt Adjusting." These services included debt reduction, interest rate reduction services, debt negotiation and debt settlement services. The consumers reported to CPAT a total of $63,614.63 lost to these companies. As a result of complaint mediation, investigation and litigation, the Attorney General recovered a total of $45,066.

If the Attorney General is initiating enforcement, why is HB1038 necessary? The conduct appears to be in violation of ch. 13-06 "Debt Adjusting" which prohibits debt adjusting by for profit entities. That chapter has criminal sanctions and no specific mention of any civil authority by the Attorney General. If the conduct is illegal we believe the Attorney General's authority is inherent, so we have used the statute, nonetheless, in conjunction with the authority in the consumer fraud law in chapter 51-15. State's attorneys prosecute crime and 13-06 should be enforced by state's attorneys. They, however, are embattled with more serious crimes and likely aren't able to make debt settlement complaints a priority. Chapter 13-06 would require a complete overhaul and HB 1038 more directly and effectively addresses the debt settlement issues.

I have attached two consumer complaints that are not of particular or unique importance and demonstrate the nature of complaints by North Dakota consumers. One consumer paid almost $2,900 to the debt settlement company. Between May and June 2010 that sum was withdrawn from her bank account. About $2,600 was paid to the debt settlement company and $240 was retained for future negotiating. The consumer's first three months of payments went directly to the debt settlement company. That entity told her to quit paying her credit card bills. Shortly after, she started receiving constant daily collection calls. She alleges the entity did nothing to assist her. In June she was sued by the credit card company on a $24,000 obligation. Ultimately she retained an attorney and that particular debt was settled for $12,000. Another consumer maintains she paid a debt settlement company $7,100 between May and November 2010 when she filed the complaint. The consumer complained the entity intended to keep about half of the $7,100 and had done nothing for the money.

We have been advised by an individual very involved with North Dakota bankruptcy filings that many bankruptcy debtors have unsuccessfully used the services of debt settlement companies, and after paying thousands of dollars for bad advice to stop paying their debts, ultimately turn to bankruptcy to try and solve financial problems that have substantially worsened during the debt settlement relationships.

A coordinated, structured two-pronged licensing and enforcement statutory scheme appears to be the best approach to regulate the industry and ensure consumers receive the services they were promised for reasonable fees. Fees under chapter 13-07, the consumer credit counseling statutes, have been regulated for years. In our experience in enforcing chapter 13-07 it is not the nonprofit entities that will take advantage of consumers in financial trouble. The victims of debt settlement fraud are well intentioned consumers who want to avoid bankruptcies and are vulnerable to sales pitches that falsely promise results.

The Attorney General encourages you to review, if time permits, the attached GAO report, "Debt Settlement. Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers." The case studies and undercover calls are very informative of the industry abuses. I won't separately detail the findings but those findings are very enlightening. I have not had an opportunity to review the 11 page comments and attachments of The Association of Settlement Companies ("TASC"), a national association of settlement companies, submitted to this committee. In a nutshell, TASC will suggest that it is self-regulating and sets standards for their members. When considering TASC's comments the Attorney General directs you to the GAO report which notes that TASC's written standards for member companies, requiring strict adherence for members, explicitly state "No Members shall direct a potential or current client to stop making monthly payments to their creditors." Yet, the undercover investigation revealed a number of TASC members advised the undercover callers to stop making their monthly payments. We believe you should consider this information in deciding the effectiveness of TASC's written standards for its members. That report also details some very low success rates for debt settlement companies.

The fees for debt settlement are heavily front end loaded. Many of the entities never deliver results. Consumers become very frustrated when they are sued after they are advised to stop paying their obligations and it is conveniently the consumer's fault for failing to follow through with a plan that isn't working. The debt settlement entity keeps the consumers' advance payments. Only the debt settlement entities are satisfied with that arrangement.

There is an important balance in regulating relationships between consumers and businesses, and the Attorney General does not interfere with those relationships, absent compelling circumstances revealing fraud and abuse. The debt settlement/debt reduction industry, however, is unfortunately rampant with fraud and abuse and the regulatory balance here is grossly imbalanced to the serious detriment of North Dakota consumers. This legislation will allow legitimate debt settlement entities to conduct business in North Dakota and will protect consumers from fraudulent and abusive conduct.

The Attorney General has some proposed amendments for the committee's consideration and I will attempt to explain those amendments and answer, as best I'm able, your questions.

The Attorney General respectfully requests the House Judiciary Committee give House Bill 1308 a "do pass" recommendation.

Thank you.

CONSUMER COMPLAINT
OFFICE OF ATTORNEY GENERAL - CONSUMER PROTECTION DIVISION
SFN 7418 (Rev.11-2009)

Name of Person or Firm Complained Against		
Impact DS		
Address [redacted]		
City [redacted]	State AZ	Zip Code [redacted]
Telephone Number (Include Area Code) [redacted]		
Cell Phone Number [redacted]	Fax Number	

Your Name [redacted]		
Address [redacted]		
City Mandan	State ND	Zip Code 58554
Home Telephone Number [redacted]	Work Telephone Number [redacted]	
Cell Phone Number [redacted]	Age * 35	Sex * F

*Optional - (For Statistical & Enforcement Purposes Only.)

When filling out this form, please keep in mind that a copy of this complaint form may be forwarded to the party or firm complained against.
(PLEASE DO NOT COMPLETE FORM IN PENCIL)

Date of Transaction	Product or Service Involved
May 2010	Debt Settlement Services

Amount of money you have already paid: $	Amount of money person or firm says you still owe: $
7,119.52	—

How would you like to have your complaint resolved?
I am getting back $3786.98. They say I owe $3433.41 in monthly fees. I was supposed to get updates monthly and have not gotten a thing. Totally Misled by Micha @ Company.

FIRST CONTACT BETWEEN YOU AND PERSON OR FIRM
(CHECK THE MOST APPROPRIATE ANSWER)

- ☐ I contacted or went to the firm's regular place of business.
- ☐ The firm contacted me in person at my home or place of work.
- ☐ I contacted or went to the firm's temporary place of business.
- ☐ I received a telephone call from the firm.
- ☐ I responded to a radio/TV ad.
- ☐ I responded to a written advertisement.
- ☒ I received information in the mail from the firm.
- ☐ Yellow pages of telephone book.
- ☐ On the Internet.

WHERE DID THE TRANSACTION TAKE PLACE?
(CHECK THE MOST APPROPRIATE ANSWER)

- ☐ At the firm's place of business.
- ☐ At my home.
- ☐ Away from the firm's place of business (for example, at your place of employment, etc.).
- ☒ Over the telephone.
- ☒ By mail.
- ☐ There was no transaction.
- ☐ On the Internet.

Did you sign a contract or written agreement?	☐ NO	☒ YES – If "YES" attach a copy	I don't have a copy of it.
Did you receive a contract or a receipt?	☒ NO	☐ YES – If "YES" attach a copy	

Name of person(s) with whom you dealt, if any.
Micah Hey - Enrollment Rep. (800) 581-6020

Have you contacted a private attorney or another agency?	☒ NO	☐ YES – If "YES", identify below.
Court action pending or completed?	☒ NO	☐ YES – If "YES", what was the result?

CONTINUE WITH EXPLANATION ON OTHER SIDE OF FORM

104000

CONSUMER COMPLAINT - CONTINUED SFN 7418 (Rev. 11-2009)

EXPLANATION OF TRANSACTION

Explain the facts and circumstances of the fraud, deception or misrepresentation fully and specifically.
If you need more room, use additional sheets of paper and attach to Complaint.

Secure Account Services (3rd Party) They held the trust account (All Funds) ph # (877) 505-5510
Impact Debt services - gets 350.38/month
=$51/month
=$49/month

I did not receive ANY monthly statement as promised.
Also, new law states that consumers will get all monies returned including fees if they drop program??

The statements contained in this complaint are true and accurate to the best of my knowledge. I wish to file a complaint against the part named. I understand the Conusmer Protection and Antitrust Division is not permitted to engage in the private practice of law, and therefore is not my lawyer or legal representative. I am, however, filing this complaint to notify the Consumer Protection and Antitrust Division of the activities of the person/firm about which I have a complaint.
(Complaint forms not signed will be returned)

Date	Signature

ATTACH THE FOLLOWING TO THE COMPLAINT

1 - Copy of any contract or written agreement.
2 - Copy of any receipt.
3 - Copy of any cancelled check or other proof of payment.
4 - Copy of any written advertisement.
5 - Copy of any correspondence.
6 - Copy of any other related documents.

Office of Attorney General
RECEIVED
NOV 19 2010
Consumer Protection
Bismarck North Dakota

SEND TO:

CONSUMER PROTECTION DIVISION
Office of Attorney General
Gateway Professional Center
1050 E Interstate Ave Suite 200
Bismarck ND 58503-5574

Thank you for taking the time to complete this Consumer Complaint form. The information you have provided will help us in our efforts to resolve your consumer problem.

Wayne Stenehjem
ATTORNEY GENERAL

CONSUMER COMPLAINT
OFFICE OF ATTORNEY GENERAL - CONSUMER PROTECTION DIVISION
SFN 7418 (Rev.11-2009)

[redacted] Fax

main office → [redacted]

Name of Person or Firm Complained Against	
Legal Helpers Debt Resolution LLC	
Address [redacted]	
City [redacted]	State CA Zip Code [redacted]
Telephone Number (Include Area Code) [redacted]	
Cell Phone Number	Fax Number [redacted]

Your Name [redacted]		
Address [redacted]		
City Bismarck	State ND	Zip Code 58501
Home Telephone Number [redacted]	Work Telephone Number	
Cell Phone Number	Age * 61	Sex * F

*Optional - (For Statistical & Enforcement Purposes Only.)

When filling out this form, please keep in mind that a copy of this complaint form may be forwarded to the party or firm complained against.
(PLEASE DO NOT COMPLETE FORM IN PENCIL)

Date of Transaction	Product or Service Involved
2-4-10	Credit card debt Resolution

Amount of money you have already paid: $	Amount of money person or firm says you still owe: $
2,864.17	2,621.79 ? if retained

How would you like to have your complaint resolved?
refunded 242.38 received 7/23/10
I would like to receive the money LDS retained because they never contacted the creditor by phone or mail. See Richard Baer's correspondence

FIRST CONTACT BETWEEN YOU AND PERSON OR FIRM *(CHECK THE MOST APPROPRIATE ANSWER)*	WHERE DID THE TRANSACTION TAKE PLACE? *(CHECK THE MOST APPROPRIATE ANSWER)*
☐ I contacted or went to the firm's regular place of business.	☐ At the firm's place of business.
☐ The firm contacted me in person at my home or place of work.	☐ At my home.
☐ I contacted or went to the firm's temporary place of business.	☐ Away from the firm's place of business (for example, at your place of employment, etc.).
☐ I received a telephone call from the firm.	☒ Over the telephone.
☐ I responded to a radio/TV ad.	☐ By mail.
☐ I responded to a written advertisement.	☐ There was no transaction.
☒ I received information in the mail from the firm.	☐ On the Internet.
☐ Yellow pages of telephone book.	
☐ On the Internet.	

Did you sign a contract or written agreement?	☐ NO	☒ YES – If "YES" attach a copy
Did you receive a contract or a receipt?	☐ NO	☒ YES – If "YES" attach a copy

Name of person(s) with whom you dealt, if any.
Jennifer Carona CDA (866) 328-9316
Albert Navarani 866-528-9169

Have you contacted a private attorney or another agency?	☐ NO	☒ YES -- If "YES", identify below.

Richard Baer

Court action pending or completed?	☐ NO	☒ YES – If "YES", what was the result?

CONTINUE WITH EXPLANATION ON OTHER SIDE OF FORM

102971

CONSUMER COMPLAINT - CONTINUED SFN 7418 (Rev. 11-2009)

EXPLANATION OF TRANSACTION

Explain the facts and circumstances of the fraud, deception or misrepresentation fully and specifically.
If you need more room, use additional sheets of paper and attach to Complaint.

My complaint is I paid LHDS $2,864.17 They refunded $243.48. The company didn't represent my interests in my credit debt resolution no contact or correspondence was made by LHDS to my creditor. Eventually I received a lawsuit from one creditor and increasing credit calls from both creditors I hired my own attorney I've settled with one creditor and I settled with the second creditor. Nether creditors recieved documentation that I was being represented by LHDS. So... a letter dated 8/3/10 from LHDS from Jeffrey S. Hyslip is incorrect retainer fee of $2,621.79 was not earned because their attorney didn't have any calls from my creditor, Richard Baer and I both asked for proof of correspondence to creditors nether one of us recieved a response. LHDS never took action on this to creditors. I would like to receive what I paid in refunded.

(cont.)

The statements contained in this complaint are true and accurate to the best of my knowledge. I wish to file a complaint against the part named. I understand the Consumer Protection and Antitrust Division is not permitted to engage in the private practice of law, and therefore is not my lawyer or legal representative. I am, however, filing this complaint to notify the Consumer Protection and Antitrust Division of the activities of the person/firm about which I have a complaint.
(Complaint forms not signed will be returned)

Date	Signature

ATTACH THE FOLLOWING TO THE COMPLAINT

1 - Copy of any contract or written agreement.
2 - Copy of any receipt.
3 - Copy of any cancelled check or other proof of payment.
4 - Copy of any written advertisement.
5 - Copy of any correspondence.
6 - Copy of any other related documents.

MAIL TO:
CONSUMER PROTECTION DIVISION
Office of Attorney General
Gateway Professional Center
1050 E Interstate Ave Suite 200
Bismarck ND 58503-6574

Thank you for taking the time to complete this Consumer Complaint form. The information you have provided will help us in our efforts to resolve your consumer problem.

Office of Attorney General
RECEIVED
SEP 10 2010
Consumer Protection
Bismarck North Dakota

Wayne Stenehjem
ATTORNEY GENERAL

Feb. 2010 I was current with both creditors but the interest rate and high debt was difficult to make payment. Both cards were not in use trying to payoff.

On Feb. 200 I contacted LHDR and discussed the high interest rate on two credit cards! after investigating the company I sign on. LHDR told me to quit paying my credit cards that they would contact my creditors to notify them LHDR was representing me to dissolve the debt. I was told by LHDR not to talk with creditor or make any payments. With-in 3 months collection calls started 2-20 times a day. I notified LHDR regarding all the calls and faxed all correspondence received from creditors they said they would handle it. On May 2010 received a phone call from attorney [redacted] from FARGO. stating he was hired by LHDR to represent clients in N.D. He left me a message on my phone if I had any concerns to call him. (I still have message on my phone) June 2010 received a lawsuit from one of my creditors. at that time I faxed the lawsuit to [redacted] with my concerns. He was surprised that I received a lawsuit also that I was receiving statement and credit call. advised me to contact LHDR all further calls to [redacted] were never returned.

[redacted]

called LHDR explained the lawsuit was transfered to the Arbitration department. Contact person Albert Tiavarani. He was no help. I asked how do I respond to this lawsuit in short he said its not their problem, I asked if he had contacted my creditors regarding my debt his responds was "NO" because there was no money in my account. I asked for proof that my creditors were notified that LHDR was representing me I never received any correspondence. This is when Richard Baer was notified. Mr. Baer concluded letter dated 6/21/10 no one represented my interests in the above matter, bottom line I paid hundreds of dollar for nothing through Richard Baer we settled with one creditor and other creditor I took care of debt. account at LHDR closed they refunded $242.48 retaining $2,621.79 for what representation. would like a much higher amount refund than just 242.48

Thankyou!

[redacted]

Bismarck, N.D.
58501

United States Government Accountability Office

GAO

Testimony

Before the Committee on Commerce, Science, and Transportation, U.S. Senate

For Release on Delivery
Expected at 2:30 p.m. EDT
Thursday, April 22, 2010

DEBT SETTLEMENT

Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers

Statement of Gregory D. Kutz, Managing Director
Forensic Audits and Special Investigations

April 2010

DEBT SETTLEMENT

Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers

GAO Accountability · Integrity · Reliability

Highlights

Highlights of GAO-10-593T, a testimony before the Committee on Commerce, Science, and Transportation, U.S. Senate

Why GAO Did This Study

As consumer debt has risen to historic levels, a growing number of for-profit debt settlement companies have emerged. These companies say they will negotiate with consumers' creditors to accept a lump sum settlement for 40 to 60 cents on the dollar for amounts owed on credit cards and other unsecured debt.

However, there have been allegations that some debt settlement companies engage in fraudulent, abusive, or deceptive practices that leave consumers in worse financial condition. For example, it has been alleged that they commonly charge fees in advance of settling debts or without providing any services at all, a practice on which the Federal Trade Commission (FTC) recently announced a proposed ban due to its harm to consumers. The Committee asked for an investigation of these issues. As a result, GAO attempted to (1) determine through covert testing whether these allegations are accurate; and, if so, (2) determine whether they are widespread, citing specific closed cases.

To achieve these objectives, GAO conducted covert testing by calling 20 companies while posing as fictitious consumers; made overt, unannounced site visits to several companies called; interviewed industry stakeholders; and reviewed information on federal and state legal actions. GAO did not use the services of the companies it called or attempt to verify the facts regarding all of the allegations it found.

View GAO-10-593T or key components. For more information, contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov.

What GAO Found

GAO's investigation found that some debt settlement companies engage in fraudulent, deceptive, and abusive practices that pose a risk to consumers. Seventeen of the 20 companies GAO called while posing as fictitious consumers say they collect fees before settling consumer debts—a practice FTC has labeled as harmful and proposed banning—while only 1 company said it collects most fees after it successfully settles consumer debt. (GAO was unable to obtain fee information from 2 companies.) In several cases, companies stated that monthly payments would go entirely to fees for up to 4 months before any money would be reserved to settle consumer debt. Nearly all of the companies advised GAO's fictitious consumers to stop paying their creditors, including accounts that were still current. GAO also found that some debt settlement companies provided fraudulent, deceptive, or questionable information to its fictitious consumers, such as claiming unusually high success rates for their programs—as high as 100 percent. FT and state investigations have typically found that less than 10 percent of consumers successfully complete these programs. Other companies made claims linking their services to government programs and offering to pay $100 to consumers if they could not get them out of debt in 24 hours. To hear clips of undercover calls illustrating fraudulent, abusive, or deceptive practices, see http://www.gao.gov/products/GAO-10-593T.

Examples of Fraudulent or Deceptive Marketing Claims by Debt Settlement Company

Source: Debt settlement company Web site. Images enhanced by GAO.

GAO found the experiences of its fictitious consumers to be consistent with widespread complaints and charges made by federal and state investigators on behalf of real consumers against debt settlement companies engaged in fraudulent, abusive, or deceptive practices. Allegations identified by GAO involve hundreds of thousands of consumers across the country. Federal and state agencies have taken a growing number of legal actions against these companies in recent years. From these legal actions, GAO identified consumers who experienced tremendous financial damage from entering into a debt settlement program. For example, a North Carolina woman and her husband fell deeper into debt, filed for bankruptcy in an attempt to save their home from foreclosure, and took second jobs as janitors after paying $11,00 to two Florida companies for debt settlement services they never delivered. Another couple, from New York, was counted as a success story by an Arizona company even though the fees it charged plus the settled balance actually totaled more than 140 percent of what they originally owed.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss our investigation into fraudulent, abusive, and deceptive practices in the debt settlement industry. As historic levels of consumer debt have dramatically increased the demand for debt relief services, a growing number of for-profit companies have appeared, offering to settle consumers' credit card and other unsecured debt for a fee as an alternative to bankruptcy.[1] The companies say they will negotiate with creditors to accept a lump sum settlement less than the amount owed—purported to be as low as pennies on the dollar in many cases. In addition, these companies often say their programs can result in lower monthly payments for consumers than what they had been paying their creditors, and that their programs will help consumers get out of debt sooner than going through bankruptcy or making only minimum payments on their credit cards. They commonly use radio, television, and Internet advertising to solicit consumers. The marketing claims appeal to consumers who may be vulnerable, given the stress of their financial situations.

Some consumers who have hired these companies have complained that they did not obtain relief from their debts and ended up in worse financial circumstances. For example, according to a sworn statement given to state attorneys, a 75-year-old New York woman ended up paying more than $5,100 to a company to settle only $3,900 of debt on one account. The company failed to settle a second one, which she ultimately paid off for about $1,000 more than what she originally owed. At the time she signed up for the debt settlement program, she had been a widow for several years and was working as a pharmacy clerk to help pay her bills and mortgage. She stated that she often neglected her own needs and accrued more debt trying to help her adult daughter care for two children and a sick spouse. She also stated that she was desperate for help and was easily sold on entering a debt settlement program through an unsolicited telephone call and an offer to reduce her debts by 24 to 40 percent. Even though the debt settlement company cost her more than she originally owed, it still counted her as a success story.

Federal and state agencies have made allegations that some debt settlement companies engage in fraudulent, abusive, and deceptive

[1]Unsecured debts are those debts for which there is no collateral, such as most consumer credit card debt.

practices. You asked us to conduct an investigation of these issues. As a result, we attempted to (1) determine through covert testing whether these allegations are accurate; and, if so, (2) determine whether these allegations are widespread, citing specific closed cases. To achieve these objectives, we conducted covert testing by calling 20 companies while posing as fictitious consumers with large amounts of debt; made overt, unannounced site visits to several companies called; conducted interviews with industry stakeholders, such as industry trade associations and the Better Business Bureau (BBB); and reviewed information on federal and state legal actions against debt settlement companies and consumer complaints. We did not actually use the services of any of the companies we called.

For our first objective, we identified debt settlement companies by searching online using search terms likely to be used by actual consumers, and by observing television, radio, and newspaper advertisements. We selected companies from across the nation to call as part of our covert testing by using several criteria, such as (1) types of marketing claims or pitches, such as refund offers, service guarantees, or targeting of specific groups of consumers; (2) presence, if any, of consumer complaints through BBB and other resources; (3) represented size of businesses, to include both small and large companies; (4) availability of consumer-friendly information on companies' Web sites, such as financial education resources, comparisons to other types of debt relief, or advice on handling credit card debt; (5) membership in various industry trade organizations, which requires adherence to specified standards of conduct; and (6) claims of advertising presence on television or radio. In one case, we identified a company through a spam e-mail message received by one of our staff members, which provided a link to the company's Web site.[2] The 20 cases that we selected incorporated a range of debt settlement companies, including some that appeared to make egregious claims and others that appeared more reputable. We found that some of the 20 companies we called are marketing companies that refer potential clients to other—sometimes multiple—affiliated companies. In most cases, we were unable to determine the exact business relationship between these entities. For the purposes of this testimony, our 20 cases represent the original company we called, plus any related marketers and any other affiliated companies with which we spoke. In addition, we called some companies more than once, depending on the circumstances. The findings

[2]Spam is unsolicited "junk" e-mail that usually includes advertising for some product.

for these 20 cases cannot be projected to all debt settlement companies. For our second objective, we identified allegations against debt settlement companies from review of closed and open civil and criminal investigations pursued by federal and state enforcement agencies over the last decade. We did not attempt to verify the facts regarding all of the allegations and complaints we reviewed. We also identified five closed civil and criminal cases where courts found the debt settlement companies liable for their actions and interviewed affected consumers.

We briefed Federal Trade Commission (FTC) officials on the results of our investigation. In addition, we referred cases of fraudulent, deceptive, abusive or questionable information provided by the 20 debt settlement companies we called to FTC as appropriate. We conducted our investigation from November 2009 through April 2010 in accordance with standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

Background

For-profit debt settlement emerged as a business model as other, decades-old forms of consumer debt relief came under increased regulation. Traditionally, consumers with large amounts of debt turned to nonprofit credit counseling agencies (CCA) for debt relief. CCAs work with consumers and creditors to negotiate debt management plans (DMP), which enable consumers to pay back unsecured debts to their creditors in full, but under terms that make it easier for them to pay off the debts—such as reduced interest rates or elimination of late payment fees. In addition, CCAs often provide consumers with financial education and assist them in developing budgets. In order to qualify for a DMP, consumers must prove they have sufficient income to pay back the full balances owed to creditors under the terms of the potential DMP. As part of a DMP, CCAs contact each of a consumer's creditors to obtain information about what repayment options the creditors may be willing to offer to the consumer. The CCA then creates the final DMP and a repayment schedule, with payments typically spread over 3 to 5 years. Throughout the length of the DMP, the CCA distributes funds to each of a consumer's creditors after the consumer makes each monthly payment to the CCA. Nonprofit CCAs typically receive funding from consumers and from creditors.

Many for-profit CCAs emerged as the level of consumer debt rose over the last decade, leading to new consumer protection concerns. FTC and state attorneys general took legal action against unscrupulous CCAs that engaged in deceptive, abusive, and unfair practices. For example, some

CCAs charged excessive fees, abused their nonprofit status, misrepresented the benefits and likelihood of success of their programs, and committed other deceptive and unfair acts. The Internal Revenue Service (IRS) also undertook a broad examination effort of CCAs for compliance with the Internal Revenue Code and revoked or terminated the federal tax-exempt status of some agencies. As federal and state actions cracked down on these consumer protection abuses, a growing number of consumers became unable to afford traditional DMPs. As a result, many companies began offering for-profit debt settlement services for consumers.

Debt settlement companies offer to negotiate with consumers' creditors to accept lump sum settlements for less than the full balance on the consumers' accounts. The process typically requires consumers to make monthly payments to a bank account from which a debt settlement company will withdraw funds to cover its fees. Some companies require consumers to set up accounts at specific banks, while others allow consumers to use their existing bank accounts. These monthly payments must accumulate until the consumer has saved enough money for the debt settlement company to attempt to negotiate with the consumer's creditors for a reduced balance settlement.[3]

Debt settlement companies typically charge a fee for their services and require payments either at the beginning of the program as an advance fee or after settlement as a contingent fee. Some companies structure the payment of advance fees so that they collect a large portion of them—as high as 40 percent—within the first few months regardless of whether any settlements have been obtained or any contact has been made with the consumer's creditors. Others collect fees throughout the first half of the enrollment period in advance of a settlement. Companies that charge a contingent, or "back-end," fee generally base it on a certain percentage of any settlement they obtain for consumers. They sometimes charge a small, additional fee every month while consumers are attempting to save funds for settlements. In addition, some debt settlement companies handle only one part of the overall settlement process, such as the front-end marketing

[3]Some creditors may sell a consumer's debt to a collection agency after the consumer misses payments for a given period of time—typically 6 to 12 months. The collection agency will then attempt to collect payments from the consumer. In such cases, debt settlement companies will generally negotiate with the collection agency seeking the consumer's money.

or the negotiation with creditors, while other debt settlement companies conduct every part of the process themselves.

Currently, there has been only limited federal action taken against debt settlement companies. Since 2001, FTC has brought at least seven lawsuits against debt settlement companies for engaging in unfair or deceptive marketing.[4] In August 2009, FTC issued a Notice of Proposed Rulemaking to amend the Telemarketing Sales Rule (TSR) to enhance consumer protections related to the sale of debt relief services,[5] including debt settlement services.[6] In its notice, FTC offers multiple criticisms of the debt settlement industry and states that its "concerns begin with the marketing and advertising of the services, but also extend to whether such plans are fundamentally sound for consumers." The proposed rule would amend the TSR to do the following, among other things:

- prohibit companies from charging fees until they have provided debt relief services to consumers;[7]
- require companies to disclose certain information about the debt relief services they offer, including how long it will take for consumers to obtain debt relief and how much the services will cost; and,
- prohibit specific misrepresentations about material aspects of debt relief services, including success rates and whether a debt relief company is a nonprofit.

In its notice, FTC demonstrates that the requesting or receiving payment of advance fees before debts are settled meets its criteria for unfairness, and therefore designates advance fees for debt settlement services as an abusive practice. FTC considers advance fees an abusive practice due to the following:

[4]FTC's regulatory authority related to false advertising is contained in section 5(a) of the Federal Trade Commission Act (15 U.S.C. § 45(a)), which makes unlawful both "unfair" and "deceptive" acts or practices that affect interstate commerce.

[5]The notice primarily discusses three categories of debt relief services—credit counseling, debt settlement, and debt negotiation. While some consider debt negotiation to be another term for debt settlement, FTC refers to debt negotiation as a separate type of debt relief service. In this context, debt negotiation companies are those that offer to obtain interest rate reductions and other concessions from creditors on behalf of consumers, but do not claim to obtain full balance payment plans or lump sum settlements for less than the full balance. See 74 Fed. Reg. 41988, 41997 (Aug. 19, 2009).

[6]74 Fed. Reg. 41988 (Aug. 19, 2009).

[7]Under the TSR, advance fees are currently banned for several other industries, including credit repair services and advance fee loans.

- the substantial injury to consumers caused by advance fees, based on the low likelihood of success for debt settlement programs and the significant burden on consumers paying advance fees—especially fees charged at the front end of a debt settlement program, which FTC states ultimately impede the goal of relieving consumers' debts;
- the injury to consumers caused by advance fees outweighing any countervailing benefits; and,
- the business practices prevalent among debt settlement companies making the injury to consumers reasonably unavoidable, such as representations in advertisements obscuring the generally low success rates of debt settlement. FTC also states in its notice that many consumers entering debt settlement programs are counseled to stop making payments to their creditors in order to facilitate settlements, which has a harmful effect on these consumers' credit scores.

Given the absence of specific federal law, some states have taken the initiative and enacted their own legislation regulating the debt settlement industry. The regulations vary widely from state to state, however. For example, Virginia's detailed legal framework requires debt settlement companies to apply and pay for an operating license, to enter into written agreements with potential customers that describe all services to be performed and provide the customer a right to cancel at any time, and to charge only a maximum $75 set-up fee and $60 monthly fee, among other restrictions.[8] Other states, such as Arkansas[9] and Wyoming,[10] have chosen to simply ban most types of for-profit debt settlement companies from operating in their states at all. Individuals who violate those states' bans are guilty of a misdemeanor and could face up to 1 year imprisonment in Arkansas and up to 6 months imprisonment in Wyoming. On the other hand, New York and Oklahoma, among others, have not yet enacted any laws specifically targeting this industry, thus leaving the public to rely on generally applicable consumer protection laws.

[8]Va. Code Ann. §§ 6.1-363.2 - .26.

[9]Ark. Code Ann. §§ 5-63-301 to -305.

[10]Wyo. Stat. Ann. § 33-14-101 to -103.

Covert Testing Shows That Some Debt Settlement Companies Engage in Fraudulent, Abusive, and Deceptive Practices

Our investigation found that some debt settlement companies engage in fraudulent, deceptive, and abusive practices that pose a risk to consumers already in difficult financial situations. The debt settlement companies and affiliates we called while posing as fictitious consumers with large amounts of debt generally follow a business model that calls for advance fees and stopping payments to creditors—practices that have been identified as abusive and harmful. While we determined that some companies gave consumers sound advice, most of those we contacted provided information that was deceptive, abusive, or, in some cases, fraudulent. Representatives of several companies claimed that their programs had unusually high success rates, made guarantees about the extent to which they could reduce our debts, or offered other information that we found to be fraudulent, deceptive, or otherwise questionable. We did not actually use the services of any of the companies we called. A link to selected audio clips from these calls is available at: http://www.gao.gov/products/GAO-10-593T.

Advance Fees

The debt settlement companies we called generally represented that they would collect fees before settling our debts—a practice FTC has proposed banning due to the harm caused to consumers. We were able to obtain information about fee structures from 18 of the 20 companies we called while posing as fictitious consumers with large amounts of debt,[11] and found that their fee structures generally recall the concerns expressed by FTC. Specifically, we found that 17 of the 20 companies represented that they collected advance fees before debts were settled. Company representatives told us that the advance fees are calculated based on a percentage of the consumer's debts to be settled, citing figures that ranged from 10 to 18 percent. Moreover, representatives from several companies told us that our monthly payments would go entirely to fees for up to 4 months before any money would be reserved for settlements with our creditors. Only 1 of the 20 companies we called represented that it followed a contingent fee model based on a percentage of the reduction of debt it says it obtains for consumers. Representatives from this company said a fee equal to 35 percent of each client's reduced debt was charged. Some companies also represented that they assessed monthly maintenance and other additional fees. One of the 17 advance-fee

[11]Of the two companies for which we were unable to obtain fee information, one company presented an audio recording of general information about its program, and one company's representative told us we did not have enough debt to qualify for its program.

companies also revealed that it charged a contingent fee after each debt is settled based on a percentage of the debt reduction.

FTC has banned advance fees in several industries, such as credit repair, based on analyses that determined these practices to be unfair because sellers often do not provide the services for which they charge. The agency has proposed a similar ban for debt settlement, stating that the advance fees cause substantial injury to consumers. FTC justified this stance toward debt settlement, in part, based on the following findings: advance fees induce financially strapped consumers to stop making payments to their creditors; and consumers are unlikely to succeed in debt settlement programs, given evidence from federal and state agencies that generally shows single-digit success rates.[12] Moreover, FTC stated concerns in its notice that advance fees for debt settlement may actually impede the process of saving money to settle debts, especially substantial fees collected at the beginning of a program. This business model may be especially risky for consumers who are already in financially stressed conditions, given that interest, late fees, and penalties often continue to accrue on the consumers' accounts as they work to save money toward settlements. In addition, consumers with already limited financial resources may be unable to direct adequate funds toward saving for settlements if their resources are being devoted to paying fees.

We asked representatives of some companies what services we would receive as we paid advance fees while saving money for settlements. These representatives generally stated that our advance fees would pay for financial education, updates from attorneys, and communications with our creditors—such as cease and desist letters, to attempt to prevent harassing telephone calls. One representative, however, was unable to provide an explanation of what services we would receive for our advance fees beyond the fact that her company's attorneys would "look at" our accounts every month. Several companies we called had basic financial education resources on their Web sites or provided links to such resources by e-mail. Industry representatives have stated that advance fees are needed to cover essential operating costs, such as overhead and providing the types of services mentioned above for their existing clients. However, FTC found that marketing and acquiring new customers make up a large portion of the operating costs for debt settlement companies. We were

[12]Federal and state agencies have defined success as consumers being able to obtain the results that the debt settlement companies promised them.

unable to verify whether any companies we called provide ongoing services for clients they enroll in their programs, given that we did not enter into business relationships with them.

Directing Consumers to Stop Paying Creditors

We also found that the companies we called generally follow a business model that poses a risk to consumers by encouraging them to stop making payments to their creditors, a practice that harms consumers because of the damage it typically causes to their credit scores. Representatives of nearly all the companies we called—17 out of 20—advised us to stop paying our creditors, by either telling us that we would have to stop making payments upon entering their programs or by informing us that stopping payments was necessary for their programs to work, even for accounts on which we said we were still current. The following quotes demonstrate some of the statements made by representatives of the companies we called regarding our payments to creditors:

- "You stop paying, uh, those payments out to those creditors. The only thing you're going to have to worry about is this payment here [to company]."
- "One-hundred percent of our clients stop making their monthly payments as soon as they enroll into the program."
- "I won't tell anybody not to pay their bills; I said one-hundred percent of the clients who have been successful have stopped paying their bills."
- "Say you enrolled in the program. At that point you would no longer make any of your credit card payments. All of them would go late."

Among the 17 companies encouraging us to stop paying our creditors or representing that stopping payments is a condition of their program,[13] 5 were members of an industry trade group called The Association of Settlement Companies (TASC) at the time we made our calls. TASC's written standards, adherence to which is required of all member companies, explicitly state "No Member shall direct a potential or current client to stop making monthly payments to their creditors." A representative of 1 of these 5 TASC member companies told us that she could not direct us to stop paying our creditors, but later stated that if we could afford to make our payments then her program was not "the best solution" for us. In addition, a representative of 1 of these 5 TASC member

[13]As stated above, some companies we called referred us to one or more affiliates. We were unable to determine the relationship between these companies and their affiliates.

companies appropriately screened us out by telling us that we had too low of income to afford that company's program under the scenario we presented; he later described his company's program as requiring clients to stop making their payments. In addition to these 5 TASC member companies, we spoke to a representative from another TASC member company who told us that we did not have enough debt to qualify for that company's program. In addition, 4 of the companies that told us to stop paying our creditors or represented that stopping payments was a condition of their program were members of a different industry trade group called the United States Organizations for Bankruptcy Alternatives (USOBA) at the time of our calls. According to USOBA representatives whom we interviewed, its member companies do not tell potential clients to stop paying their creditors. We received particularly good advice from a representative of 1 additional USOBA member company—not among the 4 listed above—whose representative told us that we should worry about taking care of our late mortgage payments before we worried about settling our credit card debts.

Stopping payments to creditors results in damage to consumers' credit scores. According to FICO (formerly the Fair Isaac Corporation), the developer of the statistically based scoring system used to generate most consumer credit scores, payment history makes up about 35 percent of a consumer's credit score. Moreover, the damage to credit scores resulting from stopping payments is generally worse for consumers who have better credit histories—such as consumers who maintained good payment histories prior to entering a debt settlement program that required them to stop making payments. In its notice, FTC also discussed the harmful effect that stopping payments has on consumers' credit scores.

Success Rates

In several cases, representatives of companies we called claimed success rates for their programs that we found to be suspiciously high—85 percent, 93 percent, even 100 percent. In its notice, FTC cites claims of high likelihood of success as a frequent representation in the debt settlement industry. The success rates we heard are significantly higher than is suggested by evidence obtained by federal and state agencies. When these agencies have obtained documentation on debt settlement success rates, the figures have often been in the single digits. For example, as part of an annual registration process in Colorado, the state's Attorney General compiled data on success rates for all debt settlement companies statewide. The data show that, from 2006 to 2008, less than 10 percent of Colorado consumers successfully completed their debt settlement

programs. Our case studies discussed below provide additional evidence of similarly low success rates.

Industry-reported data have claimed a higher success rate for debt settlement programs. According to TASC, data gathered from a survey of some of its largest member companies in 2009 shows that 34.4 percent of consumers participating in a debt settlement program offered by a TASC member company completed their debt settlement programs by settling at least 75 percent of their enrolled debts.[14] A previous study released by TASC in 2008 claimed overall completion rates between 35 and 60 percent. However, federal and state agencies have raised concerns with the methodology behind TASC's data. For example, these agencies have argued that (1) TASC's data were self-reported by its member companies, and may not reflect all member companies; (2) not every TASC member company that submitted data defined completion in the same way; and (3) the fact that consumers complete a debt settlement program does not necessarily imply that these consumers successfully obtained the debt relief services for which they paid. We did not attempt to validate success or completion data from TASC or federal or state agencies.

TASC and USOBA have cited several factors that might contribute to consumers' success rates in debt settlement programs, such as that most consumers entering debt settlement programs are in extreme financial hardship and may choose to quit their program after settling some debts and improving their financial situations. However, FTC stated in its notice that the prevalent fee structure in the debt settlement industry—substantial up-front fees—may be a major factor in the generally low consumer success rates as well. TASC and USOBA have both offered suggestions for ways to boost consumer success rates, such as improved processes for determining consumers' suitability for debt settlement programs.

Debt settlement success rates also play a key role in the BBB rating system for companies in the industry. Due to the volume and nature of

[14]While TASC requires its member companies to make a series of disclosures in its discussions with potential clients, the individual completion rate for each company's program or the 34.4 percent overall completion rate mentioned in TASC's study are not among the required disclosures.

consumer complaints,[15] among other factors, BBB recently designated debt settlement as an "inherently problematic" type of business and, in September 2009, implemented new rating criteria for debt settlement companies to reflect this designation. Under this designation, no debt settlement company may earn a BBB rating higher than a C -.[16] While BBB has designated other types of businesses as inherently problematic—such as pay-day loan centers, businesses that charge fees for publicly available information on government jobs, scientifically unproven medical devices and products, advance fee modeling agencies, and wealth-building or real estate seminars—debt settlement companies are the only type of business currently allowed by BBB to escape the inherently problematic designation if they provide evidence to BBB that they meet a series of criteria. These criteria require a debt settlement company to prove, among other things, that:

- It has substantiated all advertising claims, including claims relating to the benefits or efficacy of debt settlement;
- It makes certain disclosures to consumers, including clear and conspicuous disclosure of program fees and the risks of debt settlement;
- It has adequate procedures for screening out consumers who are not appropriate candidates for debt settlement; and
- A majority (at least 50 percent) of its clients successfully complete its program and obtain a reduction in debt that is significant and exceeds the fees charged by the company.

[15]According to data it provided to us, BBB has received thousands of complaints about debt settlement companies in recent years, with the number of complaints rising from 8 in 2004 to nearly 1,800 in 2009. This figure may underestimate the total number of complaints related to debt settlement, as not all companies providing debt settlement services are classified as debt settlement companies by BBB. According to BBB, these complaints are related primarily to debt settlement companies: (1) charging advance fees without providing services as promised to consumers and sometimes without providing any services at all; (2) failing to disclose important information to consumers, such as unannounced fees; and (3) failing or refusing to provide refunds to consumers.

[16]According to BBB, its rating system uses grades based on a proprietary formula that incorporates information known to BBB and its experience with the business under assessment. The ratings are intended to represent BBB's degree of confidence the business is operating in a trustworthy manner and will make a good faith effort to resolve any customer concerns. The rating system uses grades from A to F, with plusses and minuses, so that A + is the highest grade and F is the lowest. Some debt settlement companies may currently have a BBB rating higher than a C - because they were misclassified (e.g., characterized by BBB as something other than a debt settlement company) or because debt settlement does not represent a substantial portion of its services.

According to a BBB official, he was unaware of any debt settlement company that had yet successfully demonstrated that it met these criteria, as of March 2010. Officials from TASC and USOBA told us they strongly disagree with BBB's new rating system for debt settlement companies. According to these officials, the new rating system minimizes the importance of resolved consumer complaints, requires an unrealistic measure of programs' success rate—50 percent—and inhibits consumers' ability to differentiate between reputable and disreputable debt settlement companies.

Guaranteed Reductions in Debt

Representatives from some companies also guaranteed or promised that they could obtain minimum reductions in our debts if we signed up for their services. For example, some representatives stated that they would save us 40 to 50 cents on the dollar once they negotiated settlements with our creditors. In its notice, FTC cites claims of specific reductions in debt as an example of a consumer protection abuse in the debt settlement industry.

Fraudulent or Other Deceptive Representations

We found examples of companies offering fraudulent or other deceptive information, such as using names and imagery for their services that indicates that their program is linked to the government. Table 1 below shows examples of fraudulent or deceptive information from companies we called.

Table 1: Examples of Fraudulent or Deceptive Information Provided by Debt Settlement Companies We Called

No.	Representation	Comments
1	Debt settlement companies are "licensed and regulated" by TASC, which is "like the SEC [United States Securities and Exchange Commission] for stock traders."	TASC is a nonprofit trade association that lobbies lawmakers on behalf of the debt settlement industry. It is not a licensing or regulatory authority.
2	Stopping payments will "knock [credit score] down a couple of points...However, unlike bankruptcy or any other credit counseling program, this only affects your credit while you're in the program."	According to FICO, stopping payments to creditors as part of a debt settlement can drop credit scores anywhere between 65 to 125 points. In addition, missed payments leading up to a debt settlement can remain on a consumer's credit report for 7 years even after a debt is settled.
3	Debt settlements will be noted on consumers' credit reports as "paid in full" or "paid as agreed."	According to FICO, settlements are typically listed on consumers' credit reports as "settlement accepted on the account" or "settled for less than full balance."
4	Company advertises a "National Debt Relief Stimulus Plan."	The company's services are not affiliated with a government program or part of the American Recovery and Reinvestment Act of 2009 (the "stimulus").
5	Company promised that calls from creditors seeking money will "slow down and eventually stop" if we just told our creditors we had hired the company.	Debt settlement companies cannot prevent creditors from contacting consumers. Companies often advise consumers to terminate all communication with their creditors, ask consumers to assign power of attorney to them, and send cease and desist letters to creditors in an attempt to cut off further communications.

Source: GAO.

Five of our cases are highlighted below. The companies in these cases made multiple fraudulent or deceptive representations either to our fictitious consumers by telephone, on their Web sites and through company documents or to our staff during unannounced, overt site visits. Table 2 below shows basic information represented by these companies, including the location, fees, and industry trade association membership of each of these companies and their affiliates, if any. (Table 4 in appendix I provides summary information on all 20 companies we called.)

Table 2: Representations Made by Select Debt Settlement Companies We Called

No.	Location of company and affiliates	Fees[a]	Association membership[b]
1	Florida; affiliates in Florida, Massachusetts, California, and New Jersey[b]	• Advance fees based on 15% of enrolled debt, with monthly payments required throughout program	TASC;[c] affiliates in TASC and USOBA
2	Unknown; affiliates in Arizona, Texas, and California[b]	• Advance fees based on 12% of enrolled debt • First three monthly payments go to fees • $25 monthly maintenance fee • Additional contingent fee based on 4% of reduction in debt company obtains for clients	Affiliate in USOBA
3	California	• Advance fees based on 16% of enrolled debt, with monthly payments required throughout program • First three monthly payments go to fees • $100 fee for out-of-state clients	TASC (at the time of our call)
	California	• Advance fees based on 17% of enrolled debt, with monthly payments required throughout program • First three monthly payments go to fees • $840 maintenance fee (total throughout program) • $623.50 trust account fee (total throughout program)	TASC
5	California	• Advance fees based on 15% of enrolled debt	TASC (at the time of our call)

Source: GAO analysis of information obtained from debt settlement companies.

[a]Fee information reflects fees disclosed to us; some companies may charge additional fees that were not disclosed. Debt settlement companies typically charge fees requiring payments either at the beginning of the program as an advance fee or after each settlement as a contingent fee. Some companies structure the payment of advance fees so that they collect a large portion of them—as high as 40 percent—within the first few months regardless of whether any settlements have been obtained or any contact has been made with the consumer's creditors. Others collect fees throughout the first half of the enrollment period in advance of a settlement. Companies that charge a contingent fee generally base it on a certain percentage of any settlement they actually obtain for consumers. They sometimes charge a small, additional fee every month while consumers are attempting to save funds for settlements.

[b]Some companies we called referred us to one or more affiliates. It was not always clear to us exactly with which company or affiliate we were speaking, where the companies or affiliates were located, or what the relationships were between the companies and affiliates. In some cases, separate affiliates of the same company claimed to be members of different industry trade associations.

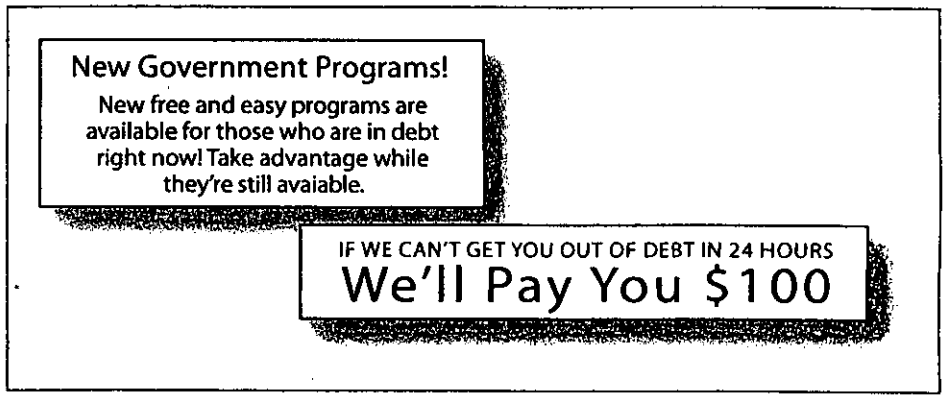
[c]While Company 1 claimed to be a member of TASC, it appears this was a false representation.

Company 1

Company 1 made several fraudulent and deceptive representations. We identified Company 1 when one of our investigators received an unsolicited spam message through his private e-mail account advertising debt settlement services, with a mailing address in the country of Lebanon listed at the bottom. A link in the message brought us to a Web site

advertising "New Government Programs! New free and easy programs are available for those who are in debt right now! Take advantage while they're still avaiable [sic]." (See figure 1 below.) The Web site also featured logos for TASC and BBB, along with other insignias declaring "Satisfaction Guaranteed" and "Privacy 100% Guaranteed." When we called the number listed on the Web site, a representative answered using the name of an affiliate different than the company name listed on the Web site. He explained that the Web site was a "generic advertisement" to spread information about his company. Throughout our conversation, he made multiple statements that we found to be deceptive or questionable. According to the representative, the "worst case scenario" for settlement of our debts would be "40 cents on the dollar." He stated that his company has helped 100 percent of its clients get out of debt in 3 years or less, and that "every single creditor settles. There's not one creditor we haven't been able to reach a settlement with." When asked about the government programs advertised on the Web site, he replied "What we're offering is not part of any government program whatsoever.... It's just that the government is allowing this to take place at this time.... The government is putting pressure on banks to allow things like this so that, you know, there's no more bankruptcies or things along those lines." Even though the Web site displayed a TASC logo, we were unable to find either Company 1 or this affiliate on TASC's member directory. The executive director of TASC confirmed to us later that neither Company 1—as it listed itself on its Web site—nor this affiliate is a member of the organization. The affiliate's Web site displays a logo for USOBA, and we confirmed its membership with that organization.

Figure 1: Fraudulent or Deceptive Advertising Claims Featured on Company 1's Web Site



Source: Debt settlement company Web site. Images enhanced by GAO.

Shortly after we called Company 1 the first time, we noticed that the Web site contained some changes—when we attempted to leave the Web site on later visits, a pop-up message appeared declaring "If we can't get you out of debt in 24 hours we'll pay you $100!" (See figure 1 above.) We called Company 1 again and a representative said that he was with Company 1. He later stated that he was actually with an affiliate of Company 1—a different affiliate than the first representative with whom we spoke. He described the Web site for Company 1 as a "landing page" used to attract business to his company. This second representative also offered deceptive or questionable information, such as a 93 percent success rate for his program. When asked about the government programs advertised on Company 1's Web site, he replied that the government program was related to creditors' ability to obtain tax credits from the IRS for the debts they sell to collection agencies. Regarding the offer to get consumers out of debt within 24 hours, he said that this was for clients who have the financial resources to make a large lump sum payment at the very beginning of the program. However, he added that "ninety-nine point nine percent of the people that come to us do not have the ability to do that." When we asked about the risk of being sued by our creditors, he told us that "a judgment is nothing more than a fancy I.O.U." We were able to find this second affiliate on TASC's member directory, and the executive director of TASC later confirmed that this affiliate is a member of TASC.[17]

We made a site visit to Company 1 in Florida. The owner of Company 1 admitted that the company does not really exist and is really just a marketing Web site, and told us he actually owns a different company that offers both debt settlement and mortgage modification services. He claimed that he did not know that Company 1's Web site contained information about an alleged government program, and logos for TASC and BBB. However, he acknowledged that neither Company 1 nor his real company is a member of TASC despite the logo featured on the Web site.[18] When asked about the offer to get consumers out of debt within 24 hours, he replied that this was a "typo" and that the offer should say 24 months rather than 24 hours.[19] Our investigators observed employees at the

[17]We also identified an additional Web site at a different address that was nearly identical to the one that referred us to the two representatives discussed above, with the same phone number and logos for TASC and BBB, but listing what appeared to be a different company name entirely.

[18]TASC's executive director confirmed that Company 1 is not a member.

[19]Prior to our site visit, we found a testimonial from an alleged client on Company 1's Web site claiming that Company 1 helped her to cut her monthly bills in half in 24 hours.

location listed for Company 1 representing on the telephone that they were employees of the second affiliate mentioned above. Moreover, when the owner of Company 1 gave our investigators a copy of the script his employees use when speaking with potential clients, the text of the script implied that they were representatives of the second affiliate. We were unable to determine the actual relationship, if any, between Company 1, its affiliates, or the other company the owner claimed he runs.

Company 2

Company 2's online and radio advertisements feature multiple fraudulent or deceptive claims. The company's Web site advertises that its services will "Reduce balances to 40% - 60%," "Eliminate excessive Credit Card Debt interest immediately," and "End late payment fee's [sic]." When we called Company 2, it referred us to at least 3 different affiliates. It was not always clear exactly with which company's representatives we were speaking.[20] Representatives from these affiliates described Company 2 as a marketing group that referred potential clients to them. We also identified radio advertisements placed in several major cities purporting to be from Company 2, in which it claimed to offer a "government authorized" and "government approved" debt settlement program. When we called the telephone number listed in one of the radio advertisements, a representative answered from one of the affiliates of Company 2 that we had spoken to earlier. When asked about the government-approved debt settlement program, the representative acknowledged the radio advertisement and replied "it is government approved.... They allow for us to do this. You know, the banks received, you know, bailout money last year. I'm sure you saw it on the news. There has to be some type of assistance for people on a consumer level also." According to this representative, Company 2 runs similar advertisements on television and radio stations nationwide.

We were unable to visit Company 2 because we could not determine its physical location. However, we visited the affiliate whose representative discussed the radio advertisement with us, which is located in California. Officials from this affiliate told us that their company is "the most legitimate debt settlement company," and that their employees receive

[20]A recent report by the Maryland Consumer Rights Coalition stated that debt settlement companies "often seem a many-headed Hydra" with parent companies split from other divisions that handle the marketing and solicitation. The report further states that this division of services causes confusion for consumers trying to track the progress of their debt settlement, and for agencies attempting to enforce compliance.

commission based on the number of clients they enroll in the company's program. They also claimed that their company was not associated with Company 2, and refused to disclose to us the number of clients in their program or the total amount of consumer debt their company is currently handling. On two separate covert telephone calls we made to Company 2, representatives of this affiliate stated they were with Company 2 at the beginning of each call but later informed us that they actually were with the affiliate and that Company 2 handled their marketing. When asked during our site visit if we could see their call center, officials refused.

Company 3

Company 3 targets Christians for its debt settlement services by employing a Biblical marketing theme, both on its Web site and over the phone. Representatives of Company 3 told our fictitious consumers that they run a nonprofit ministry affiliated with their for-profit debt settlement company, with funds from debt settlement feeding into the ministry and missionary trips overseas. In addition, representatives told us that their program has an 85 percent success rate and that they would negotiate our debt down to 40 or 60 percent of what we currently owed. About the risk of being sued by our creditors, a representative remarked to us that "It's just a computer thing. I mean, sometimes there's a handful of them that they'll have reserved to go after and it's just random. But even if they were to do that in your case, it's just a small percentage; we'd be able to advise you at that time, too. You don't need an attorney in the matter or anything like that. It's just a civil thing."

We visited Company 3 in California, where we found it located in a strip mall near a grocery store. The owner of Company 3 told us that he owned a mortgage company and sold cars prior to entering the debt settlement industry. Company 3 handles the front end of the debt settlement process by signing up clients, and uses a third-party company and law firm for the rest of the process. Most of the employees of Company 3 are contractors who earn $200 commission for each client enrolled, with bonuses for employees who enroll a high number of clients. According to Company 3 officials, they enrolled approximately 1,200 to 1,300 new clients in the first 2 ½ months of 2010. When asked if we could see a copy of their IRS Form 990 for the nonprofit side of their operation, the owner replied, "The Bible says you should never let the left hand know what the right hand is

doing."[21] Company officials provided us with a sample of its contract, which states that "In the event Client comes into a lump sum of money and wishes to settle an account before original designated completion date, Client must first pay [Company 3] Fee. The remainder of the lump sum will be utilized in settling Client's unresolved program debt." The contract also states that Company 3 does not provide legal representation or any legal advice to its clients.

Company 4

We became interested in calling Company 4 when we noticed on its Web site that it advertised a "U.S. National Debt Relief Plan," with a logo depicting a shield filled with a U.S. flag. When asked about this plan, a representative stated that it was "a consumer advocacy program entitled [sic] to help consumers get out of debt" but that "it's not a government agency. We just take advantage of the fact that the government are [sic] giving money to the banks to get out of debt and we just show you and go through the route of settling out your accounts." The representative also told us that our first three monthly payments would go entirely to paying fees with no money set aside for savings. He said that Company 4 uses this advance fee structure because, during the first few months of the program, the company would be setting up our account and mailing cease and desist letters to our creditors, and "to show that you have the commitment to be in the program."

When we visited Company 4 in California, officials told us that the company only handles the front-end marketing of the debt settlement process, and that it had enrolled approximately 1,000 clients in the first 2 ½ months of 2010. In early March 2010, TASC issued a statement on its Web site noting a recent increase in companies practicing deceptive marketing, including companies sending letters to potential clients resembling government documents and using terms like "U.S. National Debt Relief Plan." Company 4 marketed the "U.S. National Debt Relief Plan," and is a member of TASC.

Company 5

A representative of Company 5 advised us that we could not afford its debt settlement program because our fictitious consumer's income was too low

[21]IRS Form 990 is a federal information return filed annually by tax-exempt public charities. Information reported on this return includes assets held, contributions received, and grants paid.

and his expenses were too high. He suggested that we consider credit counseling or bankruptcy as options if we were unable to make substantial improvements in our budget. However, when we indicated that we may obtain a new job soon that would boost our income, he provided details on how Company 5's debt settlement program works. He told us that it generally takes about 7 to 8 months to save up enough money to begin negotiating settlements. When we asked what services we would be paying for during those first 7 to 8 months, he replied that our fees would pay for the ability to get out of debt within 36 months, and monthly education and updates from the company's attorneys. Company 5's Web site advertised that it can help consumers who are experiencing stress, anxiety, and depression associated with being in debt. When we asked about these services, the representative laughed and said these services are arranged through debt negotiators who will hold monthly strategy calls with us.

We attempted to visit Company 5 in California, but found that it was no longer at the location listed on its Web site. Employees of several other companies in neighboring office suites told us that Company 5 had moved to another office down the hall, which was listed under a different company name. An official from this company denied knowing anything about Company 5, and claimed that his company did not provide debt settlement services. However, records we obtained indicate that the name of Company 5's owner is the same as the name on this official's driver's license. In addition, the Web site for this other company indicates that it does, in fact, provide debt settlement services. After we returned from our site visit, the Web site for Company 5 was down for maintenance.

Allegations of Fraud, Abuse, and Deception in the Debt Settlement Industry Are Widespread

We found the experience of our fictitious consumers to be consistent with the widespread complaints and charges made by federal and state investigators on behalf of real consumers against debt settlement companies. We identified allegations of fraud, deception and other questionable activities that involve hundreds of thousands of consumers.[22] We drew this figure from closed and open civil and criminal cases governments have pursued against these companies over the last decade. Our calculation likely underestimates the total number of consumers affected, since we obtained information from only 12 federal and state agencies about the clients within their jurisdiction that they identified in

[22]We did not attempt to verify the facts regarding all of the allegations pursued by federal and state agencies that we identified.

some of the cases they pursued.[23] Federal and state agencies have reported taking a growing number of legal actions against companies that offer these services in recent years. As mentioned above, since 2001, FTC has brought at least seven lawsuits against debt settlement companies for engaging in unfair or deceptive marketing. The National Association of Attorneys General (NAAG) said in an October 2009 letter to FTC that 21 states brought at least 128 enforcement actions against 84 debt relief companies, including debt settlement companies, over the previous 5 years.[24] The group stated that the number of complaints received by the states about debt relief companies—especially debt settlement companies—had more than doubled since 2007. Lastly, the group noted that any business model requiring "cash-strapped consumers to pay substantial up-front fees" raised significant consumer protection concerns and agreed with a consumer group that called it "inherently harmful."

Attorneys general from 40 states and 1 territory submitted the letter, saying they supported FTC's proposed rule changes to combat unfair and deceptive practices in the industry. They cited similar debt settlement activities that prompted their own enforcement actions, including the following:

- collecting advance fees in many instances without providing services;
- misleading consumers about the likelihood of a settlement;
- misleading consumers about the settlement process and its adverse effect on their credit ratings;
- making unsubstantiated claims of consumer savings;
- deceptively representing the length of time necessary to complete the program;
- misleading or failing to adequately inform consumers that they will be subject to continued collection efforts, including lawsuits;

[23]We obtained information from the following agencies: Federal Trade Commission, U.S. Department of Justice, and state law enforcement agencies in Alabama, Colorado, Delaware, Florida, Illinois, North Carolina, New York, Texas, Vermont, and West Virginia. They identified clients through company records, individual complaints, and restitution paid. We focused on select states with enforcement actions listed in a National Association of Attorneys General letter. We did not attempt to query all 50 states.

[24]According to the letter, the 128 enforcement actions listed in its attachment do not represent a comprehensive list of all cases filed or regulatory actions taken against debt relief companies. We did not attempt to verify the facts regarding all of the actions listed in the letter. Details regarding 3 of these enforcement actions are provided below, as case studies 1, 3, and 4.

- misleading or failing to adequately inform consumers that their account balances will increase due to extended nonpayment under the program; and
- deceptive disparagement of bankruptcy as an alternative for debtors.

The state attorneys general expressed concern the industry would grow exponentially given the current economic climate and a regulatory environment that allows substantial advance fees to be collected. They criticized the advance fees as providing minimal incentive for companies to perform services because they get paid whether or not they take any action on behalf of the consumer. They also noted that low set-up costs help in the promotion of debt settlement as a cheap business opportunity. They stated that they would continue to take enforcement actions against unscrupulous operators in the industry, but that they also believed the proposed FTC rule changes would substantially aid law enforcement agencies in addressing harms caused to consumers.

We developed case studies from five closed civil or criminal actions in which state or federal courts found debt settlement companies liable for fraudulent, unfair or deceptive actions that left clients in worse financial condition—bankrupt, owing more debt, and with lower credit scores and more judgments against them. We also examined the experiences of a consumer from each of these cases. Table 3 below shows key information from each of these five cases. Further details are discussed below.

Table 3: Select Cases of Debt Settlement Companies Engaged in Fraudulent, Abusive, or Deceptive Practices

No.	Company location	Federal/state agency	Case details
1	Arizona; affiliates in Arizona and Florida	New York Attorney General	• More than 500 New Yorkers withdrew from the debt settlement program after paying over $1 million in fees only to receive more debt, tarnished credit ratings, and increased collection calls and creditor lawsuits. • Nearly half of the New York clients that completed the program during the Attorney General's investigation, or 27 out of 64, ultimately paid more than they originally owed. • Only 0.3 % of the New York clients realized the promised savings. • A New York court found the company and its affiliates liable for statutory fraud and ordered restitution for clients who paid more than they owed.
2	New York and Vermont	U.S. Attorney General	• An attorney and his law firm associates misappropriated and embezzled millions of dollars from 15,000 clients seeking debt reduction help over a 6-year period, forcing some customers into bankruptcy. • The group lured consumers through television and radio advertisements by falsely claiming a 50 to 70 % savings off unsecured debt, an improvement in credit scores and bankruptcy avoidance. • Only 8 % of the group's clients completed the program. • Clients paid advance fees for these services and funded escrow accounts from which their creditors were supposed to be paid. The fees were not considered "earned" until consumer debts were settled. • The fees collected were used in part to fund huge payments to the attorney and two of his associates before they provided any services to clients. • The client escrow accounts were drawn upon, in part, to cover overdrafts from the law firm's operating account and to make payments to the attorney's wife, among other things. • The law firm filed for bankruptcy in 2003. • A federal jury found the attorney guilty in 2005 on multiple felony counts, including fraud. His six associates pled guilty to federal charges.
3	Florida	North Carolina Attorney General	• Two companies and their owners ran an illegal debt settlement business using unfair and deceptive practices, collecting over $500,000 from about 220 North Carolinians who rarely obtained the services they purchased. • North Carolina law prohibits anyone from acting as a for-profit intermediary between residents and their creditors for the purpose of reducing, settling, or altering debt payments, except in limited circumstances. It specifically bans advance fees for these services. • The companies and their owners, one of whom was an attorney, marketed their services in part using third-party "referral agents" who received compensation for directing consumers to the group. • Many clients dropped out of the program dissatisfied. Few received refunds or obtained settlements with their creditors. Many filed for bankruptcy. • A North Carolina court found that the group's actions violated state law and banned the parties from doing any debt-related business with state residents. In a separate action in January 2009, the attorney was disbarred for a period of 5 years.

No.	Company location	Federal/state agency	Case details
4	Maryland	Maryland Attorney General	• A Maryland attorney, his law firm and their marketers used unfair and deceptive trade practices to collect $3.4 million from about 6,200 clients over a 2 year period to settle debt but provided little or no services in return, causing harm to consumer credit histories and credit scores. • The group told clients that its employees were qualified credit counselors capable of recommending the most appropriate action, but instead it provided virtually the same advice to everyone—enter debt settlement plans profitable for the group. • The group reached an agreement in 2007 with the Attorney General, agreeing to immediately cease and desist selling unlicensed debt settlement services, pay restitution to customers, and pay investigatory costs and a fine to the state consumer protection office. • The Attorney General filed a lawsuit in 2008 against the group for violating the terms of their agreement and the state's consumer protection act. The court ordered the group to fulfill the terms of its previous agreement, pay a fine and costs of $180,000, and pay restitution of almost $2.6 million.
	California	Federal Trade Commission	• Four related California companies lured more than 1,000 consumers into a debt settlement program through false promises of reducing debt, halting collection calls, removing negative credit report information, and holding payments in trust to settle accounts—from which, the FTC alleged, more than $2 million later went "missing." • FTC filed a complaint against the companies in August 2002, alleging that numerous consumers who enrolled in the program saw their indebtedness increase after incurring late fees, finance charges, and overdraft charges. Many ultimately filed for bankruptcy. • The federal court entered default judgments against all four companies, banning them from engaging in any debt settlement services and ordering them to collectively pay $1.7 million in restitution to consumers, among other actions.

Source: GAO analysis of case studies discussed below.

Case Study 1

An Arizona company and its affiliates used false advertising and deceptive marketing to fraudulently induce more than 500 New Yorkers into paying over $1 million in fees for a debt settlement program that left them with more debt, tarnished credit ratings, and increased collection calls and creditor lawsuits. The group told clients that consumers typically saved between 25 percent and 40 percent, including all fees and charges. It also promised to substantially reduce credit card debt in as little as 24 months. However, according to the New York Attorney General, only 0.3 percent of the company's clients realized these savings and few ever completed the program. Only 64 of the group's New York clients finished the program during the time period of the Attorney General's investigation (between January 2005 and September 2008); another 537 withdrew from the program after paying fees. Those who finished the program complained of being deceived and harmed by the group. Nearly half of them actually paid more than they owed. For example, one said, "I actually paid 87 percent more than what was originally due." Another said that the company "did

not settle any of my accounts until I was actually sued by my creditors." A state court found the group liable for statutory fraud, ordered it to pay restitution to clients who completed the program but paid more than they owed, and prohibited it from doing business with consumers in New York unless it posted a $500,000 performance bond.

The group required clients to authorize electronic debits from their personal bank accounts in an amount that typically ranged between $300 and $1,000 each month, depending on the consumers' cash flow and expected settlements. The group told clients that once the funds accrued to a sufficient amount, it would negotiate with creditors for a settlement. Clients were instructed to stop making credit card payments during this time and to cease all communication with their creditors. The group did not include most of the program fees it charged in its calculation of the "savings" clients would achieve. The fees included the following: $399 for "set up"; an amount equal to three times the clients monthly payment for "enrollment"; $49 per month for administrative and bank fees; and an amount equal to 29 percent of the difference between the amount originally due and the settlement amount for a "final fee." The set-up and enrollment fees had to be paid in full before the group would allow money to accrue for a settlement.

The experience of one New York family exemplifies the harm suffered by the group's clients. According to a sworn statement the wife gave to state attorneys, the couple owed about $21,700 in credit card debt accumulated after the husband was laid off. In 2006, the wife received a call from a telemarketer saying that the Arizona company had looked into her family's credit history and found that it could cut their credit card debt in half. She and her husband joined the program and began making $325 in monthly payments to settle five accounts, even though they were current on their bills. "Who wouldn't want to save 50 percent on her credit cards?" the wife told state attorneys. The couple was advised to stop paying their creditors, which they did after being told by the company that no penalties and interest would accrue as a result. The couple was soon being harassed by their creditors, who called at all times of day, including evenings and weekends. Four of the couple's small accounts were settled during this time. However, the creditor with the largest balance, which totaled about $19,000, took the couple to court. The pair withdrew from the program and settled the lawsuit for $28,000, including $9,000 in penalties and interest. They subsequently had to pay this creditor $300 per month. The wife called this outcome "disastrous for us." Nevertheless, the couple received a "congratulations" letter from the company, saying the pair had paid only 79.3 percent of what was originally owed on the four settled accounts.

Documents that the couple gave state attorneys, however, show otherwise: after adding the $2,506 in fees they were charged, the pair actually paid more than 140 percent of what was originally owed on the four accounts. The wife told state attorneys that the Arizona company "failed our family in every respect, and we are counted as one of its success stories!"

Case Study 2

An attorney and his law firm associates defrauded about 15,000 clients seeking debt reduction help, causing them to lose millions of dollars and forcing legions of them to file for bankruptcy. The group lured consumers through television and radio advertisements, falsely claiming a 50 to 70 percent savings off unsecured debt, an improvement in credit scores and bankruptcy avoidance. The group, with offices initially in New York and later in Vermont, further promised that if clients did not receive a settlement, they would be entitled to a full refund. Clients paid fees for these services and funded escrow accounts from which their creditors were supposed to be paid. Under the terms of the contract that clients signed, the fees were not considered "earned" until consumer debts were settled. The group, however, did not reduce debt for most of its clients (only 8 percent completed the program, according to a witness cited by the U.S. Department of Justice) and failed to pay refunds to many of those who withdrew from the program or were forced into bankruptcy. Instead, the fees collected were used in part to fund huge payments to the attorney and two of his associates before they provided any services to clients. The client escrow accounts, meanwhile, were drawn upon to cover overdrafts from the law firm's operating account and make payments to the attorney's wife, among other things. The law firm filed for bankruptcy in 2003. A federal jury found the attorney guilty in 2005 on multiple felony counts, including fraud. His six associates pled guilty to federal charges.

To enter the law firm's debt settlement program, clients signed an agreement that authorized monthly automatic deductions from their bank accounts. The first four payments often went into a retainer account to collect advance fees owed to the firm, despite the fact that the clients had pressing debt problems. The advance fees equaled about 25 to 28 percent of the total projected savings from the client's debt settlement plan. Thereafter, about half of payments also were deposited into an escrow account to settle client debts held by creditors until the retainer account was fully funded. Subsequent monthly deductions went into escrow account until enough money accrued to make a settlement offer on behalf of the client. Although not formalized in written contract, many clients were instructed to stop making their minimum monthly payments to

creditors. They were told that continuing to pay creditors would inhibit the firm's ability to reach a settlement.

One of the firm's New York clients who federal authorities interviewed enrolled in the debt settlement program after hearing an advertisement on the radio. The woman, who owed $60,000, was experiencing marital problems and feared becoming a single mother with small children and a large amount of debt. She called the toll-free number and arranged for a meeting at a New York office. One of the firm's associates, who later pleaded guilty to interstate transmittal of stolen money and preparing a false tax return, told her that the advance fees she paid would be held in trust until all of her debt was settled. She paid about $7,000 to $8,000 to the firm to settle her debts until one of her creditors obtained a judgment against her, causing her bank account to be frozen. When she contacted the firm to withdraw and ask for a refund, her calls were not returned. She ultimately filed for bankruptcy. The firm never secured a settlement on her behalf. She filed a civil lawsuit and won a default judgment against the firm for $10,000 including attorney fees, but told us she never recovered any money from the court decision. In relating her experiences with the debt settlement company, she described the attorney as "a ghoul and a vulture... preying on vulnerable consumers."

Case Study 3

Two Florida companies and their owners ran an illegal debt settlement business using unfair and deceptive practices, collecting over $500,000 from about 220 North Carolinians who rarely obtained the services they purchased and found themselves in far worse financial positions. North Carolina law prohibits anyone from acting as a for-profit intermediary between residents and their creditors for the purpose of reducing, settling or altering debt payments, except in limited circumstances. The state ban specifically includes situations where an individual is receiving advance fees to provide these services. To enforce these laws, the North Carolina Attorney General filed a complaint in February 2008 accusing the group of operating a "classic advance-fee scam, designed to extract up-front fees from financially strapped consumers whether or not any useful services are performed." The companies and their owners, one of whom was an attorney, marketed their services in part using numerous third-party "referral agents" who received compensation for directing consumers to the group. One such referral agent listed a local telephone number which, when dialed, actually rang a telemarketing "boiler room" in Massachusetts or Florida. The group and its agents told consumers that their unsecured debts could be reduced by up to 60 percent in as little as 1 to 3 years and thus avoid bankruptcy. The group typically charged clients an advance fee

of 15 to 25 percent of their total debt, paid through monthly debits from their bank accounts. It also advised them to cease all communication and payments to creditors, stating that it could stop any harassment and provide "legal protection." When consumers were sued, however, the group gave them no legal assistance. They also experienced difficulty in contacting the group and were often put on hold, disconnected, or "given the runaround," state prosecutors said. Many clients dropped out of the program dissatisfied. Few received refunds or obtained settlements with their creditors. Many filed for bankruptcy. A North Carolina court found that the group's actions violated state law and banned the parties from doing any debt-related business with state residents. State prosecutors ultimately secured refunds for some of the group's clients. In a separate action in January 2009, the attorney also was disbarred for a period of 5 years.

An example of the service the group's clients received can found in the experience of a rural North Carolina couple. According to the wife's sworn statement, the pair found it increasingly difficult to meet their monthly financial obligations after the husband became ill and temporarily lost his income. They searched for ways to reduce their unsecured debt on the Internet and found what turned out to be one of the group's referral agents. They were told that the initial monthly payment of about $1,700 would be deducted from their bank account for the first 3 months of the program to cover attorney fees. Subsequent monthly payments of about $1,200 were to go towards settlements with creditors. The couple joined the program in hopes of avoiding bankruptcy and made their first installment in February 2007. Seven months later, the wife called the group for a status on her account and was told the couple had only accrued about $3,000 in savings, despite paying the group over $11,000 to date. She also learned that none of their credit accounts had been settled and they had been charged additional attorney fees of $499 each month. They withdrew from the program and demanded a full refund, since the group had done nothing "other than take our money with no accountability." The couple started receiving collection notices and threats of lawsuits. Their debts had now increased since they were no longer making payments to creditors. In an attempt to save their home from foreclosure, the couple filed for Chapter 13 bankruptcy. They also took second jobs as janitors to help pay off their debts. The wife told us that during the day she works as a bank teller and her husband is employed as an electrical engineer. One of their creditors suggested they call their state Attorney General. "My husband and I are worse off than before we entered into an agreement with (the group) for debt settlement services," the wife said in her sworn

statement. The state Attorney General ultimately secured a full refund for the couple.

Case Study 4

A Maryland attorney, his law firm, and their marketers used unfair and deceptive trade practices to collect $3.4 million from about 6,200 clients over a 2-year period to settle debt but provided little or no services in return, causing harm to consumer credit histories and credit scores. The group told its clients that they could settle debts with creditors for half of the total amount owed, but either did not do so or negotiated agreements that saved significantly less than promised. Only $811,136—less than a quarter of the money the group collected— was either paid to creditors or refunded to clients. Moreover, about $240,000 was taken from client trust accounts to pay for the law firm's debt and expenses. The group told clients that its employees were qualified credit counselors capable of recommending the most appropriate action, but instead it provided virtually the same advice to everyone – enter debt settlement plans profitable for the group. The Maryland Office of the Attorney General began an investigation of the group because it was not licensed to provide debt settlement services in the state. The group reached an agreement in 2007 with the Attorney General, agreeing to immediately cease and desist selling unlicensed debt settlement services, pay restitution to customers, and pay investigatory costs and a fine to the state consumer protection office. However, the Attorney General filed a lawsuit in 2008 against the attorney, his law firm, and their marketers accusing them of continuing to provide debt settlement services, thus violating the terms of their agreement and the state's consumer protection act. The court ruled in favor of the Attorney General and ordered the group to fulfill the terms of its previous agreement, pay a fine and costs of $180,000, and pay restitution of almost $2.6 million. As of March 2010, the attorney had only paid $20,000.

Clients made numerous complaints to the Maryland Office of the Attorney General, detailing the financial harm they suffered from the group. A New Hampshire couple struggling to pay their bills joined the debt settlement program in August 2007 and authorized the firm to automatically deduct about $650 from their checking account each month, according to a letter they sent to the Attorney General. Although the couple had approximately $41,000 in credit card debt when they joined the program, the wife told us that they had a good credit history and had never missed a payment. However, she said that they were told they had to stop making payments to their creditors when they entered the program. The collection letters and phone calls from creditors started "arriving constantly" by the end of

September, the couple told the Attorney General. Threats of lawsuits followed 2 months later. The couple withdrew from the program in February 2008, after paying the firm $3,895 and receiving no relief from their debts. They told the Attorney General they were so far in default on their credit cards, with interest and fees added on top, that they considered bankruptcy to be the best option available to them. According to the wife, their credit score dropped from 720 down to 605 as a result of their experience with this debt settlement program. She added that they ultimately entered into a consumer credit counseling program after they learned that state law requires such counseling prior to bankruptcy. When asked to compare the two different debt relief programs, she said that credit counseling is "legit" and helps consumers to get out of debt, but that "debt settlement is a crock."

ase Study 5

Four related California companies lured more than 1,000 consumers into a debt settlement program through false promises of reducing debt, halting collection calls, removing negative credit-report information, and holding payments in trust to settle accounts—from which, FTC alleged, more than $2 million later went "missing." The companies' telemarketers told consumers that the group could cut their debt by as much as 60 percent in exchange for a nonrefundable fee, thus improving their financial status. The companies did not disclose that the fees typically amounted to hundreds or thousands of dollars. They said that the monthly payments withdrawn from consumers' bank accounts would be held in trust to settle their debt at a reduced amount. Consumers were instructed to immediately stop paying their unsecured creditors so that they would be considered a "hardship," putting them in a better position to negotiate settlement terms. The companies stated that they would contact the creditors and tell them to cease all contact with their customers, thus preventing collection calls. They also told consumers that any negative information that appeared on their credit report would be removed at the conclusion of the program.

FTC filed a complaint against the companies in August 2002, alleging that numerous consumers who enrolled in the program saw their debt increase after incurring late fees, finance charges and overdraft charges. Negative information often appeared on the consumers' credit reports—such as charge-offs, collections and wage garnishments—and will stay on their record for a period of up to 7 years. FTC determined that in numerous instances, the companies did not contact consumers' creditors or collectors, nor did they return calls. FTC later determined that more than $2 million the companies collected to be held in trust for making

settlements was missing. Given their worsened financial condition, many consumers ultimately filed for bankruptcy. The federal court entered default judgments against all four companies, banning them from engaging in any debt settlement services and ordering them to collectively pay $1.7 million in restitution to consumers, among other actions. FTC brought suit against four executives of the companies, but these cases ended in settlement agreements without any liability or fault established. As part of the settlements, however, the executives agreed to be permanently banned from participating in debt settlement services and to pay between approximately $220,000 and $2.6 million, depending on the amount of consumer injury that stemmed from their activities. The monetary judgments were largely suspended, except in two instances where the executives surrendered property and other assets to help satisfy what they owed, because of their inability to repay consumers.

The experience of a secretary from Riverside, Calif., illustrates the harm that FTC determined the companies to have caused consumers. She joined the program after receiving an e-mail in August 2000 and being told by a representative from one of the companies that she could be completely out of debt in 16 months, according to a written statement she gave to FTC under penalty of perjury. At the time, she made about $27,000 a year, owed a total of $7,000 in credit card debt and was making little progress towards reducing her balances given that her salary barely covered rent, food, car payments, and insurance. The company also offered a debt management class, which she stated had appealed to her because she wanted to learn how to better manage her money. She never received the promised training, though, despite asking for it several times. Three months after she joined the program, letters from creditors started arriving threatening legal action if she did not pay. Counselors with her debt settlement company told her to ignore them, calling the move a "scare" tactic. She started to panic after she received a court summons in late 2000 stating that a lawsuit had been filed against her. A counselor again told her not to worry, that everything would be okay. After a court summons arrived from a second credit card company, a counselor told her to fax the documents to the company and that staff would deal with it. The state courts, however, entered two judgments against her in March 2001. She later received notice that her wages would be garnished by 25 percent. "I was frantic," she stated. "I was barely making ends meet on my salary." By July 2001—less than a year after the secretary entered the debt settlement program—her credit card debt had more than doubled to about $15,000, because of late charges, interest, and other fees. She filed for bankruptcy that same month. She later sued the company that enrolled her in the program and

settled for what she had paid in program fees, about $1,700, plus court costs.

Mr. Chairman, this concludes our statement. We would be pleased to answer any questions that you or other members of the committee may have at this time.

Appendix I: Debt Settlement Companies

Table 4 below summarizes examples of fraudulent, deceptive, abusive or questionable information provided by the 20 debt settlement companies we called. We have referred these cases, as appropriate, to the Federal Trade Commission (FTC).

Table 4: Representations Made by Debt Settlement Companies We Called

No.	Location of company and affiliates	Fees[a]	Association membership[b]	Case details
1	Florida; affiliates in Florida, Massachusetts, California, and New Jersey[b]	• Advance fees based on 15% of enrolled debt, with monthly payments required throughout program	The Association of Settlement Companies (TASC);[c] affiliates in TASC and United States Organizations for Bankruptcy Alternatives (USOBA)	• Marketing Web site that referred us to two affiliates • Representative from one affiliate (a member of USOBA) stated "everyone who enters the program makes the independent decision to stop paying their creditors" • Identified through spam e-mail message received by one of our investigators • Web site advertised "New Government Programs!" and "If we can't get you out of debt in 24 hours we'll pay you $100" • Representatives claimed high success rates—93% and 100% • Representative from USOBA-member affiliate claimed that "worst case scenario" for our settlements would be "40 cents on the dollar," and that "every single creditor settles." He also promised that hiring his company would ensure that calls from creditors would "slow down and eventually stop" • Representative from TASC-member affiliate claimed that TASC was "like the SEC for stock traders" and serves as the regulating body for the industry • Owner of company acknowledged TASC logo featured on Web site despite company not being a member of TASC • For further details, see section on "Company 1" in this testimony

No.	Location of company and affiliates	Fees[a]	Association membership[b]	Case details
2	Unknown; affiliates in Arizona, Texas, and California[b]	• Advance fees based on 12% of enrolled debt • First three monthly payments go to fees • $25 monthly maintenance fee • Additional contingent fee based on 4% of reduction in debt company obtains for clients	Affiliate in USOBA	• Marketing Web site that referred us to at least three affiliates • Representatives from two affiliates told us we would not make our monthly payments to creditors while in the program • Representative from one affiliate told us we could not afford debt settlement and suggested that we consider bankruptcy as an alternative • Web site advertised "Reduce balances to 40% - 60%," "Eliminate excessive Credit Card Debt interest immediately," and "End late payment fee's [sic]" • Company's radio advertisements claimed "government approved" and "government authorized" debt settlement • Representative from one affiliate stated creditors would send letters to us indicating that our settled accounts are considered "paid in full" • For further details, see section on "Company 2" in this testimony
3	California	• Advance fees based on 16% of enrolled debt, with monthly payments required throughout program • First three monthly payments go to fees • $100 fee for out-of-state clients	TASC (at the time of our call)	• Web site targeted at Christian consumers • Multiple representatives told us we would not make payments to our creditors once we entered company's program • Representative told us that stopping payments to our creditors would "knock [our credit score] down a couple of points," and that our credit would only be affected while we were in the program • Representatives claimed that program has 85% success rate, that lawsuits from creditors were "just random" and did not require an attorney, and that they would negotiate our debt down to 40 to 60% of what we owed • Representative told us that creditors would report our accounts settled for less than the full balance as "paid in full" or "paid as agreed" • Owner told us during our site visit that the company recently dropped its TASC membership due to rising costs • For further details, see section on "Company 3" in this testimony

No.	Location of company and affiliates	Fees[a]	Association membership[b]	Case details
4	California	• Advance fees based on 17% of enrolled debt, with monthly payments required throughout program • First three monthly payments go to fees • $840 maintenance fee (total throughout program) • $623.50 trust account fee (total throughout program)	TASC	• Company advertised "U.S. National Debt Relief Plan," with a logo depicting a shield filled with a U.S. flag • Representative stated that, upon entering the program, we would "no longer be making payments to your creditors on a monthly basis" • Representative justified first three monthly payments going only to fees as necessary because it covered initial set-up costs and "to show that you have the commitment to be in the program" • For further details, see section on "Company 4" in this testimony
5	California	• Advance fees based on 15% of enrolled debt	TASC (at the time of our call)	• Representative told us we were too poor for debt settlement and advised us to consider bankruptcy as an alternative; later described company's debt settlement program • Representative stated that we could not continue paying our creditors while in company's program • After our undercover call but prior to release of this testimony, company appears to have gone out of business • For further details, see section on "Company 5" in this testimony
6	Texas	• Advance fees based on 15% of enrolled debt, with monthly payments required during first 24 months (program length unknown)	Unknown	• Representative stated that "One-hundred % of our clients stop making those [credit card] payments" in order for program to work; later directed us to divert money from paying creditors to account from which company withdraws fees • Representative advised us to give company's telephone number to creditors as our telephone number, to avoid calls from creditors • Representative stated "basically what we do is...we negotiate with your creditors to basically cut your bills in half. So when we go to negotiate, we go to negotiate at 50 cents on the dollar. That's what we guarantee. Now, we can also get less," and added as an example one major bank that he claimed "normally settles" for only 30 cents on the dollar. • Represented their program could prevent creditors from suing us or garnishing our wages

No.	Location of company and affiliates	Fees[a]	Association membership[b]	Case details
7	California	• Advance fees based on 10% of enrolled debt, with monthly payments required during first 12 months (of estimated 38-month program)	Unknown	• Advertises "National Debt Relief Stimulus Plan" • Representative told us we would stop paying our creditors, and that "the only thing you're going to have to worry about is this payment here [company's fees]" • Representative stated that lawsuits were a "scare tactic" • Web site states it can "Prevent Creditor Harassment" • Representative claimed company could reduce our balances so that we would pay "anywhere from 30 to 60 % on what you owe"
8	Texas	• Advance fees based on 12% of enrolled debt, with monthly payments required during first 15 months (of estimated 48-month program) • First four monthly payments go to fees	TASC	• Regarding payments to our creditors, representative stated "you're gonna have to cut them off so that they haven't received anything" • Representative claimed "every account that we work on will be at least 40 cents on the dollar"
9	Texas	• Advance fees based on 15% of enrolled debt, with monthly payments required during first 12 months (of estimated 24-month program)	Unknown	• Representative stated that "one-hundred % of our clients stop making their monthly payments as soon as they enroll into the program" • Representative encouraged us to explore other debt relief options as well as debt settlement • Name of company changed during our investigation
10	Texas	• Advance fees based on 17% of debt, with monthly payments required during first 19 months (of estimated 48-month maximum program)	USOBA	• Representative stated that upon enrolling in company's program "you would no longer make any of your credit card payments. All of them would go late" • Representative claimed to "negotiate your debt down to 50 % or less of what you owe" • Representative said advance fees paid for attorneys who would "look at" our account monthly • Representative was unable to explain refund policy by telephone • Representative suggested we change our address on billing statements to address for company's attorneys

No.	Location of company and affiliates	Fees[a]	Association membership[b]	Case details
11	Florida	• Unknown—only received recorded information	Unknown	• Telephone number listed on Web site went to a 7-minute recording • Recording stated that we would stop paying our creditors upon entering program • Recording claimed to send letters to credit bureaus that would "remove any late marks that you may have received on the account"
12	California	• Advance fees based on 15% of enrolled debt	Unknown	• Front-end marketing company, with 28 different Web sites used to solicit customers for referral to one debt settlement company • Representative stated that affiliate handling actual settlement process would call us back; we did not receive a return call
13	Texas	• Advance fees based on 10% of enrolled debt, with monthly payments required throughout program	USOBA	• Representative stated that program does not work for everyone, but does work for everyone who has a hardship • Representative stated company's services are helpful to consumers "because we allow [consumers'] accounts to go delinquent and past due and into collections" • An e-mail sent after our call stated that upon enrolling in the program, "we will inform your creditors that you will no longer be making payments on the accounts"
14	Arizona	• Advance fees based on 12.9% of enrolled debt, with monthly payments required during first 10 to 12 months (of estimated 30-month program)	Unknown	• Representative stated that "9 out of 10 of our clients are current," but stop making payments when entering program • When asked whether to stop paying accounts that are current, representative replied "Absolutely"
15	California	• Advance fees based on 15% of enrolled debt • First three monthly payments go to fees • $30 monthly maintenance fee • $14.50 monthly trust account fee	TASC	• Representative stated that she could not interfere with our obligation to pay our creditors, and encouraged us to continue making payments if we could afford to do so at the same time as saving for settling debts • Representative later stated that if we could continue making our minimum payments "maybe this [debt settlement] isn't the best solution for you"

No.	Location of company and affiliates	Fees[a]	Association membership[b]	Case details
16	Florida	• Contingent fees based on 35% of reduction in debt company obtains for clients • First monthly payment goes to enrollment fee • $53 monthly maintenance fee	USOBA	• Web site targeted at Christian consumers • Representative stated that "you stop paying everybody. That's what makes you qualify. You fall behind." • Company's contract states there is a $1,000 termination fee for dropping out of the program • Representative suggested that we could pay our initial fee with a credit card • Representative offered to also provide us information on debt consolidation loans, to determine which option would be best
17	California	• Advance fees based on 18% of enrolled debt, with monthly payments required during first 18 to 24 months (of estimated 36-month program)	USOBA	• Representative encouraged us to take care of our late mortgage payments before worrying about paying off or settling our credit card debts
18	Unknown	• Advance fees based on 15% of enrolled debt, with monthly payments required throughout program • First three monthly payments go to fees	Unknown	• Web site targeted at Christian consumers • Web site describes one of the "blessings" of its program as "Immediate increase of spendable cash-flow [sic]" • Representative told us the program is based on our stopping payments to creditors
19	Maryland	• Advance fees based on 15% of enrolled debt • $9.85 monthly bank fee	Unknown	• Representative stated that it "wouldn't make sense" to continue making payments while in a debt settlement program • Representative said that program "works for some" but is "not great for others," and that company discourages consumers from debt settlement if they plan to buy a house soon, due to credit score damage
20	California	• Unknown—representative said we did not have enough debt to qualify for program	TASC	• Representative stated that we did not have enough debt to qualify for the company's debt settlement program

Source: GAO analysis of information obtained from debt settlement companies.

[a]Fee information reflects fees disclosed to us; some companies may charge additional fees that were not disclosed. Debt settlement companies typically charge fees requiring payments either at the beginning of the program as an advance fee or after each settlement as a contingent fee. Some companies structure the payment of advance fees so that they collect a large portion of them—as high as 40 percent—within the first few months regardless of whether any settlements have been obtained or any contact has been made with the consumer's creditors. Others collect fees throughout the first half of the enrollment period in advance of a settlement. Companies that charge a contingent fee generally base it on a certain percentage of any settlement they actually obtain for consumers. They sometimes charge a small, additional fee every month while consumers are busy attempting to save funds for settlements. FTC has criticized advance fees, stating that consumers often suffer irreparable injury as a result of paying them in advance of receiving services. The agency maintains that the practice of taking fees before a settlement is obtained results in a number of adverse consequences for consumers: late fees or other penalty charges, interest charges, delinquencies reported to credit bureaus that decrease the consumer's credit score, and sometimes legal action to collect the debt.

[b]Some companies we called referred us to one or more affiliates. It was not always clear to us exactly with which company or affiliate we were speaking, where the companies or affiliates were located, or what the relationships were between the companies and affiliates. In some cases, separate affiliates of the same company claimed to be members of different industry trade associations.

[c]While Company 1 claimed to be a member of TASC, it appears this was a false representation.

Appendix II: GAO Contacts and Staff Acknowledgments

GAO Contacts

For further information about this testimony, please contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov.

Contacts points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony.

Staff Acknowledgments

GAO staff who made major contributions to this testimony include Cindy Brown Barnes, Assistant Director; Andy O'Connell, Assistant Director; Christopher W. Backley; Amy E. Brown; Eric Charles; Scott Clayton; Ken Hill; Jennifer Huffman; Appleton Kamdoum; Jason Kelly; Barbara Lewis; Natalie Maddox; Doug Manor; Steven Martin; Vicki McClure; James Murphy; Mark Needham; and Ramon Rodriguez.

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State of North Dakota
DEPARTMENT of FINANCIAL INSTITUTIONS

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MEMORANDUM

DATE: January 5, 2011

TO: House Judiciary Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Testimony Regarding House Bill No. 1038

Chairman DeKrey and members of the House Judiciary Committee, thank you for the opportunity to provide testimony regarding House Bill No. 1038.

As you are aware House Bill No. 1038 proposes to create and enact a new Chapter to the North Dakota Century Code, Chapter 13-11, relating to regulation of debt-settlement providers, as well as amending and reenacting Section 6-01-01.1 of the North Dakota Century Code.

It is my understanding that Vonette Richter from Legislative Council provided some introductory remarks regarding the background of the Bill and a copy of the Interim Committee's findings. I would like to emphasize

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that this is not the Department's Bill and it is being introduced at the request of the Interim Judiciary Committee.

The Department and the Attorney General's Consumer Protection and Anti-trust Division were asked to collaborate in drafting proposed legislation based on the Uniform Debt Management Services Act for consideration by the Interim Judiciary Committee. In doing so, our agencies started with the Uniform Act to draft the Bill; however, drew heavily from existing statutes under the authority of the Department of Financial Institutions as well as drawing some content from the Illinois Debt Management Service Act. I would be happy to walk through the Bill and highlight some specific areas which may be of interest to the Committee.

Section 1 of the Bill simply amends a Section of North Dakota law which provides that any funds received by the Department of Financial Institutions under specific Chapters must be deposited into the Department's regulatory fund.

Under Section 2, beginning on line 15, the Bill starts with definitions. In particular I would draw your attention to page 3, line 5, which is the definition of a debt-settlement provider. Also beginning on line 9 of page 3 the debt-settlement provider excludes a number of entities and individuals delineated from line 11, page 3 (6(a)) through line 3, page 4 (6(h)).

Additionally, beginning on line 4, page 4 the definition of debt-settlement service is set forth and was expanded beyond the Uniform Law, including language obtained from the Illinois Act. The differences between 7(a)(1) and 7(a)(2) are subtle; however, the definition under 7(a)(1) includes providing advice or acting as an intermediary while in 7(a)(2) the definition is offering to provide services in advising, encouraging, assisting, or counseling a consumer to accumulate funds for purposes of settling a consumer's unsecured debt in an amount less than the full principal or less than the current outstanding balance. Mr. Grossman and I met with Vice Chairman Klemin and discussed an amendment adding a third paragraph to the definition of debt-settlement service which would include settling a North Dakota consumer's tax obligation with a state or federal government agency in an amount less than the current outstanding balance. We hope to have the amendments discussed with Vice Chairman Klemin drafted shortly.

Beginning on line 19 of page 4 the bill sets forth what debt-settlement service does not include; essentially the exclusions are limited to legal, accounting, and financial planning services.

The definitions of enrollment or setup fee, maintenance fee and settlement fees found on page 5, lines 1, 5, and 23 become important later on in the Chapter.

Beginning on page 6 the bill sets forth a license requirement; an application process for a license with the Department; a requirement for a fee and a bond associated with the application; and the qualifications for licensure. These Sections were primarily derived from existing statutes under the Department's authority.

Page 7 discusses when the licenses expire; the renewal process for the license, both of which are drawn from existing statutory authority for the Department.

Page 8, line 4 is a Section which requires the applicant or licensee to update information previously provided to the Department within 10 days after a change of the information which was provided in an application. The bill sets a requirement the licensee maintain its records according to generally-accepted accounting principles and would require an annual report by August 1 of each year, with the form being prescribed by the Commissioner.

Beginning on line 16, page 8, the Department is required to act on an application for licensure within 60 days of filing a completed application.

Beginning on line 19 of page 8, the standards for revoking, suspending, or surrender of a license are set forth. Again, these Sections are drawn from existing statutory authority under the Department.

On page 9, line 12, this Section would give the Commissioner the authority to suspend or remove officers and employees based on the criteria enumerated in this Section. The Section does allow for due process in that an individual or company may request a hearing. The Section does give the Commissioner the authority to immediately suspend a person if they have been charged with a felony in state or federal count involving a dishonesty or breach of trust. That order is effective immediately and is in effect until the criminal charge is finally disposed of or until the order is modified by the Commissioner. Again, this Section is drawn from existing authority under the Department's purview.

Beginning on page 10, line 15, we include restrictions on advertising and marketing practices. Essentially a debt-settlement provider is prohibited from representing results or outcomes in advertising, marketing, or other communication unless they can provide substantiation for that representation at the time it is made. Also a provider may not make, expressly or by implication, any unfair or deceptive representations. The provider may not omit material facts, and all marketing and advertising

must include a disclosure indicating that debt-settlement services are not appropriate for everyone, that failure to pay monthly bills timely will result in increased balances and will harm credit ratings. In addition, a caution must provided that not all creditors will agree to reduce principal balance and may pursue collection, including lawsuits.

Beginning on line 29, page 10, the debt-settlement provider is required to furnish copies of the contract to the Commissioner upon request and also is required to furnish the debtor with a copy of the written contract at the time of execution setting forth any charges agreed upon.

In addition, there is a recordkeeping requirement beginning on line 4, page 11 which includes fees paid by the debtor; amount of money held in trust; offers made and received on the debtor's accounts; enforceable settlements reached with the creditors; a requirement to provide information to the debtor upon request; a requirement to issue a receipt if a payment is made at the provider's office; and the provider must prepare and retain in the file for each debtor, a written analysis of the debtor's income and expenses to substantiate the plan of payment is feasible and practical.

Beginning on line 17, page 11, the requirement that the provider keep all funds received from a debtor for the purpose of paying bills, invoices, or

accounts of the debtor separate from the funds of the provider and place these funds in either a trust account or an account which clearly indicates that the funds are not those of the debt-settlement provider or its employees, agents, or officers.

Beginning on page 12, line 1, the funds that are held in trust are not subject to attachment, lien, levy of execution, or sequestration by order of court except by a debtor for whom a debt-settlement provider is acting as an agent in paying bills, invoices, or accounts.

Beginning on line 4, page 12, the provider is required to give a monthly accounting to the debtor itemizing: the amount received from the debtor; the amount paid to each creditor; the amount of charges deducted; and, any amount held in reserve, as well as the status of each debtor's enrolled accounts. This Section also requires the provider to give an accounting to a debtor within seven days after a written demand; the debtor cannot request this accounting more than three times every six-month period. The bill does not require establishment of trust accounts if there are no consumer funds held or controlled by the provider.

Beginning on line 13, page 12, the statute would require the provider act in good faith and the provider must maintain a toll free communication system staffed at a reasonable level during ordinary business hours.

Beginning on line 20, page 12, is a requirement for the provider to give the consumer oral and written notice disclosing certain items delineated beginning on line 24 of page 12 through line 22 of page 13. In addition, this Section requires the consumer to sign and date an acknowledgement form acknowledging that they have received the "Consumer Notice and Rights Form" and the provider or its representative shall also sign and date the form. This form must be in duplicate and the provider must retain the original; if the acknowledgement is in electronic form the acknowledgement must contain the consumer disclosures required by Section 101(c) of the Federal ESign Act. Beginning on page 14, line 4, is an additional option for the provider to comply with this Section.

Beginning on line 8, page 15, the bill requires the provider to conduct an individualized financial analysis and retain a copy of that analysis; the Section specifies what the analysis must include and prohibits the provider from entering into a contract unless they can make written determinations supported by the financial analysis that the consumer can reasonably meet the requirements of the program and that it is suitable for the consumer at the time the contract is to be signed.

Beginning on line 27, page 15, the bill sets forth items the debt-settlement contract must include and specifies that any contract entered into in violation of this Section is void.

Beginning on line 3, page 16, the disclosures required for the contract are set forth and continue through line 21 of page 17. This Section further requires if the provider communicates with a consumer in a language other than English, they furnish the consumer the disclosures and documents required in that other language.

Beginning on line 26, page 17 is a section which allows for cancellation of a contract by the consumer at any time before the provider has performed fully each service they have contracted to perform or represented they would perform. If the consumer cancels the contract under this section or there is a material violation of the Chapter on the part of the debt-settlement provider, the provider shall return all fees and compensation with the exception of an application fee and any earned settlement fee; all funds paid by the consumer to the provider that have accumulated for the consumer's settlement account and have not been disbursed must be returned to the consumer also. The cancellation of the contract by the consumer also revokes any powers of attorney or direct debit authorizations granted to the provider by the consumer. Refunds

required under this Statute are to be done in seven days after notice of cancellation and must include a full accounting. The provider must give timely notice of the cancellation of the contract to each of the creditors with whom the provider has had prior communication on behalf of the consumer in connection with the provision of any services.

Beginning on line 18, page 18, the Statute sets forth the fees that a provider may charge. Specifically, the debt-settlement provider is only allowed to charge a one-time enrollment fee of no more than $100 and may not charge any other enrollment fee, setup fee, or upfront fee. The provider is also allowed to charge a settlement fee that may not exceed an amount greater than 15% of the savings. I would note that the term "savings" is defined beginning on line 18, page 5, and means the difference between the principal amount of the debt and the amount paid by the provider to the creditor or negotiated by the provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt-settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt. This Section also specifies that a provider is not entitled to a settlement fee if the debt-settlement is in an amount greater than the principal amount of the debt. Finally, a provider may not collect the settlement fee until a legally enforceable agreement to accept

funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt and those funds are either provided by the provider on behalf of the consumer or provided directly by the consumer to the creditor pursuant to that settlement negotiated by the provider.

Line 7, page 19, prohibits a provider from soliciting voluntary contributions from an individual or affiliate of the individual for any service provided to the individual. A provider may accept a voluntary contribution from an individual provided that until 30 days have elapsed after completion or termination of the plan, the aggregate amount of money received from or on behalf of an individual may not exceed the total amount the provider may charge under the previous Section 13-11-21.

Beginning on line 13, page 19, this Section enumerates prohibited acts and practices which continue through line 16 of page 22.

Beginning on line 17, page 22, if the provider has been served with notice of a civil action or violations of the Chapter, the provider must within 30 days notify the Commissioner that it is being sued.

Beginning on line 22, page 22, this Section of the bill establishes liability of the provider for the conduct of other persons.

Beginning on line 26, page 22, the bill sets forth the powers of the Commissioner, including: determining qualifications of applicants; conducting investigations and examinations; issuing cease and desist orders; denying, suspending, revoking or conditioning the license; or, declining to renew a license for: a violation of the Chapter, if the applicant has withheld information, or, if the applicant makes a material misstatement in an application for a license or renewal.

Beginning on line 25, page 23 is the enforcement authority which specifies violations and penalties. This particular Section makes violations of this Chapter a Class C felony; authorizes the Commissioner to impose civil money penalties not to exceed $5,000 per violation upon someone that willfully violates a law, rule, written agreement or order under the Chapter; and, provide for due process of a civil money penalty under Chapter 28-32. This Section also provides that the Attorney General may also enforce this Chapter, has powers provided in the Chapter or Chapter 51-15 and may seek remedies provided in this Chapter as well as Chapter 51-15.

Beginning on line 11, page 24, this Section allows the contract to be voided if the provider imposes a fee or other charge not authorized within this Chapter; also, an individual may void the contract if a provider is not licensed as required by this Chapter when an individual assents to a

contract. If the contract is voided under Subsection 2 of this Section the provider does not have a claim against that individual for breach of contract or for restitution.

Finally, beginning on line 19 of page 24, the bill allows any person that is aggrieved by a violation to bring an action to enjoin the violation or for restitution or both. The Section allows the plaintiff to obtain restitution up to the actual amount of restitution or a sum of $2,000, whichever is greater. Additionally, the court may award costs, expenses and reasonable attorney fees and does not limit any other claims the person may have against the provider or any third party subject to this Chapter.

Mr. Chairman and members of the Committee, we were asked to provide a Fiscal Note regarding this Bill, which you should have been provided. As you will note in the Fiscal Note, the Bill requires debt-settlement providers to be licensed and regulated by the Department of Financial Institutions and has no fiscal impact to the General Fund; however, it will have a negative impact to the Department's Special Regulatory Fund. The Department of Financial Institutions is a self-funded regulatory agency and the revenue we obtain from licensing is deposited into the regulatory fund for the operation of the Department. The expenditure includes salary for one full-time equivalent position, operating

expenses, and programming costs for implementation of online licensing. The Department is projecting approximately 35 licenses at a licensing fee of $400 for the biennium or a total of $28,000 for the biennium. In addition there is an investigation fee of $400 for licensing which is a one-time fee, for total revenue of $14,000. The Department is projecting examination fees, assuming six examinations are conducted; those fees are projected to be approximately $43,950, which include recouping expenses for lodging, transportation, meals, and salary. The total revenue projected for the biennium is estimated to be $85,950. The expenditures detailed on the Fiscal Note include the salary and benefits, equipment, furniture, and office supplies, as well as other expenses including IT Data Processing. In addition the Department is estimating programming costs for our internal Records Management program developed by ITD of $85,650, as well programming for our online application system of $30,000. As you can see, total expenditures of $316,376 are estimated, as opposed to revenue of $85,950, resulting in net expenditures of $230,426.

The bill does not include any appropriation in the Executive Budget and if this Bill is passed, the Department of Financial Institutions will seek to increase its Appropriation Bill, House Bill No. 1008, for the expenditures.

Mr. Chairman and members of the Committee, I would be happy to answer any questions you may have.

H.B. 1038
TESTIMONY OF MARILYN FOSS
NORTH DAKOTA BANKERS ASSOCIATION

Chairman DeKrey, members of the House Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. NDBA does not oppose appropriate regulation of debt settlement management companies and supports appropriate supervision over their activities. However, we believe one section of the bill goes beyond that. As it establishes a system for regulating and supervising debt settlement management companies, it also creates a new an unlimited exemption from execution. This broad, new exemption implicates and negatively impacts lenders' ability to collect the loans they have made and therefore must affect the terms and conditions upon which they will be willing to make loans .

The trouble spot is in proposed section 13-11-14 (page 12, lines 1-3) which addresses the fund that will be accumulated by a debt settlement management company on behalf of a debtor, stating, " Such funds are not subject to attachment, lien, levy of execution, or sequestration by order of court except by a debtor for whom a debt-settlement provider is acting as an agent in paying bill, invoices, or accounts." Among other things, this language allows debtors to set aside and protect funds from creditors' claims, to designate only one or a few creditors to be paid from the fund and leaves creditors who are not preferred without a state law remedy to collect their debts – all because of the unlimited exemption from ordinary state law collection and exemption processes. Because the language creates a new exemption from process, it will apply in bankruptcy court as well as state court proceedings.

No provision of this nature is included in the Uniform Debt Management Services Act and, so far as I am aware, the provision has not previously been discussed in a committee hearing. NDBA has begun discussion with the attorney general's office about how to best resolve the

various issues, but at this point we oppose passage of the bill with the cited language in it. For that reason I am submitting amendments s to remove the troublesome language from the bill.

PROPOSED AMENDMENT TO H.B. 1038
(Sponsored by the North Dakota Bankers Association)

Page 12 Remove lines 1 through 3

Page 12, line 4, replace "3." with "2."

Page 12, line 10, replace "4." with "3."

Renumber accordingly

Proposed Amendments to HB1038 House Judiciary January 5, 2011

Page 3, line 11, replace "the" with "this"

Page 3, line 17, after "credit union" insert "farm credit system institutions"

Page 4, line 1, after "person" insert "currently"

Page 4, line 1 replace "chapter 13" with "any chapter administered by the department of financial institutions or registered with the attorney general's office."

Page 4, line 18, delete "or"

Page 4, line 18, replace the period with "; or" and immediately thereafter insert

"(3) Offering to provide advice or service, or acting as an intermediary between or on behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the full amount of the obligation, including interest and penalties, or in an amount less than the current outstanding balance of the tax obligation."

Page 4, line 31, after the period insert "(4) A nonprofit corporation engaged in consumer credit counseling services under chapter 13-07.

Page 8, line 5, replace "registered" with "licensed"

Page 22, line 3, after "law" insert "in this state"

Page 24, after line 25, insert "**SECTION 3. AMENDMENT.** Subsection 1 of section 13-07-01 of the North Dakota Century Code is amended and reenacted as follows:

13-07-01. **Consumer credit counseling service – Definition.** As used in this chapter "consumer credit counseling service" means a nonprofit corporation ~~engaged in the business of debt adjusting as defined in section 13-06-01~~ whose agreements contemplate that creditors will reduce finance charges or fees for late payments, default, or delinquency. For purposes of this chapter a nonprofit corporation means an entity that is:

a. organized and properly operating as a not-for-profit entity under the laws of the state in which it was formed;
b. exempt from taxation under the Internal Revenue Code, 26 U.S. C. Section 501; and
c. not owned, operated, managed by, or affiliated with a for-profit entity.

SECTION 4. Chapter 13-06 of the North Dakota Century Code is repealed.

Renumber accordingly.

North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1038
January 5, 2011

Chairman DeKrey and members of the House Judiciary Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) in support of the amendment proposed by Parrell Grossman, Director of the Consumer Protection & Antitrust Division of the Office of Attorney General, to insert "farm credit system institutions" after "credit union" on Page 3, line 17 of HB 1038.

The proposed amendment in which "farm credit system institutions" are explicitly named in the exceptions under Section 13-11-01(6)(c) makes it clear that farm credit system institutions are exempt.

Although Mr. Grossman has assured us that "farm credit system institutions" would already be included in "other persons authorized to make loans" and be considered an exception, the proposed amendment in which farm credit system institutions are explicitly named removes any possible misunderstanding or misinterpretation.

We would also support the North Dakota Banker's Association opposition to the provision on Page 12, lines 1-3 of HB 1038. The language provides a means for a debtor to, in essence, "shield" money from a creditor or group of creditors by giving it to the debt-settlement provider for payment of other specified creditors. This would create preferential treatment of one creditor over another with no ability to get at those funds even with a court order.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about $5.5 billion in credit and financial services to nearly 19,700 customers.

NDFCC asks you to support the proposed amendment to include "farm credit system institutions" explicitly in the exceptions and opposes the provision on Page 12, lines 1-3 of HB 1083.

1038.2.8.11A

02-08-2011

TESTIMONY FOR HOUSE BILL NO. 1038

House Appropriations Committee-Government Operations Division

Testimony of Robert J. Entringer, Commissioner, Department of Financial Institutions relating to the revised fiscal note for House Bill No. 1038

Chairman Thoreson and members of the Committee, I am Bob Entringer, Commissioner for the Department of Financial Institutions. I am here today to testify in regard to the revised Fiscal Note provided by the Department of Financial Institutions for HB 1038 related to the regulation of debt-settlement providers.

FISCAL NOTE

Mr. Chairman, as you are aware the Fiscal Note submitted by the Department of Financial Institutions projects Revenue of $85,950 in the 2011-2013 biennium. The projected revenue is based on an estimate of 35 applications for licensure at an annual licensing fee of $400 and a one-time investigation fee of $400 per licensee. In addition we are anticipating conducting an examination of at least 6 licensees in the first biennium; included in the revenue are examination fees which recoup the cost of examiner's salary and benefits as well as expenses associated with the examination such as transportation, lodging, meals.

The expenditures for the biennium are estimated to be $173,907. Primarily, the expenditures are $85,650 to update our Financial Institutions Records Management system which is our database upon which we record pertinent information regarding all of our regulated entities. This estimate is based upon: 1) the current costs from ITD for the upcoming biennium, and 2) we estimated the number of programming hours based on a similar update from a prior legislative session when our Department added a new license type. In addition we are projecting On-Line Application programming costs of $30,000; this is to upgrade our website to allow this new license type to apply for and renew license applications electronically. We based our estimate on the current ITD programming charges using an estimate of 300 hours to develop the programming. Mr. Chairman, we did not have time to request a formal estimate from ITD for the programming so we based our estimate on previous experience.

Additional operating costs include travel of $24,750, which will be recouped through examination fees; printing of $2,200, which includes forms for paper applications; IT Data Processing of $17,160, which is the ongoing IT cost for our database; professional development of $3,200, which is for training to examine and regulate these entities and includes some travel costs; professional services of $7,700, which is an estimate of

legal expenses to the Attorney General's office and again is based on previous experience with adding a new license type; and operating fees and services which is primarily OMB costs.

The revenue for the 2013-2015 biennium is based on a projected increase in licenses of 20 and an estimate of 14 examinations conducted in the biennium. The major increase in expenditures is in travel which is related to the increase in the number of examinations conducted and, again these costs are recouped in examination fees.

As I indicated at the beginning of my testimony this is a revised fiscal note and all expenses related to an additional FTE in the original fiscal not have been removed.

Mr. Chairman and members of the Committee thank you for your time and I would be happy to answer any questions you may have.

Road Investments to Support Agricultural Logistics

Background

- In 2009, the total market value of agricultural goods produced in ND exceeded $5.5 billion
- USDA/USDOT: *An effective transportation system supports rural economies, reducing the prices farmers pay for inputs, such as seed and fertilizer, raising the value of their crops, and greatly increasing their market access. Providing effective transportation for a rural region stimulates the farms and businesses served, improving the standard of living ... because it (agriculture) is so capital-intensive, it generates much more economic activity in the community than just the jobs it creates.*
- Purpose: analyze changes in agricultural production and logistics and the importance of roadway investments to the distribution of crops produced in North Dakota; identify investments to provide for 20-year paved road design lives under heavy truck traffic.

Key Trends

- Yields have been increasing over time resulting in more crop volume and movements from a given land area.
- Crop mix has been changing over time resulting in greater densities of production.
- The number of elevators has decreased over time resulting in fewer delivery options.
- Shipments have become more concentrated at a fewer number of elevators; longer farm-to-elevator hauls are required.
- More grains are being transshipped from smaller to larger elevators resulting in longer combined truck trips.
- The location of in-state processing and biofuels production has resulted in more intrastate truck (as opposed to interstate rail) movements.
- Road construction prices have increased dramatically over time for asphalt and gravel roads.

Analysis Process

- Based on a detailed crop production and distribution model in which the crops produced in each county subdivision are transported to elevators and in-state processing plants to minimize distance/trucking cost.
- The model minimizes the total or route trip distance including transshipments from one elevator to another or from an elevator to an in-state processing plant.

- The demands at elevators are derived from reports to the Public Service Commission, while the demands at ethanol plants are derived from confidential surveys.
- Once the trips are predicted, they are assigned to the highway network and traffic statistics are compiled for thousands of individual road segments included in agricultural distribution routes.
- The investment needs of each road segment are analyzed and the results accumulated.
- For paved roads, the future overlay thicknesses needed for 20-year lives are estimated.
- Investment needs for both agricultural and other roads are estimated.

Statewide Results

- The average predicted trip distance to elevators and in-state processors (including transshipment distances) is 26 miles, compared to 12 miles in 1980.
- Agricultural goods require roughly 600 million ton-miles of transportation annually.
- Roughly 44% of ton-miles are on local and county roads.
- 57% of agricultural truck travel on local and county roads is on gravel surfaces.
- More than 10,000 miles of gravel road have some agricultural traffic.
- Another 3,958 miles of paved roads have some agricultural traffic.
- Not all of these miles are heavily impacted.
- Estimated statewide need (exclusive of state highways and projected impacts from future oil development) is $211.5 million per year, including $100.5 million of paved road investment needs and $110 million of unpaved road investment needs.
- Approximately $59 million of paved road needs relate to agricultural haul roads.
- Approximately, $43.6 million of unpaved road needs relate to agricultural haul roads.

Results for Non-Oil Counties

- The total estimated road investment need in the 36 non-oil producing counties is approximately $149 million per year.
- The estimated annual paved road investment need in the 36 non-oil producing counties is $72.4 million. Approximately $47 million relates to agricultural haul roads.
- The estimated annual unpaved road investment needs in the 36 non-oil impacted counties is $76.6 million. Approximately $31.9 million relates to agricultural haul roads.

Funding
- $134 million - bridge

Road Investment Needs to Support Agricultural Logistics and Economic Development in North Dakota

January 30, 2011

Contents

Summary

According to the Agricultural Statistics Service, North Dakota leads the United States in the production of spring wheat, durum wheat, sunflower, barley, dry edible beans, canola, and flaxseed. In 2009, the total market value of agricultural goods produced in the state exceeded $5.5 billion. Because of the importance of agriculture to the state's economy, this report focuses specifically on the investment needs of roads used to haul agricultural goods to market. The purpose of the study is to analyze changes in agricultural production and logistics and the importance of roadway investments to the distribution of crops produced in North Dakota.

Important changes have occurred during the last two decades that have implications for agricultural logistics and roadway investment needs:

(1) Yields have been increasing over time resulting in more crop volume and movements from a given land area.

(2) Crop mix has been changing over time resulting in greater densities of production.

(3) The number of elevators has decreased over time resulting in fewer delivery options.

(4) Shipments have become more concentrated at a fewer number of elevators. Consequently, longer farm-to-elevator hauls are required.

(5) More grains are being transshipped from smaller to larger elevators resulting in longer combined truck trips.

(6) The location of in-state processing and biofuels production has resulted in more intrastate truck (as opposed to interstate rail) movements.

(7) Funding for county and local roads exclusive of oil extraction funds has grown only modestly over time (when measured in real dollars).

(8) In contrast, construction prices have increased dramatically over time for asphalt and gravel roads. Collectively, these factors are stressing the county and local road systems used to market and distribute North Dakota products.

This study is based on a detailed crop production and distribution model in which the crops produced in each county subdivision are moved to elevators and in-state processing plants to minimize distance. Because trucking cost is typically measured on a per-mile basis, minimizing the distance of agricultural goods movements is parallel to minimizing trucking cost on a system-wide basis.

The model minimizes the total or route trip distance including transshipments from one elevator to another or from an elevator to an in-state processing plant. The demands at elevators are derived from reports to the Public Service Commission, while the demands at ethanol plants are derived from confidential surveys. Since crop supplies and demands are known, the objective of the distribution model is to predict truck movements to minimize the ton-miles of transportation needed to satisfy elevator and plant demands. In effect, the model identifies a logistically-efficient set of truck movements that minimizes use-related vehicle depreciation and maintenance and fuel consumption. However, the model does not predict that each grower will deliver his or her crops to the closest elevator. Instead, crops are moved to meet the demands of shuttle-train elevators, plants, and other facilities. The key predictions from the model are: (1) agricultural goods require roughly 600 million ton-miles of transportation annually, and (2) the average predicted trip distance to elevators and in-state processors (including transshipment distances) is 26 miles.

Once the trips are predicted, they are assigned to the highway network and traffic statistics are compiled for thousands of individual road segments included in agricultural distribution routes. Once the traffic forecasts have been accumulated, the investment needs of each road segment are analyzed and the results accumulated. In addition to specifically analyzing agricultural logistics routes, the investment needs for other local roads not significantly affected by agricultural goods movements are estimated so that the total statewide need can be quantified.

The estimated investment needed for county and local paved roads totals $100.5 million annually on a statewide basis. Approximately $59 million of these needs relate to agricultural haul roads. The remainder corresponds to other county and local roads. In addition, $110 million are needed annually for local unpaved roads. Approximately, $43.6 million of these needs relate to agricultural haul roads. The remainder corresponds to other local roads, especially township roads. Altogether, the total estimated statewide need is $211.5 million per year, including $100.5 million of paved road investment needs and $110.0 million of unpaved road investment needs.

The estimates developed in this study do not include the specific roadway investment needs attributable to the future growth of oil and gas industries in western North Dakota. Rather, the estimates presented in this report reflect the baseline investment needs throughout the state. The projected oil-related infrastructure needs presented in a separate report (Additional Road Investments Needed to Support Oil and Gas Production and Distribution in North Dakota) are in addition to the estimates presented in this study.

Response to Questions

The original report was issued on January 10, 2011. Since then, requests for detailed information have been posed by legislators. The answers to those questions are summarized in the following paragraphs.

Question 1: How much of the 26.2-mile average trip distance occurs on paved versus unpaved roads, and collector versus local roads?

The 26.2-mile average trip includes farm-to-elevator movements, transshipments from smaller elevators to shuttle-train elevators, and transshipments from elevators to in-state processing plants. As shown below, approximately 56 percent (or 14.8 miles) of the total average trip distance occurs on state highways. This portion of the trip reflects transshipments from smaller elevators to shuttle-train elevators and transshipments from elevators to in-state processing plants, as well as the final portions of many farm-to-elevator hauls. Twenty-five percent of the trip (or 6.5 miles) occurs on gravel roads (local roads or county major collectors). Another 17.5 percent of the trip (or 4.6 miles) occurs on paved county or local roads. About 1 percent of the trip occurs on graded and drained or unimproved roads or trails

Distribution of Average Trip Distance Among Roadway Classes and Surface Types

Functional Class	Surface Type	Percent of Ton-Miles
State Highway	Paved	56.4%
Local	Gravel	16.7%
Major Collector	Paved	15.1%
Major Collector	Gravel	8.3%
Local	Paved	1.7%
Minor Arterial	Paved	0.7%
Local	Graded & Drained	0.5%
Local	Trail	0.4%
Local	Unimproved	0.1%
Other		0.1%

In interpreting these percentages, it is important to note that local and county roads comprise a significantly greater percentage of farm-to-elevator and direct farm-to-processor movements when the transshipments that occur primarily on state highways are excluded. As shown below, 57% of agricultural truck travel off the state highway system occurs on county or local gravel roads. Approximately, 42% of agricultural truck travel off the state highway system occurs on paved county or local roads.

Distribution of Trip Distance Off the State Highway System Among County and Local Roadway Classes and Surface Types

Functional Class	Surface Type	Percent of Ton-Miles
Local	Gravel	38.3%
Major Collector	Paved	34.8%
Major Collector	Gravel	19.1%
Local	Paved	3.9%
Minor Arterial	Paved	1.5%
Local	Graded & Drained	1.1%
Local	Trail	< 1%
Local	Unimproved	< 1%

Question 2: How much of the estimated road funding need relates to the 36 counties that do not produce oil or gas?

As noted in the summary, the estimated annual paved road investment needs for the entire state (exclusive of state highways and projected impacts of future oil development) is $100.5 million. Approximately $59 million of these needs relate to agricultural haul roads. The remainder corresponds to other county and local roads. The estimated annual unpaved road investment needs for the entire state (exclusive of state highways and projected impacts from future oil development) is $110 million. Approximately, $43.6 million of these needs relate to agricultural haul roads. The remainder corresponds to other local roads. Thus, the total estimated statewide need is $211.5 million per year, including $100.5 million of paved road investment needs and $110 million of unpaved road investment needs.

The estimated annual paved road investment needs in the 36 non-oil producing counties is $72.4 million. Approximately $47 million of these needs relate to agricultural haul roads. The remainder corresponds to other county and local roads. The estimated annual unpaved road investment needs in the 36 non-oil impacted counties is $76.6 million. Approximately $31.9 million of these needs relate to agricultural haul roads. The remainder corresponds to other county and local roads. Thus, the total estimated statewide need the 36 non-oil producing counties is approximately $149 million per year. This information is summarized numerically in the following tables

Total Unpaved County and Local Road Funding Needs in North Dakota Exclusive of Funding Needs Attributable to Future Growth in Oil Production

Category	Miles	Annual Cost (millions)
Ag Impact	10,286	$43.63
Other	48,782	$67.32
Total	59,068	$109.95

Unpaved County and Local Road Funding Needs in Non-Oil Producing Counties

Category	Miles	Annual Cost (Million)
Ag Impact	7,163	$31.93
Other	32,367	$44.70
Total	39,530	$76.63

Total Paved County and Local Road Funding Needs in North Dakota Exclusive of Funding Needs Attributable to Future Growth in Oil Production

Category	Miles	Annualized Cost
Ag Impact	3,958	$58.88
Other	2,417	$41.58
Total	6,375	$100.46

Paved County and Local Road Funding Needs in Non-Oil Producing Counties

Category	Miles	Annualized Cost
Ag Impact	2,999	$47.32
Other	1,386	$25.09
Total	4,385	$72.41

Question 3: What is the distribution of funding needs within the 36 non-oil impacted counties?

Distribution of Estimated Local and County Road Funding Needs for Agricultural Logistics Routes Among Counties and Road Types in Non-Oil Impacted Counties

	Percent of Road Funding Needs	
County	Gravel Roads	Paved Roads
Adams	1.0%	0.0%
Barnes	5.8%	4.9%
Benson	3.9%	3.7%
Burleigh	4.2%	0.8%
Cass	10.4%	7.7%
Cavalier	4.0%	1.5%
Dickey	2.5%	4.9%

Distribution of Estimated Local and County Road Funding Needs for Agricultural Logistics Routes Among Counties and Road Types in Non-Oil Impacted Counties

	Percent of Road Funding Needs	
County	Gravel Roads	Paved Roads
Eddy	2.1%	2.7%
Emmons	1.3%	0.3%
Foster	1.7%	2.5%
Grand Forks	2.6%	6.8%
Grant	0.6%	0.0%
Griggs	4.8%	1.7%
Hettinger	2.2%	2.3%
Kidder	3.6%	1.3%
Lamoure	2.5%	3.5%
Logan	1.6%	0.2%
McIntosh	0.5%	0.6%
Morton	0.8%	1.2%
Nelson	2.9%	3.7%
Oliver	0.2%	0.6%
Pembina	1.1%	5.2%
Pierce	3.0%	0.4%
Ramsey	3.1%	3.2%
Ransom	2.1%	1.5%
Richland	1.6%	6.0%
Rolette	0.8%	1.2%
Sargent	1.7%	2.0%
Sheridan	2.1%	0.5%
Sioux	0.0%	0.0%
Steele	4.3%	3.7%
Stutsman	7.2%	7.1%
Towner	3.3%	0.1%
Traill	3.8%	7.7%
Walsh	2.4%	6.4%
Wells	4.1%	4.1%

Question 4: What will happen if all of the funding needs identified in the study cannot be provided? Will crops cease to be produced in these areas because of poorer roads? Will agricultural logistics flows be stopped or slowed?

The effects of limited road funding will not be seen immediately in most areas. The changes will occur gradually. Paved roads that cannot be resurfaced in a timely manner because of limited funds may deteriorate beyond the point of resurfacing and have to be

reconstructed at much higher costs, if they are to be salvaged at all. Instead of being reconstructed, some of these paved roads may be converted to gravel roads because the cost to rehabilitate them is too great. Moreover, all roads will not be improved on a cyclical basis and normal maintenance will be more sporadic. The effects will be manifested in higher vehicle operating costs for all travelers because of rougher roads or longer trip distances to detour around the most deteriorated roads.

The long-run effects are unknown and speculative. However, a poorer road system may affect the desirability of North Dakota as a future location for agricultural-related investments such as processing plants and biofuel facilities. Crops such as corn and soybeans can be grown in many states and regions, not just in North Dakota. A poorer road system creates uncertainties for industries that wish to minimize inventory costs at their plants. The cost of moving crops from farms to elevator and in-state processors affects the total supply-chain cost of goods produced in North Dakota.

Clearly, poorer roads will not stop agricultural flows in the short run. However, roads and other infrastructure are important factors in the long-term economic competiveness of states and regions. Another concern is that transportation cost increases are typically borne by farm producers. As transportation costs increase, the prices received by farmers for their crops are effectively reduced for two reasons: 1) it is more expensive to deliver to elevators, and 2) the proportion of elevator to market movements that go by truck are more expensive. Crops will continue to be produced regardless of road conditions. However, the amount of revenue earned by farm producers may be impacted, as well as the location of processing facilities.

1. Overview of Study

The purpose of this study is to analyze changes in agricultural production and logistics and the importance of roadway investments to the distribution of crops produced in North Dakota. According to the Agricultural Statistics Service, North Dakota leads the United States in the production of spring wheat, durum wheat, sunflower, barley, dry edible beans, canola, and flaxseed. In 2009, the total market value of agricultural goods produced in the state exceeded $5.5 billion. The top three commodities by value are: wheat ($1,822 million), soybeans ($1,074 million), and corn ($708 million). According to the United States Department of Commerce, the agriculture sector of North Dakota is responsible for approximately 11 percent of the state's total economic output.

Because of the importance of agriculture to the state's economy, this report focuses specifically on the investment needs of roads used to haul agricultural goods to market. The vital importance of transportation to agriculture is eloquently expressed in a 2010 joint study by the United States Departments of Agriculture and Transportation, which notes:

> *An effective transportation system supports rural economies, reducing the prices farmers pay for inputs, such as seed and fertilizer, raising the value of their crops, and greatly increasing their market access. The economies of rural areas are intertwined. As agriculture thrives, so does its supporting community. Providing effective transportation for a rural region stimulates the farms and businesses served, improving the standard of living ... because it (agriculture) is so capital-intensive, it generates much more economic activity in the community than just the jobs it creates.*[1]

Although this study focuses on roads used for agricultural distribution, generalized estimates of investments for other roads are presented to provide a context for interpreting the results. However, the estimates presented in this report do not include the specific roadway investment needs attributable to the future growth of oil and gas industries in western North Dakota. A separate report (Additional Road Investments Needed to Support Oil and Gas Production and Distribution in North Dakota) includes forecasts of future infrastructure needs in western North Dakota, based on specific production scenarios. The estimates presented in this report reflect the baseline investment needs throughout the state. Note that the projected oil-related infrastructure needs cited in the separate report are in addition to the estimates presented in this study. Only county and local roads are considered in this analysis. Investment needs for state highways have already been estimated by the North Dakota Department of Transportation.

[1]The United States Departments of Agriculture and Transportation, *Study of Rural Transportation Issues*, April 2010.

The report begins with an overview of important trends in agricultural production and logistics that create a context for analyzing investment needs in agricultural haul roads. After this overview, the primary data and methods used in the study are described, followed by a presentation of results and implications.

2. Background Trends

Many important changes have occurred during the last two decades that have implications for agricultural logistics and roadway investment needs. The key factors driving this study are summarized below:

1. Yields have been increasing over time resulting in more crop volume and movements from a given land area.
2. Crop mix has been changing over time resulting in greater densities of production.
3. The number of elevators has decreased over time resulting in fewer delivery options.
4. Shipments have become more concentrated at a fewer number of elevators.
5. From trends 3 and 4, it follows that longer farm-to-elevator hauls are required.
6. More grains are being transshipped from smaller to larger elevators resulting in longer combined truck trips.
7. The location of in-state processing and biofuels production has resulted in more intrastate truck (as opposed to interstate rail) movements.
8. Funding for county and local roads exclusive of oil extraction funds has grown only modestly over time (when measured in real dollars).
9. In contrast, construction prices have increased dramatically over time for asphalt and gravel roads.

The last two factors relate specifically to roadway funding limitations and their effects on roadway infrastructure. Each of the key factors is highlighted in the following sections.

2.1. Yield Increases

Due to increases in crop and production technology and improvements in management practices, crop yields in North Dakota have increased during the past 20 years. The degree of increase varies from year to year due to weather conditions, but the underlying trend is upward.

Figure 1 depicts the statewide yield trends for corn, soybeans, and spring wheat. In 1990, corn averaged 80 bushels per acre throughout the state. However, corn yields rose to 115 bushels per acre in 2009, down from a high of 124 bushels per acre in 2008. Soybean yields have remained relatively consistent throughout the period. Statewide average wheat yields have increased slightly during the past 20 years, with the average yield in the 1990s

being 31.85 bushels/acre versus 36.45 bushels/acre in 2000. Discussions with industry and research contacts indicate that yields are expected to continue to increase in the future primarily due to seed technology and genetics.

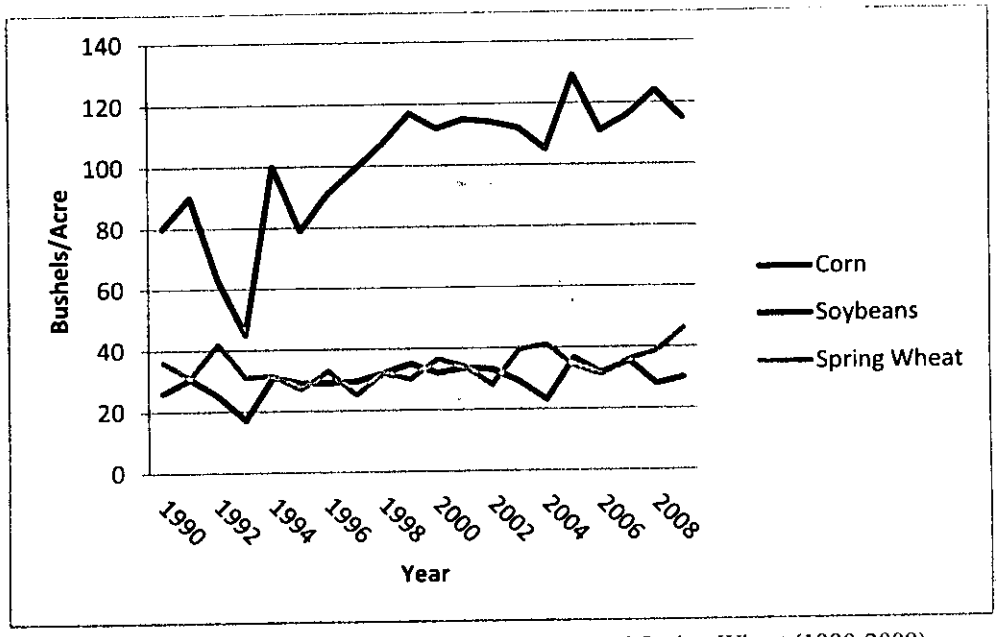


Figure 1 Statewide Yield Trends for Corn, Soybeans and Spring Wheat (1990-2009)

2.2. Changes in Crop Mix

A second production factor that has increased the volume of grain shipped in North Dakota is the changing crop mix. In 1990, roughly 60 percent of the crop land in North Dakota was planted to wheat (Figure 2). In 2009, this number was 45 percent. Over the same period, corn acres have increased from 5 to 10 percent of cropland and soybean acres have risen from 2 to 20 percent of crop land in North Dakota. The shift from wheat to soybeans does not contribute to increased truck volume because the yields are similar. However, the shift from wheat to corn production results in increased truck volumes because the relative yield of corn is more than double that of wheat on a statewide basis.

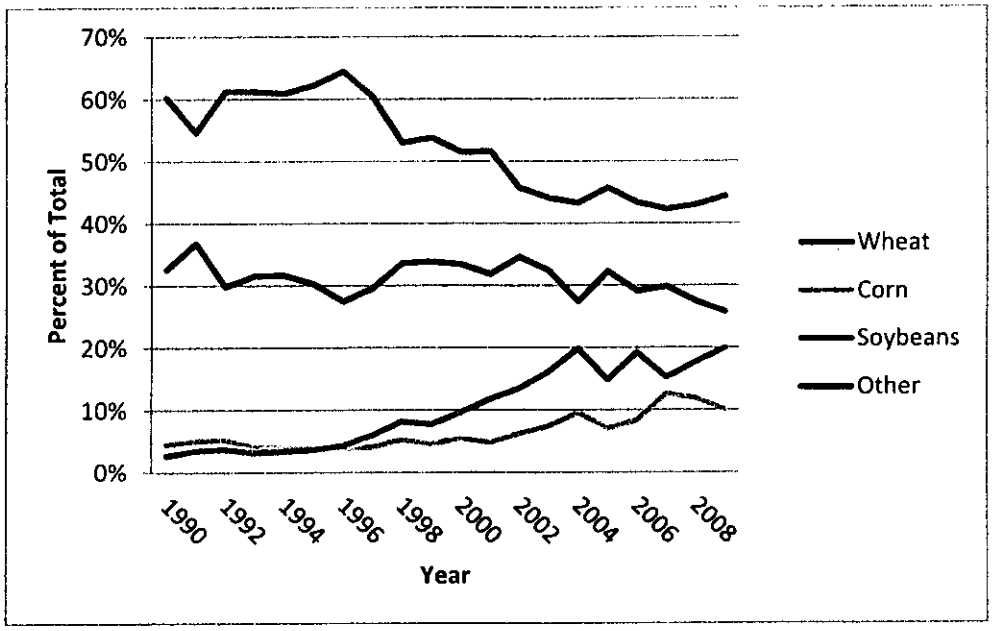


Figure 2 Statewide Percentages of Planted Acres for Corn, Soybeans and Spring Wheat

While Figure 2 illustrates changes in crop mix statewide, there are significant variations at the regional level, although the trends are similar. The figures presented in Appendix A depict specific changes in the proportions of acres devoted to the production of wheat, corn, soybeans and other crops at the Crop Reporting District (regional) level.

2.3. Changes in Elevator Numbers and Locations

To illustrate key trends, statistics were compiled on the numbers and locations of grain elevators in North Dakota from 1990 to 2009. Specifically, the North Dakota Public Service Commission's grain movement database was used to compile statistics on the number of licensed elevators in the state. The grain movement database assigns a unique identifier to each elevator served by each railroad. A small number of elevators are represented twice because they are served by more than one railroad.

During the 1990-2009 period when increasing yields and changes in crop mix were resulting in more output per acre and greater volumes were being shipped from farms to elevators, the number and size of elevator facilities were changing. As shown in Figure 3, the number of elevators shipping grains or oilseeds has decreased over the past 20 years. In 1990, 458 elevators shipped grains or oilseeds. By 2009, this number had decreased to 311 elevators. The elimination of elevators has resulted in fewer delivery options for farmers marketing grain.

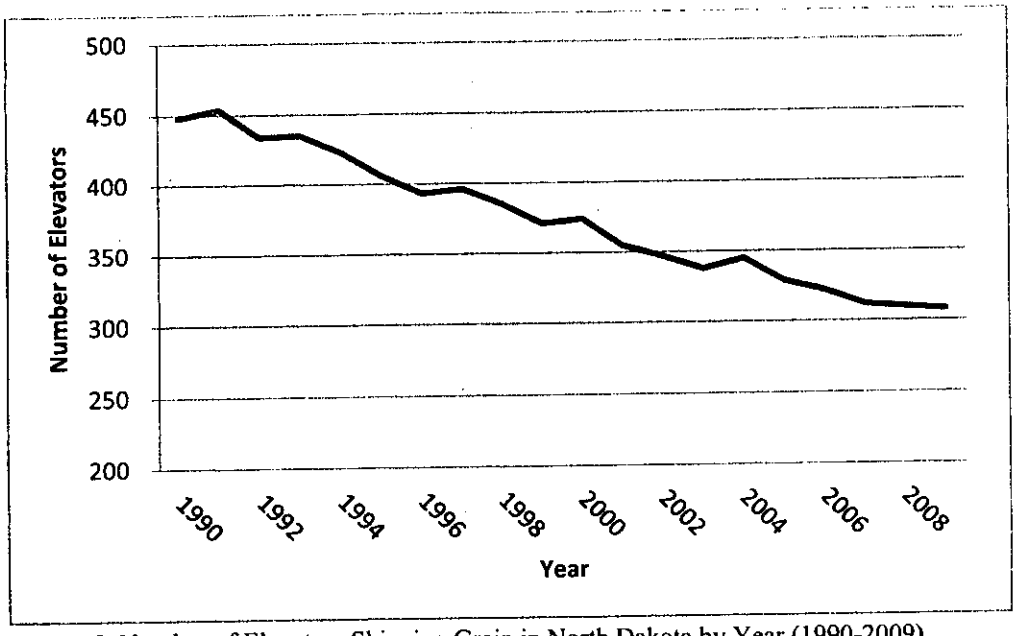


Figure 3 Number of Elevators Shipping Grain in North Dakota by Year (1990-2009)

2.4. Trends in Elevator Throughput

While the total number of elevators has decreased, the amount of grain handled by these facilities has increased. Figure 4 shows that the average tonnage shipped from elevators in North Dakota was relatively constant throughout the mid-1990s. From 1998 to present, there has been an increase in the average tonnage shipped from elevators in the state. In comparison, the median elevator throughput has remained constant over the past 20 years.

2.5. Shuttle Elevators

In the late 1990s, shuttle-train programs were introduced wherein an elevator may receive a reduced rail rate if it is able to meet certain conditions and satisfy minimum grain shipment volumes designated by the railroads. "Shuttle loading facilities influence commodity movement by rail, both in and out of state. They also impact the highway system, since trucks must move commodities to the shuttle facility for rail loading."[2]

Figure 5 shows the average tons shipped from shuttle and non-shuttle elevators in North Dakota. Prior to the shuttle-train program, elevator throughput statewide averaged 31,930 tons in the 1990s. This volume has remained relatively unchanged for non-shuttle elevators through this decade. However, for shuttle elevators, throughput volume has increased from 74,600 tons in 1997 to 240,640 tons in 2009.

[2] North Dakota Department of Transportation, *Rail Plan Update*, 2007.

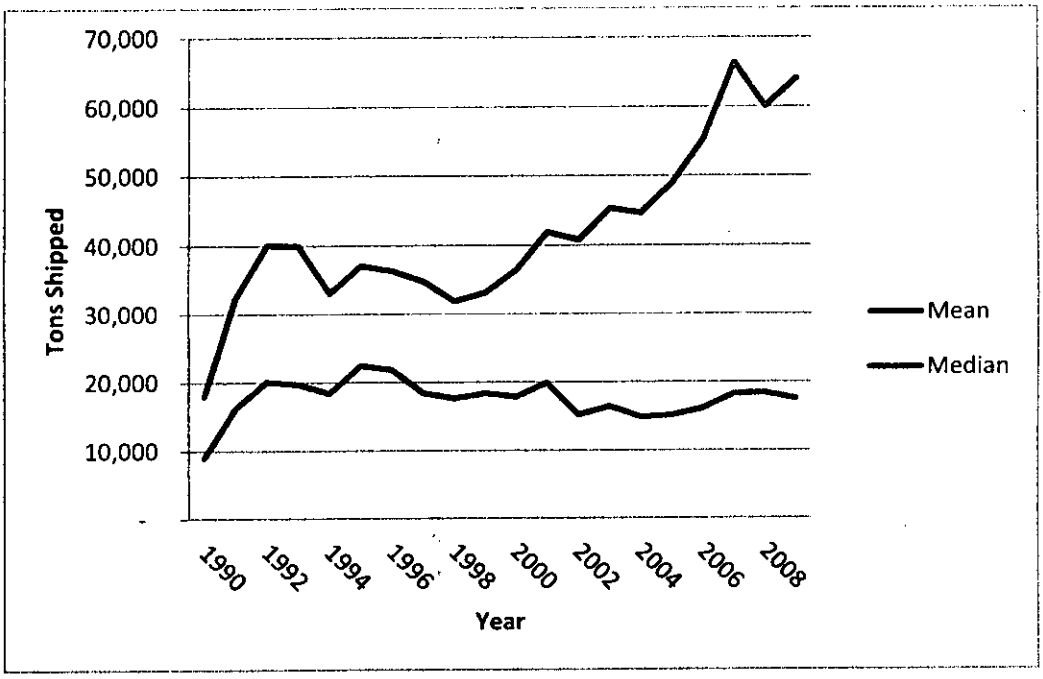


Figure 4 Mean and Median Tons Shipped by ND Elevators (1990-2009)

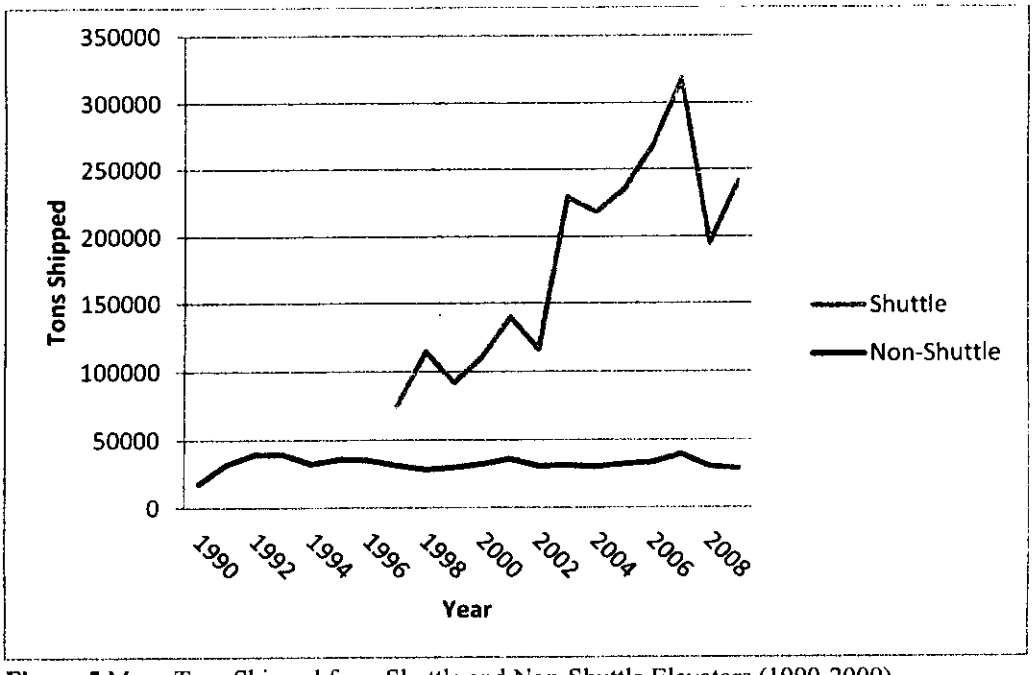


Figure 5 Mean Tons Shipped from Shuttle and Non-Shuttle Elevators (1990-2009)

2.6. Transshipments

In addition to higher volumes of grain being handled at shuttle elevators, there has been a recent increase in the amount of bushels transshipped within the state. These types of movements represent an elevator-to-elevator shipment, such as a satellite elevator shipping to a shuttle elevator. Figure 6 depicts the amount of grain transshipped via truck and rail over the past 20 years.

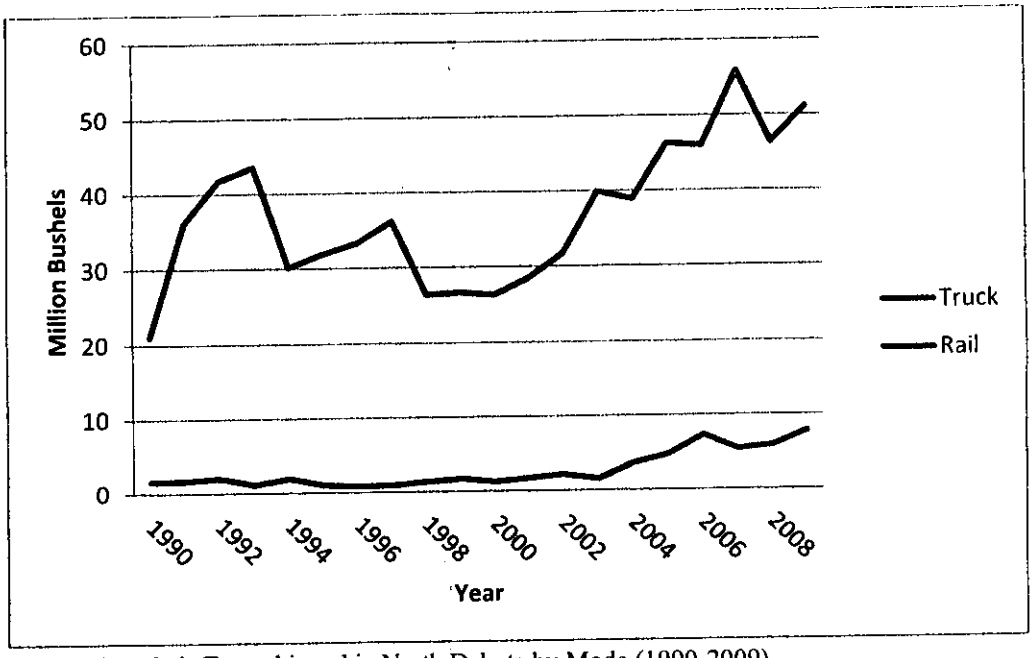


Figure 6 Bushels Transshipped in North Dakota by Mode (1990-2009)

2.7. Funding For Roads

Trends in roadway capital investment in current and constant 1994 dollars are illustrated in Figure 7. These represent only the funds invested or spent by local governments—e.g., county, township, and municipal governments. The period from 1994 to 1996 saw relatively little increase in local road funding as measured in constant 1994 dollars. However, an increase in capital investment occurred in 1996 to 1997, with the following five years from 1997 to 2001 exhibiting stable funding in constant dollars. However, capital outlays increased dramatically during 2002. The dramatic increase in 2002 was a singular event. Since 2003, capital funding (as measured in 1994 dollars) has generally decreased.

As shown in Figure 8, expenditures for road maintenance and traffic services have increased over time, especially in current dollars. However, the increase has been modest in real terms, approximately 1.5 percent per year from 1994 through 2007.

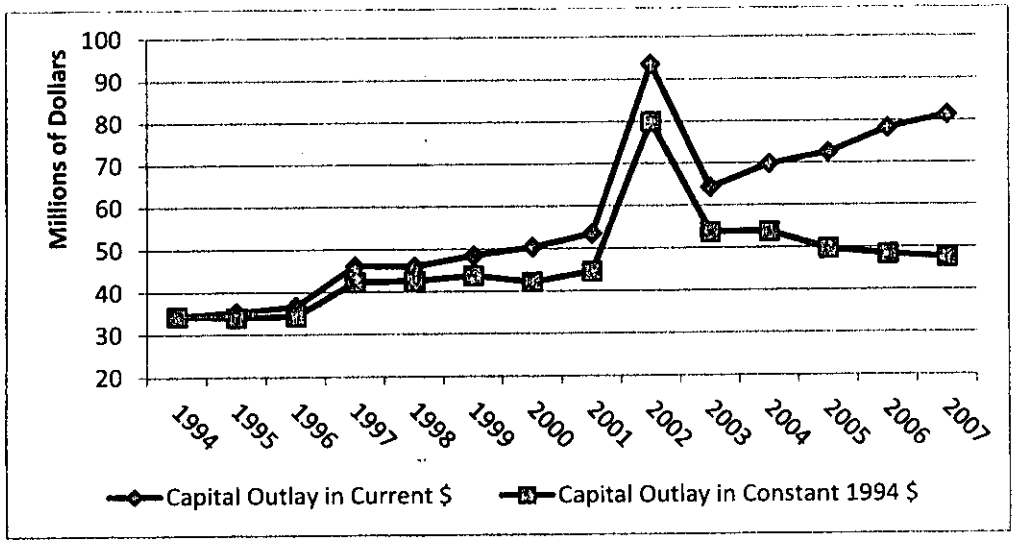


Figure 7 Capital Outlays for Roads in North Dakota in Current and Constant 1994 Dollars[3]

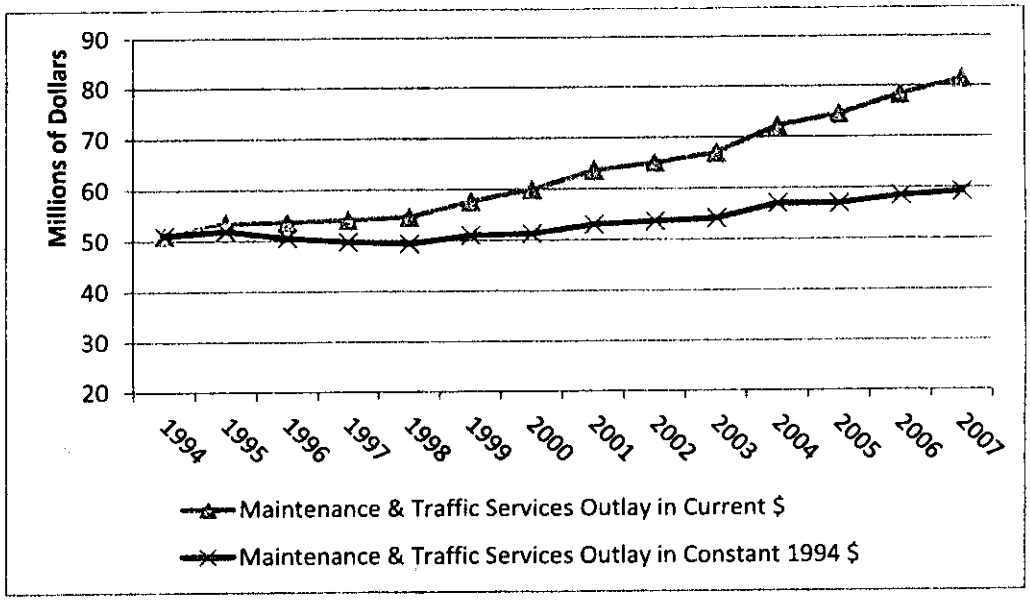


Figure 8 Outlays for Road Maintenance and Traffic Services in North Dakota

[3]Sources: United States Department of Transportation - Federal Highway Administration, 1994-2009 and the Bureau of Labor Statistics, 1994-2009.

2.8. Road Construction Prices

Although general inflationary trends are reflected in Figures 7 and 8, cost increases have strongly affected roadway construction and maintenance. In particular, construction prices have increased dramatically over time for asphalt and gravel roads. Throughout the last decade, increases in petroleum prices have been the primary contributor to increased construction costs at the state level. According to the Federal Highway Administration, in addition to higher fuel prices, consolidation of the construction industry, localized shortages of materials, shortages of skilled labor, regulatory restrictions, increased technical requirements in contracts, and other factors have contributed to higher construction bid prices.

Figure 9 shows the Producer Price Index for material and supply inputs to highway construction at the national level for the past 20 years. The price index does not include the cost of labor or administration, and focuses primarily on the components and materials used in road construction. As the figure shows, construction costs have increased throughout the entire period. However, the rate of increase has been much more pronounced from 2003 to 2008. During this period, the construction cost index increased from 136.6 to 222.4. Increases in construction costs result in fewer roadways being improved at a constant revenue level.

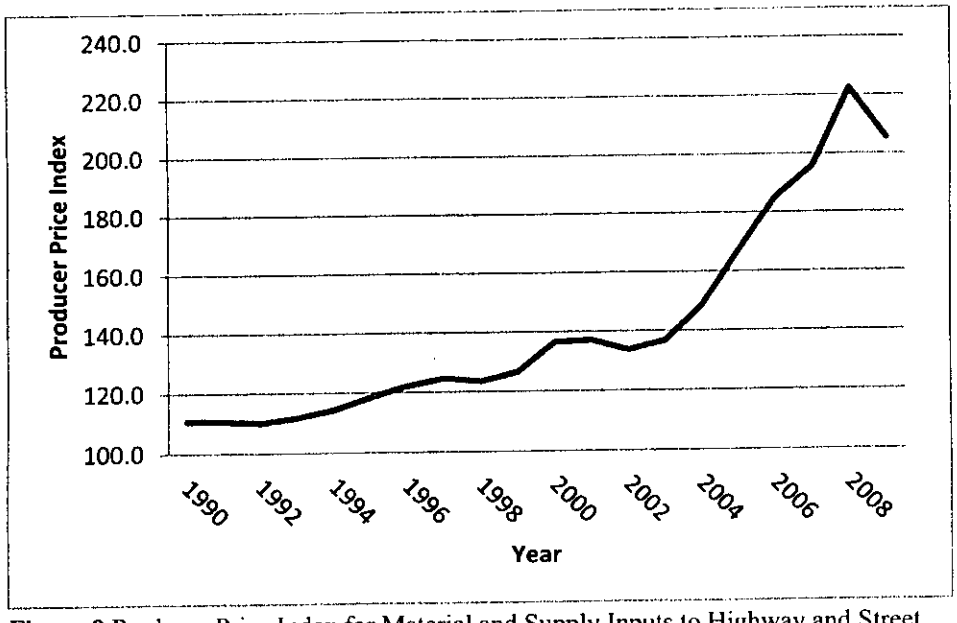


Figure 9 Producer Price Index for Material and Supply Inputs to Highway and Street Construction[4]

[4] Source: Bureau of Labor Statistics, 1990-2009.

The purpose of this section of the report has been to describe key trends in agricultural production and logistics, as well as trends in road funding and construction costs. The analysis depicts a set of factors that are collectively stressing the county and local road systems used to market and distribute North Dakota products. With this background, the report transitions to a description of the primary data and methods used to predict agricultural traffic flows and roadway investment needs.

3. Analysis Models and Data

The estimates presented in this report have strong analytical foundations. The study features the integration of four main models: (1) a crop production and location model; (2) a crop distribution model, in which movements or flows are predicted from crop-producing zones to elevators and processing plants; (3) a traffic model in which predicted flows are assigned to individual road segments; and (4) a road investment model, in which truck traffic and road characteristics are used to estimate investment needs. Models 1 and 3 are based on Geographic Information System (GIS) data and procedures, while the crop distribution model (Model 2) is grounded in mathematical programming logic. The road analysis model is based on highway planning and economic-engineering methods.

The first three types of models are summarized in the following sections. Roadway analysis methods for paved and gravel roads are described later in the report.

3.1. Crop Production and Location Model

In the analysis, it is vital to know not only the quantities of crops produced but their locations. More precise location information enables refinements in trip forecasting and the analysis of individual roadway segments. To provide greater accuracy, crop production estimates are generated for 1,340 county subdivisions in North Dakota.[5] USDA's 2009 crop satellite image is used for this purpose.

Using satellite imagery, the square miles of land devoted to the production of each crop in each county subdivision is estimated using GIS technology. However, the satellite image is only a snapshot of cultivation at a particular time. It is not an inventory of harvested crops. Moreover, it is an approximation subject to analytical limitations.

For these reasons, the predicted square miles devoted to crop production in each subdivision are adjusted based on the 2009 county production values published by the North Dakota Office of the National Agricultural Statistics Service (NASS). In this process, the predicted production of each crop in each subdivision is apportioned based on its share of cultivated land area within the county. For example, if five percent of the total

[5] For the most part, subdivisions are synonymous with organized townships.

cultivated acres in a county devoted to barley production lies within a certain township, this subdivision is assumed to produce five percent of the barley harvested in the county. This method implicitly assumes that barley yields are the same everywhere in the county.

While the estimates are subject to limitations, there is a high degree of accuracy in the predicted crop locations. In effect, the estimates are the most accurate possible without detailed field surveys, which are beyond the scope of this study. As discussed later, the predicted crop production levels in each county subdivision represent the zonal supplies of the distribution model.

3.2. Market Demands

The markets for the agricultural commodities produced in North Dakota are defined as processing plants within the state or elevators that ship crops out of state to various domestic and export locations. The demands at elevators are compiled from monthly reports submitted to the North Dakota Public Service Commission. The demands at ethanol plants are derived from several sources including: (1) reported shipments from North Dakota elevators to in-state processors, (2) the stated productive capacities of the plants, and (3) confidential survey information that describes the percentages of corn acquired from the local drawing areas around the plants and expected production volumes.

In effect, the demands at elevators and ethanol plants are known with high levels of confidence. The same cannot be said for all other demand sources. The lower boundary of demand at the Ladish Malt Plant in Spiritwood is known from the inbound shipments of barley from elevators in North Dakota. In the network model, this target is allowed to increase in relation to local supply in the nearby area. Consequently, the estimated demand at the facility should be close to actual levels. Less data are available regarding the final demands of specialty crops such as dry edible beans, peas, and lentils. Nonetheless, the demands for crops at specific locations are known with high levels of confidence overall.

3.3. Network Representation of Crop Distribution System

Terminology is important when describing the objectives and results of the crop distribution model. Such a model is comprised of a set of nodes and paths that connect the nodes. Shipments flow from node-to-node via the paths.

A path (such as one leading from a crop-producing subdivision to an elevator) is typically comprised of many individual road segments. Each segment (or link) is demarcated by two intersections or junctions in the road network. In many instances, two or more paths may be chained to form a trip chain or route. For example, a trip route may include a path from a crop-producing subdivision to an elevator, and a path from that elevator to a processing plant.

3.3.1. *Nodes*

The nodes consist of three types: origin, intermediate, and destination. The county subdivisions where the crops are produced are origin nodes. The elevators and in-state processing plants are destination nodes. However, elevators may also serve as intermediate nodes. As an intermediate or transshipment node, an elevator may receive shipments directly from subdivisions or from other elevators. Subdivisions may ship directly to in-state markets (e.g., ethanol plants).

Terminal elevators are defined as those that export crops out of state. A shuttle-train facility is a terminal elevator. Other elevators may function as terminal elevators when they export grains and oilseeds from the state. However, in other cases, these elevators function as intermediate or transshipment facilities.

A simplified grain distribution system is depicted in Figure 10. As the figure shows, farm producers from various subdivisions or townships may ship directly to a shuttle-train elevator, or to a smaller elevator located closer to the subdivision. The smaller elevator, in turn, may transship some of the grain it procures to the shuttle-train facility; which, in turn, ships large quantities by rail to markets located out of state. A similar network can be drawn by substituting a processing plant for the shuttle elevator. In this case, the primary outbound product will be ethanol, vegetable oil, malt, or flour.

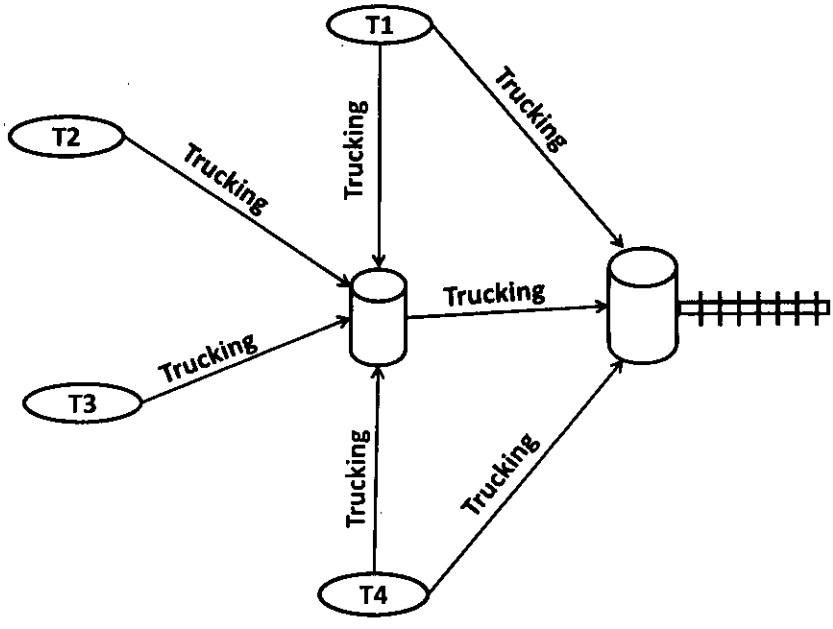


Figure 10 Crop Flows in Elevator Network

There are several types of truck shipments in a grain distribution network. A producer may haul crops to a smaller elevator in trucks owned and operated by the farm. At a later date, the grain may be trucked to a shuttle-train elevator or plant in commercial trucks. Alternatively, the farm producer may truck directly to a shuttle facility or plant. All types of flows are simulated in the model.

3.3.2. *Paths and Segments*

At a microscopic level, a path may consist of many individual road segments. For example, a subdivision-to-elevator path may include local gravel roads, paved county major collectors, and state arterial highways. In the GIS model, the fastest path through the network is identified from each subdivision to the nearest 10 to 20 elevators.[6] Because there are more than 150,000 unique road segments in the North Dakota GIS file, the input files are enormous and require extensive computable time. However, in the final analysis, flows are accumulated by individual road segments—which allow for greater detail in the roadway investment analysis.

3.4. Criteria and Objectives of Crop Distribution Model

The objective of the distribution model is to predict crop flows that minimize time or distance, while meeting the demands of in-state processing plants and terminal elevators. The fastest-path algorithm is used to generate paths from subdivisions to elevators and plants, and from elevator-to-elevator. Because some of the paths extend to distant elevators, the fastest-path criterion seems most reasonable. Over a short distance, a truck operator may follow a shorter zigzag path. However, for longer trips, truckers will quickly move toward the major collector/arterial network where the speeds are faster and more consistent.[7]

In identifying the fastest paths, maximum speeds are specified for each road segment based on the functional classification and surface type (e.g., paved or gravel). The maximum speeds range from 75 mph on Interstate highways to 10 mph on unimproved roads. While the fastest path criterion is the best for identifying paths over long distances, the predicted travel times are not accurate. The only information available is the speed limit, or the assumed speed for local roads or trails.

In reality, maximum speeds may not be consistently attainable or may vary greatly due to weather, traffic, and operating conditions. Thus, the selection of one path over another (e.g., a direct movement from a subdivision to one elevator versus another one) is based on

[6] In a few areas, the density of the elevator system is not sufficient to allow the connection of each crop-producing zone to 20 facilities.

[7] The shortest-path algorithm yields slightly shorter trip distances than the fastest-path algorithm—i.e., less than 2 percent on average. Thus, the selection of one method over the other does not significantly affect the results.

distance—i.e., the shortest of the two fastest alternative paths. Shorter distances minimize fuel consumption and use-related vehicle depreciation. Moreover, in contrast to the predicted trip times, the distances are relatively accurate and do not vary during the year.

3.4.1. *Minimum Distance Criterion*

The objective of the mathematical programming model is to minimize the distance of moving all agricultural commodities to plants or final elevators, from where they are shipped out of state. In effect, the model identifies an optimal or logistically efficient set of truck movements. These movements minimize use-related vehicle depreciation and maintenance, as well as fuel consumption. In many cases, the predicted movements may also minimize travel time. Because trucking cost is typically measured on a per-mile basis, minimizing the distance of agricultural goods movements is parallel to minimizing trucking cost on a system-wide basis.[8]

3.4.2. *Total Trip Distance*

The model minimizes the total or route trip distance including transshipments from one elevator to another or from an elevator to an in-state processing plant. Transshipments may occur when production in the primary draw area is not sufficient to meet the elevator's demands. In these cases, grains or oilseeds may be delivered by farmers from remote townships to elevators located on the periphery of the larger facility's draw area. These deliveries are processed at the smaller facilities and then resold to the shuttle- or unit-train elevator and shipped by commercial truck to that facility. In this case, the trip chain extends from the township to the shuttle- or unit-train elevator via the smaller elevator en-route. In many cases, a shuttle elevator or ethanol plant may contract with elevators to collect, process, and reship grain. In interpreting the results, it is important to recall that the route distance represents the total trip distance from farm to plant or terminal elevator, where the terminal elevator is one that ships the commodity out of state.

3.4.3. *Contextual Factors*

The realism of the crop distribution model depends on several factors. It assumes that price competition exists among elevators. As a result, a primary market or draw area surrounds each facility. Within this zone, crops are most likely to be delivered to the elevator or plant. Of course, the primary draw areas of shuttle-train and unit-train elevators may be larger than the draw areas of smaller elevators. Nevertheless, price relationships reflect the capability of smaller elevators to resell grains and oilseeds to larger elevators. For

[8] The prime interest of this study is estimating the ton-miles of agricultural goods movements via particular routes, as opposed to the trucking cost involved in delivering grains and oilseeds to markets. However, the predicted flow pattern is the same as that which would result from minimizing the average trucking cost per mile.

example, the price at a so-called satellite elevator that routinely resells grain to a shuttle elevator may reflect the price at the larger elevator plus the trucking cost from the smaller elevator to the larger one, plus the handling and processing cost at the smaller facility. These competitive relationships, along with truck cost factors, create tendencies for producers to deliver to closer elevators. These tendencies are intensified by higher fuel prices. Although diesel fuel prices have dropped since 2008, they have been on an upward trend since March of 2009. Although higher crop prices at shuttle elevators are attractive, higher fuel prices create greater impedances to long-distance travel.

3.4.4. *System versus Local Criteria*

Clearly, every farm producer will not deliver to the closest elevator, and the model does not predict this will occur. Rather, movements are restricted by elevator demands, which represent the known outbound shipments from each facility in crop year 2009-2010. Elevator volumes are reflections of the competitive landscape and market draw areas discussed previously. When an elevator's demand is fulfilled, no additional inbound movements are simulated. Even if the elevator is the most attractive facility for a producer on the fringe of its draw area, the producer's grains or oilseeds are shipped to another elevator whose demand must be filled.

In this model, the demands are known (and assumed to be fixed). The objective is to find the pattern of flows that moves the known supplies of crops from subdivisions to elevators and plants with the fewest ton-miles, while meeting the known demands of the facilities. This is far different from saying each farm producer delivers his or her crops to the closest elevator.

4. Predicted Flows

The predicted tons of each major crop are shown in Table 1, as well as the weighted-average lengths of haul. Note that the average distance includes the movement from farm to first elevator or plant, as well as any subsequent movements from the first elevator to other facilities—i.e., transshipments. In effect, it is the total trip distance discussed in Section 3.4. It reflects trips from farms to in-state processors, as well as to elevators. The oilseed category in Table 1 includes sunflowers and canola, while the other crop category includes dry edible beans, oats, and other specialty crops.

Approximately 21.89 million tons of crops are analyzed in this study. The total predicted distance of these movements (including transshipment distances) is 26.2 miles.[9] However, there are significant variations among crops. The average trip distance for barley reflects a

[9] When the shortest path algorithm is used (instead of the fastest path algorithm) in the initial selection of routes, the weighted-average distance drops to 25.6 miles.

spatial disconnect between supply and demand. Much of the barley grown in 2009 was cultivated in the north-central region including Bottineau County. However, most of the major demand sources are plants and elevators in eastern North Dakota, necessitating longer hauls than for other commodities. The weighted-average route distance for commodities other than barley is 21 miles, suggesting that the longer barley hauls significantly inflate the average.

Table 1. Predicted Tons of Agricultural Freight and Average Trip Lengths

Crop	Annual Tons	Average Trip Distance (mi.)
Barley	1,681,418	87.8
Corn	5,102,252	21.1
Oilseeds	578,929	26.6
Other	547,028	39.7
Soybeans	4,144,969	23.1
Beans	562,124	30.8
Wheat	9,268,699	18.1
All Crops	21,885,419	26.2

The predicted ton-miles of agricultural goods are shown in Tables 2 and 3, respectively. In Table 2, the predicted ton-miles are listed by type of pavement. In some cases, the owner (state or local government) is indicated. As the table shows, agricultural goods required roughly 600 million ton-miles of transportation during crop year 2009-2010. More than half of these ton-miles occurred on principal arterial highways, most of which are owned and maintained by the North Dakota Department of Transportation. The next greatest concentration of flows is on county major collectors: approximately 132 million ton-miles. Sixty-five percent of these ton-miles travel paved county major collector (CMC) roads (Table 4). The remaining 35 percent move on gravel CMC roads.

Table 2. Predicted Ton-Miles of Agricultural Freight by Road Type

Surface Type	Ton Miles	Percent
Paved: High-Type (State)	319,449,945	56.4%
Paved (County and Local)	99,563,913	17.6%
Graded & Drained	2,807,777	0.5%
Gravel	141,222,015	25.0%
Trail	2,233,471	0.4%
Unimproved	720,330	0.1%
All Roads	565,997,453	100.0%

Table 3. Predicted Ton-Miles of Agricultural Freight by Roadway Class

Functional Class	Ton-Miles	Percent
Principal Arterial	319,871,952	57%
Minor Arterial	3,804,845	1%
Major Collector	132,333,047	23%
Minor Collector	621,758	0%
Local	109,365,851	19%
All Roads	565,997,453	100%

Table 4 Distribution of Agricultural Ton-Miles Among Paved and Graveled County Major Collector Roads

Surface Type	Ton-Miles	Percent of Ton-Miles
Gravel	46,866,136	35.4%
Paved	85,459,102	64.6%
Trail	7,808	0.0%

With this overview of agricultural goods movements, the report now turns to the estimation of road impacts; starting with unpaved roads. Only county and local roads are considered in this analysis. Investment needs for state highways have already been estimated by the North Dakota Department of Transportation.

5. Unpaved Road Analysis

5.1. Cost and Practices Data

Survey responses from a 2009 study were used to compile gravel cost, gravel overlay thickness, application frequency, and blading frequency and cost. When survey responses were unavailable, the district average was used to represent the costs and practices.

The **gravel overlay thickness** represents the quality of the gravel surface as well as roadway condition. Responses indicate that the statewide average gravel thickness is 932 cubic yards/mile. However, there is substantial variation from one part of the state to another. Gravel loss factors such as weather conditions, traffic volume, traffic speed in addition to gravel cost and availability factors are likely reasons for the variations.

The **gravel interval** represents the quality of the gravel surface as well as the roadway condition and maintenance practices. Responses indicate that the statewide average gravel interval is 6 years, with 5 years being the most frequent response. However, there is substantial variation from one part of the state to another. Gravel loss factors such as

weather conditions, traffic volume, traffic speed in addition to gravel cost and availability factors are likely reasons for these variations.

As mentioned above, cost and availability of quality gravel likely impact the decisions of counties with respect to overlay thickness and timing. As was observed with the gravel overlay thickness and interval, wide variations in gravel cost were reported, both statewide as well as within regions. The statewide average was $6.54 per cubic yard, ranging from $3.00 to $14.00 per cubic yard.

The final activity used in estimating county level costs is the blading interval. The blading interval is representative of the counties' maintenance activities. Factors such as traffic volume, speed, and weather conditions influence the frequency and necessity of road maintenance.

5.2. Cost Estimation

The survey responses were the primary tool used to estimate district level costs. A spreadsheet model was constructed to calculate annualized gravel road improvement and maintenance costs for varying levels of gravel thickness, intervals, overlays, and blading intervals.

5.3. Classification

The network flow model generated agricultural related truck trips by impacted segment. This number was added to the baseline average daily traffic (ADT) to obtain the total ADT for impacted sections. Using the predicted ADT volumes, unpaved segments were classified by traffic volumes: 0-50, 50-100, 100-150 and 150-200. No gravel roads in this analysis exceeded 200 ADT. It is assumed that as traffic levels increase, the amount and/or frequency of gravel application and blading will increase to preserve surface condition.

Table 5 Miles of Gravel Road Included in the Analysis by ADT Class

ADT Class	ADT Range	Miles
1	0-50	5,466
2	50-100	4,804
3	100-150	15
4	150-200	1

5.4. Maintenance and Improvement

As mentioned above, as traffic increase on gravel roads, the frequency of maintenance activities must increase to preserve surface condition. Using the cost model, annualized costs were calculated for 5, 4, and 3 year gravel application intervals. Based upon these

annualized estimates, improvement costs for the three gravel ADT classes are estimated and presented in Table 6. While the first phase of the analysis considers only the roads impacted by agricultural traffic, the remaining roads must also be maintained. The annual cost estimates for these roads and the total estimates are also presented in the table below.

Table 6 Annual Cost Estimates for Gravel Roads in North Dakota ($2010)

Category	Miles	Cost
Ag Impact	10,286	$43,627,275
Other	48,782	$67,319,298
Total	59,068	$109,946,573

6. Paved Road Analysis

The factors that drive the paved road analysis are: (1) the number of trucks that travel the road segment, (2) the types of trucks and axle configurations used to haul agricultural commodities, (3) the structural characteristics of the roads in agricultural logistics routes, (4) the widths of the roads, and (5) their current surface conditions. Each of these factors is discussed in the following sections of the report.

6.1. Truck Types

A previous survey of elevators revealed the types of trucks used to haul grains and oilseeds and the frequencies of use. As shown in Table 7, approximately 56 percent of the inbound volume is transported to elevators in five-axle tractor-semitrailer trucks. Another four percent arrives in double trailer trucks—e.g., Rocky Mountain Doubles. Another twelve to thirteen percent arrives in four-axle trucks equipped with triple or tridem rear axles.

After considering entries in the other category, the following assumptions were made. Sixty-two percent of the grains and oilseeds arriving at elevators in North Dakota will arrive in combination trucks, as typified by the five-axle tractor-semitrailer. The remaining 38 percent will arrive in single-unit trucks, as typified by the three-axle truck.

Table 7 Types of Trucks Used to Transport Grain to Elevators in North Dakota

Truck Type	Percentage of Inbound Volume
Single unit three-axle truck (with tandem axle)	25.15%
Single unit four-axle truck (with tridem axle)	12.55%
Five-axle tractor-semitrailer	54.96%
Tractor-semitrailer with pup (7 axles)	3.62%
Other	3.72%

6.2. Truck Axle Weights

Truck loads are transmitted to the pavement through the truck's axles and wheels. Therefore, axle configurations and weights are important in this study. The pavement design equations of the American Association of State Highway and Transportation Officials (AASHTO) are used to analyze axle impacts. These same equations are used by most state transportation departments in the United States. The equations are expressed in *equivalent single axle loads* (ESALs). In this metric, the weights of various axle configurations (e.g., single, tandem, and tridem axles) are converted to a uniform measure of pavement impact. With this concept, the service life of a road can be expressed in ESALs instead of truck trips.

6.2.1. *Effects of Axle Weights*

An ESAL factor for a specific axle represents the impact of that axle in comparison to an 18,000-pound single axle. The effects are nonlinear.[10] For example, a 16,000-pound single axle followed by a 20,000-pound single axle generates a total of 2.19 ESALs, as compared to two ESALs for the passage of two 18,000-pound single axles.[11] An increase in a single-axle load from 18,000 to 22,000 pounds more than doubles the pavement impact, increasing the ESAL factor from 1.0 to 2.44. Because of these nonlinear relationships, even modest illegal overloads (e.g., 22,000 pounds on a single axle) can significantly reduce pavement life.

6.2.2. *ESAL Factors*

ESAL factors are estimated for the prototypical grain trucks mentioned earlier. This calculation is illustrated for a tractor-semitrailer weighing 80,000 pounds with a weight distribution of 12,000 pounds on the front (steering) axle and 34,000 pounds on each of the tandem axles. The ESAL factor for a 34,000-pound tandem axle is 1.07, which suggests that its impact is only marginally greater than the impact of an 18,000-pound single axle. The ESAL factor for the 12,000-pound single axle is 0.177 and the overall ESAL factor for the truck is $0.177 + 1.07 \times 2 = 2.32$. This means that for every loaded mile the truck travels it is consuming a small part of a pavement's life, as measured by 2.32 units or ESALs. A similar calculation for a 50,000-pound three-axle truck (with a tandem rear axle) yields an ESAL factor of 1.68—i.e., 0.61 + 1.07.

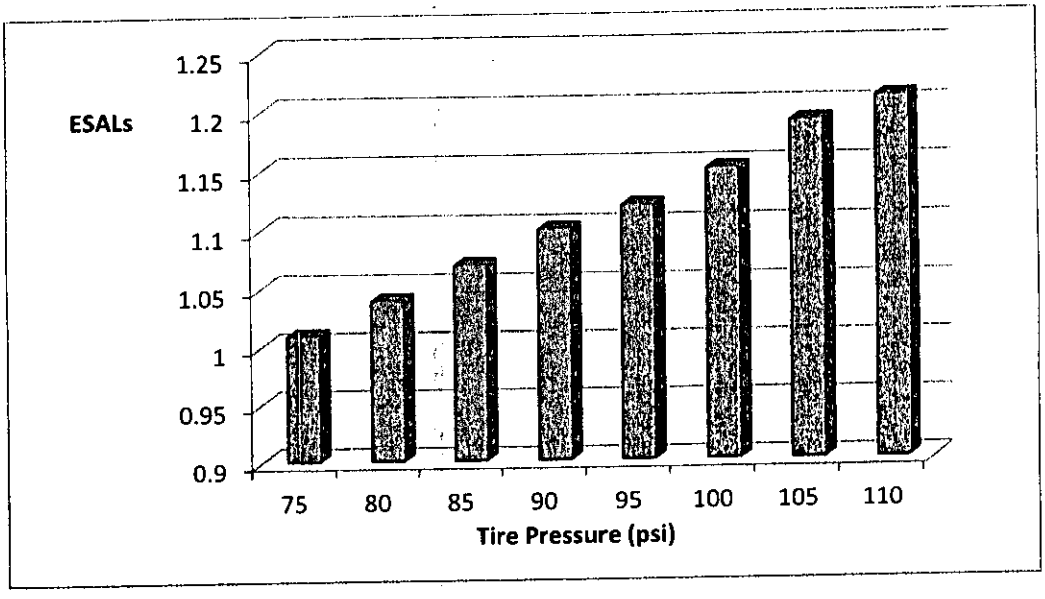
The AASHTO ESAL factors were originally estimated when tire pressures were much lower than they are today. As shown in Figure 11, modern tire pressures increase the

[10] The relationship between ESALs and axle loads is approximately a fourth power relationship.

[11] These calculations reflect a light pavement section with a structural number of 2.0 and a terminal serviceability (PSR) of 2.0.

ESAL factor by as much as 20%. In effect, the true ESAL factor of a tractor-semitrailer is 2.78 per loaded mile. All ending calculations in this study reflect adjustments for higher tire pressures.

The use of single instead of dual tires on drive and trailer axles may further impact the ESAL factor. With 6 inches of wander (e.g., lateral variation in the placement of tires on pavements), the use of single tires on drive and trailer axles may increase the ESAL factor by as much as 50%.[12] In this study, only the steering axle of the truck is assumed to be equipped with single tires. Therefore, no adjustments are necessary.



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6.3. Surface Conditions

Roads conditions are often assessed by examining the distress and roughness of the surface layer. Table 8 shows the results of a 2008 survey of county road managers in which they were asked to rate the current conditions of the roads in their counties, by functional class—i.e., county major collector or local road. The survey results have been weighted by the miles in each class and county. As the table shows, approximately nine percent of county major collector miles are in poor or fair-to-poor condition. In comparison, 42.5 percent of county local road miles are in poor or fair-to-poor condition. Most of the miles

[12] Transportation Research Board. *Truck Weight Limits: Issues & Options*, Special Report 225, National Academies Press, 1990.

in each classification are rated as fair. Less than 5 percent of county local road miles are in good condition.

Table 8 Percent of Miles by Condition Level and Functional Class

Surface Condition	County Major Collector	Local Roads
Good	26.98	4.51
Good/Fair	4.61	.
Fair	59.63	52.99
Fair/Poor	3.11	4.41
Poor	5.68	38.09

6.4. Structural Numbers

The capability of a paved road to accommodate heavy truck traffic is reflected in its structural rating, which is measured through the structural number (SN). The structural number is a function of the thickness of the surface and base layers and the materials of these layers. The surface layer is typically composed of asphalt while the base layer is comprised of aggregate material. The amount of cracking and deterioration of the surface layer is considered in the structural number of an aging pavement. Moreover, the conditions of base layers and underlying soils are important considerations when assessing seasonal load limits and the year-round capabilities of roads.

The average thicknesses of pavement layers in county and local paved roads are shown in Table 9. These values represent weighted means derived from a 2008 survey. The estimates have been weighted by the miles of county major collector and local road in each reporting county.

Table 9 Weighted-Average Layer Thicknesses of County Collector and Local Roads in North Dakota

	County Major Collector	Local Road
Base layer thickness (inches)	5.1	3.9
Surface layer thickness (inches)	4.1	4.0

When estimating in-service structural numbers, a badly deteriorated layer is likely to be assigned a lower coefficient.[13] For example, the average in-service structural number of a

[13] The pavement design guide of the American Association of State Highway and Transportation Officials (AASHTO, 1993) suggests the use of asphalt surface coefficients ranging from 0.15 to 0.40 for in-service pavements, based on the extent of longitudinal patterned (e.g., alligator) cracking and transverse cracks. As a point of reference, a new asphalt surface is typically assigned a structural coefficient of 0.44. For aggregate base layers, the AASHTO guide suggests using coefficients of 0.0 to 0.11, depending upon the extent of degradation

county major collector in poor condition with substantial distress may be computed as 5.1 inches of base × 0.07 + 4.1 inches of asphalt × 0.20 = 1.2. Similarly, the average in-service structural number of a county local road in poor condition with substantial surface layer distress may be 1.1 (e.g., 3.9 inches of base × 0.07 + 4.0 inches of asphalt × 0.20).[14]

6.5. Potential Improvements to County Collector and Local Roads

The types of potential road improvements analyzed in this study are reconstruction and resurfacing. If a pavement is not too badly deteriorated, normal resurfacing is a cost-effective method of restoring the structural capacity of a road. In this type of improvement, a new asphalt layer is placed on top of the existing pavement. The thickness of the layer may vary. However, it may be as thick as five inches. Without extensive truck traffic, a relatively thin overlay (e.g., 2 to 3 inches) can often be effectively applied.

Reconstruction entails the *replacement* of a pavement in its entirety—i.e., the existing pavement is removed and replaced by one that is equivalent or superior. Reconstruction includes drainage work and shoulder improvements, as well as the widening of substandard lanes. In contrast, resurfacing leaves the pavement intact. In lieu of replacement, hot mix asphalt is placed on the existing surface in a quantity needed to return the pavement to an acceptable level of serviceability and *restore* its structural strength

6.5.1. *Reconstruction*

A road may be reconstructed for several reasons. (1) The pavement is too deteriorated to resurface. Roads in the poor and very poor classifications fall into this group. (2) The road has a degraded base that will provide little structural contribution to a resurfaced pavement. (3) The roadbed is comprised of poor soils that are susceptible to moisture. In this case, reconstruction is necessary to provide year-round service at the maximum legal weight. (4) The road is too narrow to accommodate thick overlays without widening. In this case, reconstruction may be the only alternative that does not reduce capacity or potentially affect safety.

6.5.2. *Feasibility of Overlays on Narrow Roads*

The graded width determines if a substantial new asphalt layer can be placed on top of the road without compromising its capacity. As the top of the road is elevated due to overlays,

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and contamination of aggregates with fine soil particles or abrasions.

[14] In comparison, the average in-service structural number of a county major collector in fair condition may be 1.6 (e.g., 5.1 inches of base × 0.08 + 4.1 inches of asphalt × 0.28). Similarly, the average in-service structural number of a county local road in fair condition may be 1.4 (e.g., 3.9 inches of base × 0.08+ 4.0 inches of asphalt × 0.28).

a cross-sectional slope must be maintained.[15] Consequently, the useable width may decline. Typically, this is not an issue for wider roads (e.g., 34-feet or more in width). However, for narrower roads, it may result in reduced lane and shoulder widths and/or the elimination of shoulders. In the ultimate case, the narrowest roads cannot be resurfaced. The probabilities of crashes increase when roadway widths are narrowed.[16]

6.5.3. *Improvement Logic*

In this study, segments with higher traffic volumes are considered for reconstruction because of width and operational concerns. Unfortunately, detailed information regarding graded widths could not be obtained for this study. Only aggregate values were obtainable. Without knowledge of the widths of individual segments, reconstruction improvements are allocated to segments in counties with insufficient roadway widths based on traffic until a modest level of traffic is reached.

At a minimum, reconstruction will prevent the loss of width. It may also provide for minor widening, shoulder and drainage improvements. As a result, reconstruction may enhance capacity (as measured in vehicles per hour) because of wider lanes and shoulders. Shoulder improvements may enhance safety. Last but not least, reconstruction will remove spring load restrictions and allow year-round operation at gross vehicle weights of 80,000 pounds or greater.[17] The allocation of reconstruction dollars to roads with higher traffic levels will maximize capacity and ride-quality benefits for all travelers.

Roads not selected for reconstruction are eligible for resurfacing. However, the thickness and cost of the overlay depends upon the expected truck traffic level.

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[15] Roads are "crowned" or elevated in the center primarily for drainage. With a cross-sectional slope, water readily drained off the crowned surface and into the ditches.

[16] For purposes of reference, a 24-foot graded width allows for an initial design of two 11-foot lanes with some shoulders. However, the lane widths and shoulders cannot be maintained as the height of the road is elevated during resurfacing. To illustrate, assume a 4:1 cross-sectional slope for both the initial construction and subsequent overlays. In this case, each inch of surface height results in a loss of approximately eight inches of top width. Thus, a road with an existing surface thickness of four inches may suffer an ultimate top-width loss of five feet with a new four-inch overlay. The upshot is that lanes and shoulders must be reduced to fit the reduced top width. In the case of a road with a 24-foot graded width, shoulders must be eliminated and lanes reduced to 10 feet or less.

[17] A thick structural overlay may remove spring load restrictions and allow year-round operation at the maximum legal weight. However, this result cannot be guaranteed. The outcome depends upon the existing road and its underlying soils. Old aggregate bases in roads that have never been reconstructed may be largely ineffective. Given the depths of the bases reported in the survey (i.e., from 2 to 6 inches) and their low implied coefficients, these bases are unlikely to provide significant structural contributions to a resurfaced pavement. Moreover, the bases may be degraded and contaminated with fines. In such cases, structural overlays are not guaranteed to remove spring load restrictions.

6.5.4. *Reconstruction of Segments in Agricultural Routes*

According to a 2008 survey, approximately seven percent of all miles of county major collector road clearly have insufficient graded widths to accommodate future overlays without substantially narrowing the roads. Another seven percent of the miles of county major collector road may have insufficient graded widths to accommodate future overlays without substantially narrowing the roads. However, it is impossible to verify this percentage without detailed field work. According to the same survey, approximately 86 percent of all miles of county local road have insufficient graded widths to accommodate future overlays without substantially narrowing the roads. This does not mean that the roads will be closed. However, it does mean that many miles of road will have no shoulders and 10- or 11-foot lanes.

Reconstruction is expensive, costing $1.25 million per mile. Thus, it can only be justified on roads with significant traffic volumes. Without knowledge of the widths of individual segments, reconstruction improvements are allocated based on overall traffic with a minimum frequency of grain trucks per day, subject to the overall constraints of 14 percent of impacted county major collector miles and 86 percent of impacted county local road miles. These constraints correspond to the statewide proportions of county major collector and county local road miles that are candidates for reconstruction due to insufficient widths.

Altogether, 147 miles of road with significant agricultural traffic met the minimum traffic thresholds for potential reconstruction. These segments represent are only a small portion of the 6,375 miles of paved county and local road in the state and the approximately 3,957 miles of paved roads used for agricultural logistics. However, some of the miles of county and local paved road have only one or two predicted grain trucks per day, coupled with light ADT; and, therefore, are not candidates for reconstruction.

In addition to wider roads, reconstruction is expected to provide year-round heavy-hauling capabilities. Since the vast majority of these segments are located in paths that feature county major collectors, access to key facilities (such as plants and large elevators) may be improved. Further, the allocation of reconstruction dollars to roads with higher traffic levels will maximize capacity and ride-quality benefits for all travelers.

6.5.5. *Resurfacing of Segments of Agricultural Routes*

Those roadway segments not selected for reconstruction are evaluated for overlays. The thickness of the overlay is a function of the grain truck traffic plus some allowance for other trucks traveling the roadways. These percentages are derived from the 2008 survey mentioned earlier.

Based on the estimated ESAL demand for the next 20 years, a new structural number is computed that considers the effective structural number of the existing surface and base layer at the time of resurfacing.[18] As shown in Table 10, the median overlay thickness needed on road segments in primary agricultural routes is four inches. For segments with lower truck traffic volumes, overlays of 2.5 to 3.0 inches will typically suffice. On the most heavily impacted miles, a 5-inch overlay may be needed. However, these segments are relatively few and are ones where considerable grain traffic is channeled in approaches to large facilities.

Table 10 Estimated Surface Thicknesses for Major County Collector Segments in Agricultural Logistics Routes

Weighted Percentiles of Distribution	Inches of New Asphalt Surface Layer
90th	4.7
75th (Upper Quartile)	4.0
50th (Median)	4.0
Mean	3.9
25th (Lower Quartile)	3.7

The resurfacing cost of each segment is estimated from the inches of overlay needed and a projected 2011 unit cost of $70,000 per inch per mile, which is applicable to two-lane rural roads.[19] With this unit cost, a four-inch overlay costs $280,000 per mile. A three-inch overlay costs $210,000 per mile, etc.

6.6. Routine Maintenance

Routine maintenance costs on paved roads include activities performed periodically (such as crack sealing, seal coats, and striping), as well as annual activities (such as patching). The cost relationships in Table 11 have been derived from a South Dakota Department of Transportation study, with the original cost factors updated to 2010 levels and annualized. For example, the annualized seal-coat cost would allow for at least two applications during a typical 20-year life-cycle for roads with ADT of 200 or more.

[18] The assumed structural coefficient of a deteriorated surface layer (that now serves as a base layer) is 0.14, while the assumed structural coefficient of the original base layer is 0.7. For local roads, this calculation results in a median residual structural number of 0.7. The analogous number for county major collectors is 1.0.

[19] This unit cost was derived from the North Dakota Department of Transportation's 2009 cost for a structural overlay—i.e., the DOT's average cost of $340,000 per mile was divided by five inches to obtain $68,000 per mile. This value was then indexed to 2011 assuming a three percent inflationary increase in construction costs.

Table 11 Routine Maintenance Cost Factors for Paved Roads by Traffic Level

ADT Traffic Range		Annualized Cost of Road Maintenance Activities			
Lower	Upper	Crack Sealing	Seal Coat	Striping	Patching
1	99	$540	$2,340	$76	$900
100	199	$540	$2,340	$113	$900
200	299	$720	$3,150	$126	$900
300	399	$720	$3,150	$126	$900
400	499	$576	$3,285	$140	$900
500	599	$480	$3,285	$144	$900
600	699	$480	$3,285	$162	$900
700	-	$480	$3,285	$162	$900

6.7. Highlights of Paved Road Analysis

There are approximately 6,375 miles of paved road under the jurisdiction of county, township, and municipal governments in North Dakota. However, not all of these segments are significantly affected by agricultural traffic. Some of the segments have only a few predicted tons that do not amount to a full truckload. These segments are not specifically analyzed as part of an agricultural distribution route. Instead, they are reclassified as non-agricultural segments.

As shown in Table 12, the annualized cost of maintaining and improving roads significantly impacted by agricultural traffic is $58.9 million. There are 2,417 miles remaining, which are not significantly impacted by agricultural transportation. The cost of improving and maintaining these miles is estimated to be $41.6 million annually.

Table 12. Paved County Collector and Local Road Miles and Cost by Impact Type

Category	Miles	Annualized Cost
Ag Impact	3,958	$58,883,223
Other	2,417	$41,580,950
Total	6,375	$100,464,172

The annualized cost in Table 12 reflects reconstruction, resurfacing, and annual maintenance cost. Annual maintenance cost was calculated for any segment with agricultural truck traffic. The estimated annualized maintenance cost of these 3,958 miles is $18.5 million over the 20-year period (Table 13). Of the 3,958 miles significantly impacted by agricultural traffic, 147 miles were selected for reconstruction due to deficiencies in roadway width. The estimated annualized cost of these reconstruction improvements is $9.2 million. An additional 2,541 miles were selected for resurfacing over the 20-year analysis period at an estimated annualized cost of $31.2 million. Those

segments with only one agricultural truck per day were not analyzed specifically to determine the pavement thickness, because it is assumed that the agricultural traffic will have no impact on the resurfacing decision. Rather, these segments are reclassified as non-impacted routes for purposes of resurfacing and their resurfacing costs are included with that group. The total estimated annualized cost for agriculture impacted roads is $58.9 million.

Table 13 Ag Impacted Paved Miles Improved and Maintained by Improvement Type

	Miles	Annualized Cost
Reconstruction	147.0	$9,192,586.55
Resurfacing	2,541	$31,240,378.00
Maintenance	3,958	$18,450,258.00
Total		$58,883,222.55

Table 14 shows the miles and annualized improvement and maintenance costs of roads not significantly impacted by agricultural traffic. In this analysis, the 2,417 miles not reflected in the maintenance cost estimate for agricultural routes are assumed to be maintained at an estimated annualized cost of $9.3 million, which reflects an average cost of $3,856 per mile per year. Moreover, all 2,417 non-impacted miles are assumed to receive a resurfacing treatment during the analysis period. In addition, those segments with only one agricultural truck per day that did not receive a resurfacing or reconstruction improvement in the agricultural analysis are included with this category. Altogether, 3,687 miles of road not significantly affected by agricultural traffic are assumed to receive a standard resurfacing improvement at an estimated annualized cost of $32.3 million. For these non-impacted roads, it is assumed that a 2:5-inch overlay of each segment will provide reasonable service for 20 years in the absence of significant agricultural truck traffic. In total, the cost of maintaining and improving paved local roads that were not significantly impacted by agricultural traffic is estimated to be $41.6 annually.

Table 14 Non-Impacted Paved Miles Improved and Maintained by Improvement Type

Improvement Type	Miles	Annualized Cost
Resurfacing	3,687	$32,261,075
Maintenance	2,417	$9,319,875
Total		$41,580,950

Comparatively, the estimated resurfacing cost of agricultural distribution routes is 40 percent greater than the estimated resurfacing cost of non-agricultural routes on a per-mile basis. Comparatively, the estimated maintenance cost of agricultural distribution routes is 21 percent greater than the estimated maintenance cost of non-agricultural routes on a per-mile basis. These differences reflect higher levels of truck traffic and average daily traffic on these routes. Since 90 percent of the paved county-road miles in agricultural

distribution routes are major collectors, these comparisons reinforce the current investment priorities of counties.

7. Conclusion

The purpose of this study is to analyze changes in agricultural production and logistics and the importance of roadway investments to the distribution of crops produced in North Dakota. The essential objective was to quantify the funding level required to maintain and improve the existing local road network.

In this study, a very detailed network model was developed to predict and route crop movements from 1,340 county subdivisions to elevators and ethanol plants. The predicted flows were used to specifically analyze investment needs for agricultural haul roads. In addition, the investment needs for other local roads not significantly affected by agricultural goods movements were estimated so that the total statewide local roadway needs could be quantified.

Statewide, estimated needs total $100.5 million annually for county and local paved roads. Approximately $59 million of these needs relate to agricultural haul roads. The remainder corresponds to other county and local roads. Also, statewide, estimated needs total $110 million annually for local unpaved roads. Approximately, $43.6 million of these needs relate to agricultural haul roads. The remainder corresponds to other local roads, especially township roads. Thus, the total estimated statewide need is $211.5 million per year, including $100.5 million of paved road investment needs and $110.0 million of unpaved road investment needs.

In conclusion, it is important to note that the study has limitations, most of them due to a short time frame (i.e., 40 days), difficulties in obtaining data, and a limited budget, which precluded any field work. All crop flows could not be represented in the distribution model because of difficulties and delays in getting data. Therefore, the total ton-miles shown in Table 3 may be somewhat understated. Based on information available, it is likely that more than 95 percent of all crop ton-miles are reflected in the estimates.

One of the issues not addressed in this study is the effect of spring load restrictions on farm producers, elevators, and plants. This is an issue that should be revisited and the major county collectors in agricultural logistics routes should be evaluated individually to assess the need for and cost of potential reconstructions or thicker overlays. Although county-wide surface conditions were available from a previous survey, these values could not be assigned to individual segments without additional interviews and modeling. As a result, it is quite possible that many additional miles of county and local road may need reconstruction because of poor condition. These detailed analyses were not possible within

a 40-day window. While further study is recommended, this report has identified the minimum threshold of county and local road investment needs.

8. Appendix A. Regional Trends in Crop Production North Dakota

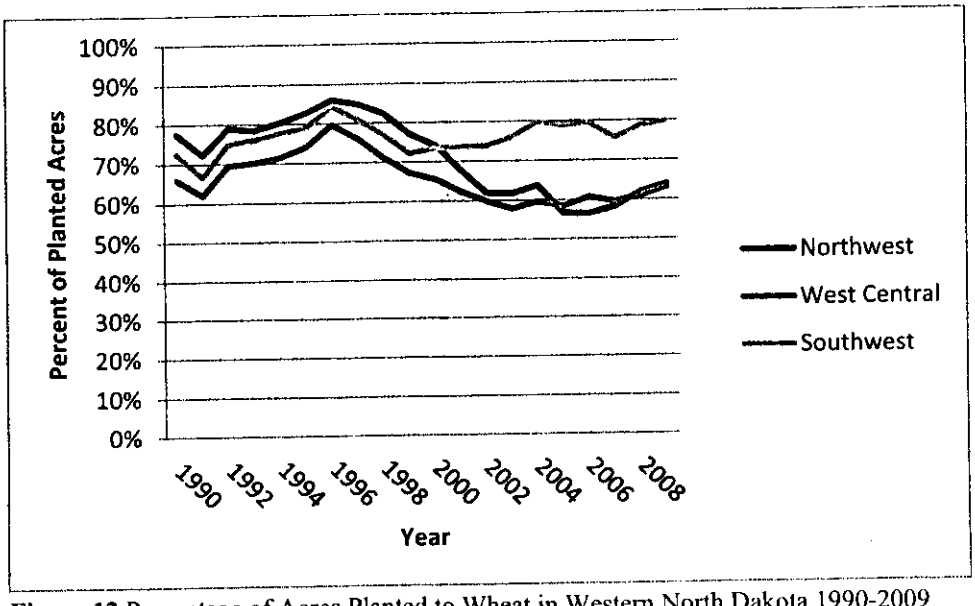

Figure 12 Percentage of Acres Planted to Wheat in Western North Dakota 1990-2009

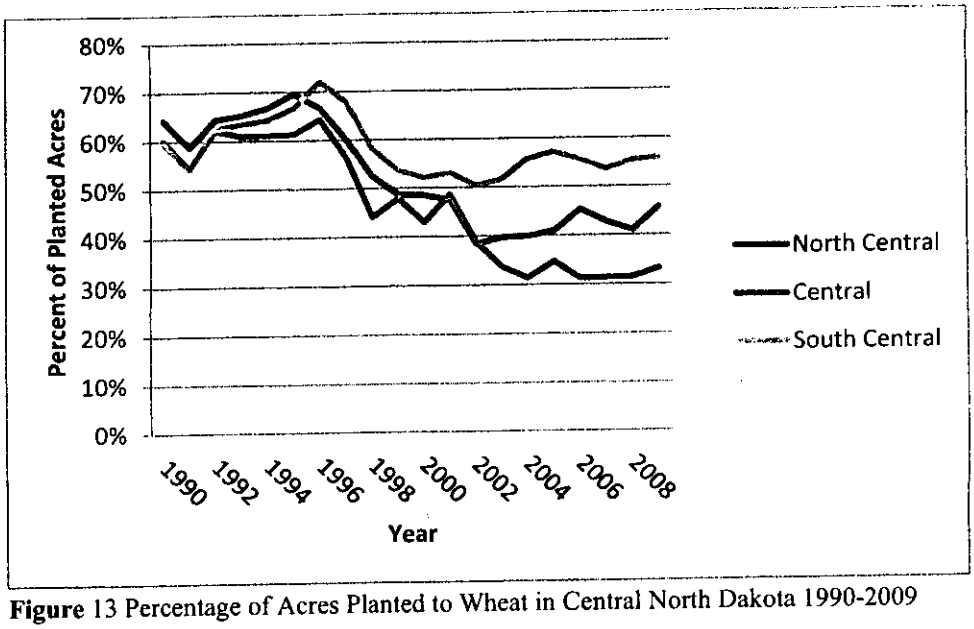

Figure 13 Percentage of Acres Planted to Wheat in Central North Dakota 1990-2009

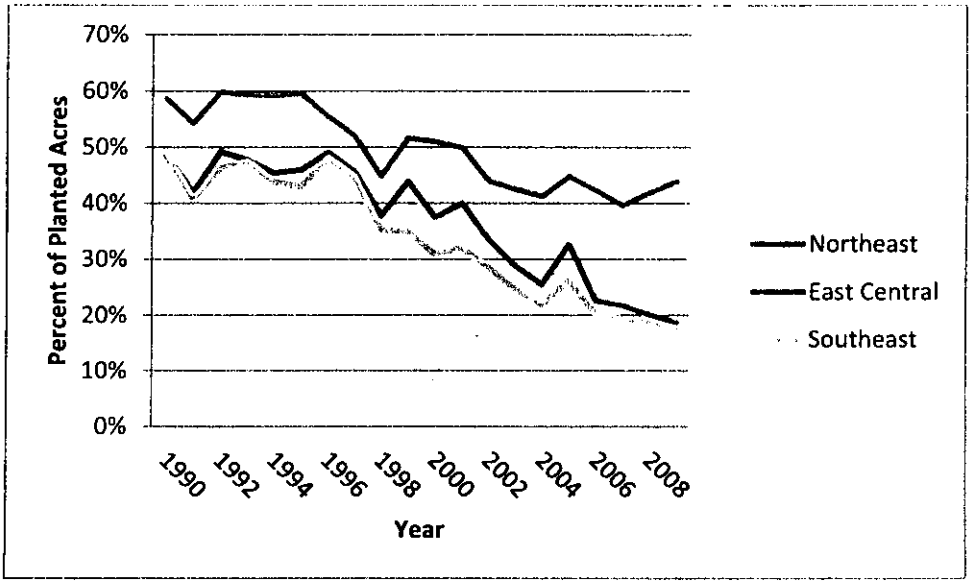

Figure 14 Percentage of Acres Planted to Wheat in Eastern North Dakota 1990-2009

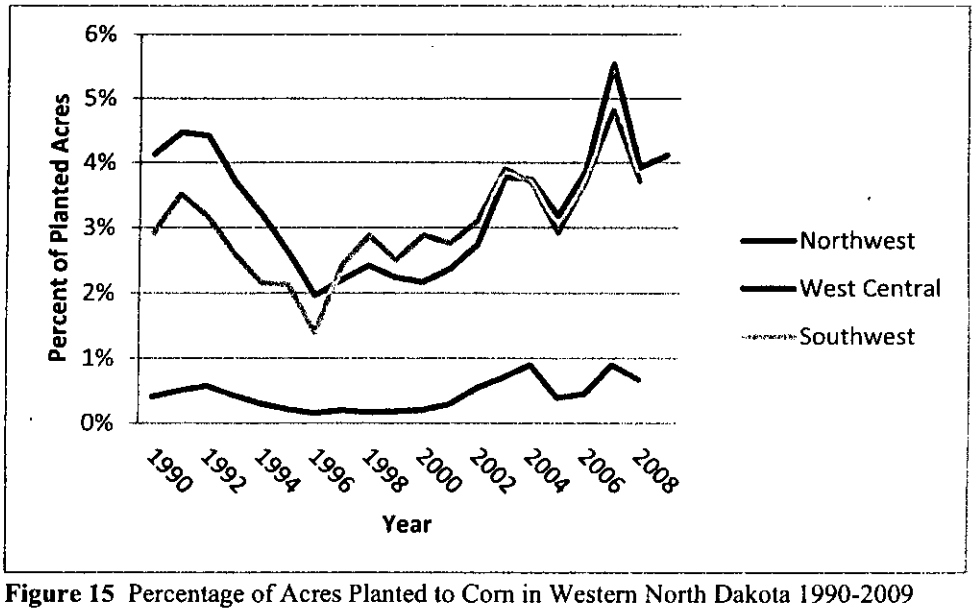

Figure 15 Percentage of Acres Planted to Corn in Western North Dakota 1990-2009

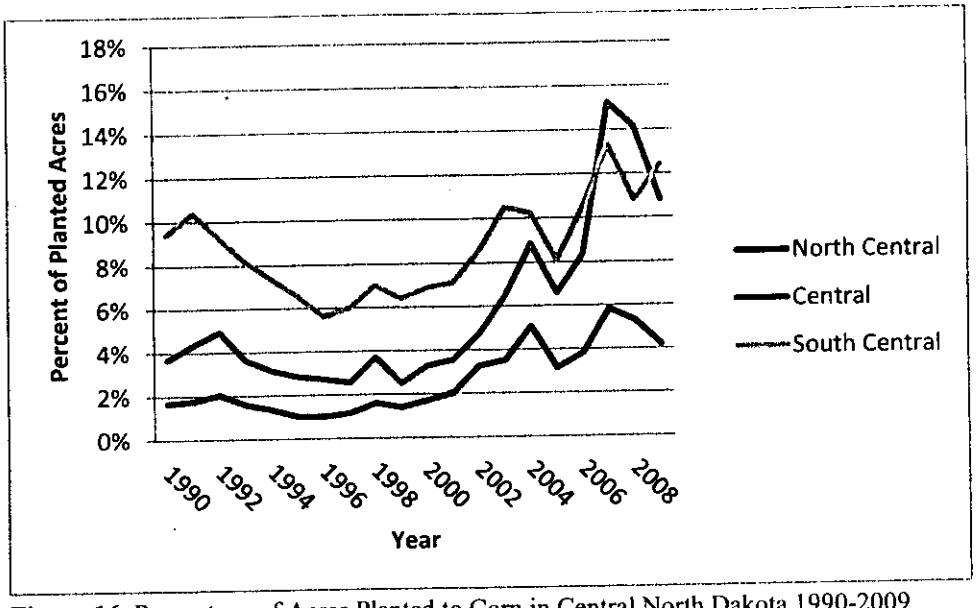

Figure 16 Percentage of Acres Planted to Corn in Central North Dakota 1990-2009

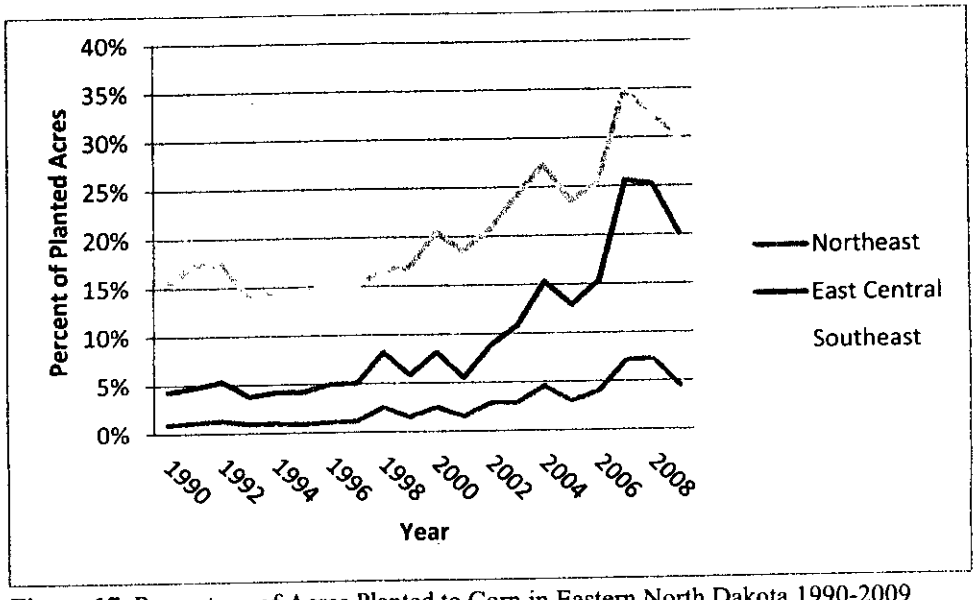

Figure 17 Percentage of Acres Planted to Corn in Eastern North Dakota 1990-2009

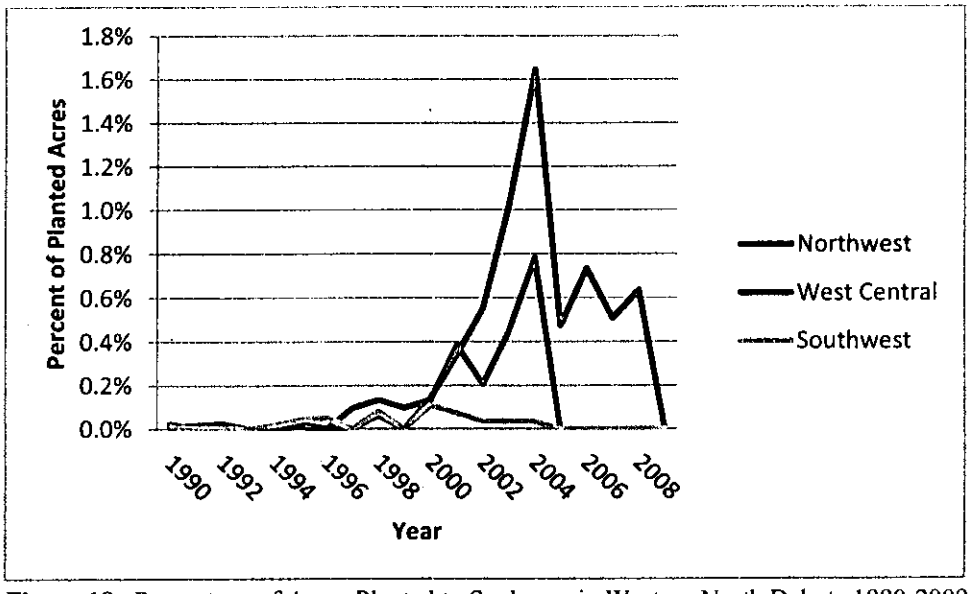

Figure 18 Percentage of Acres Planted to Soybeans in Western North Dakota 1990-2009

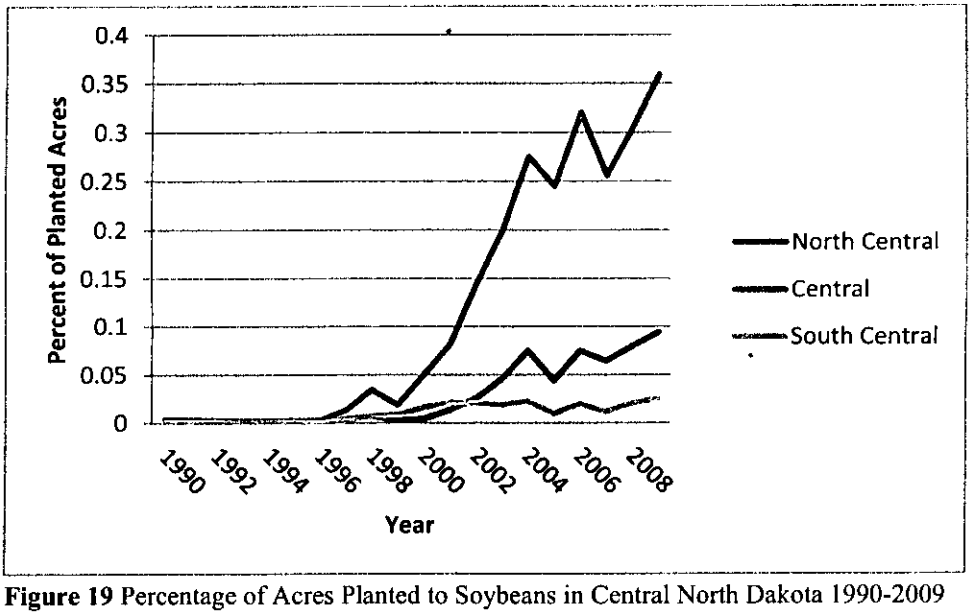

Figure 19 Percentage of Acres Planted to Soybeans in Central North Dakota 1990-2009

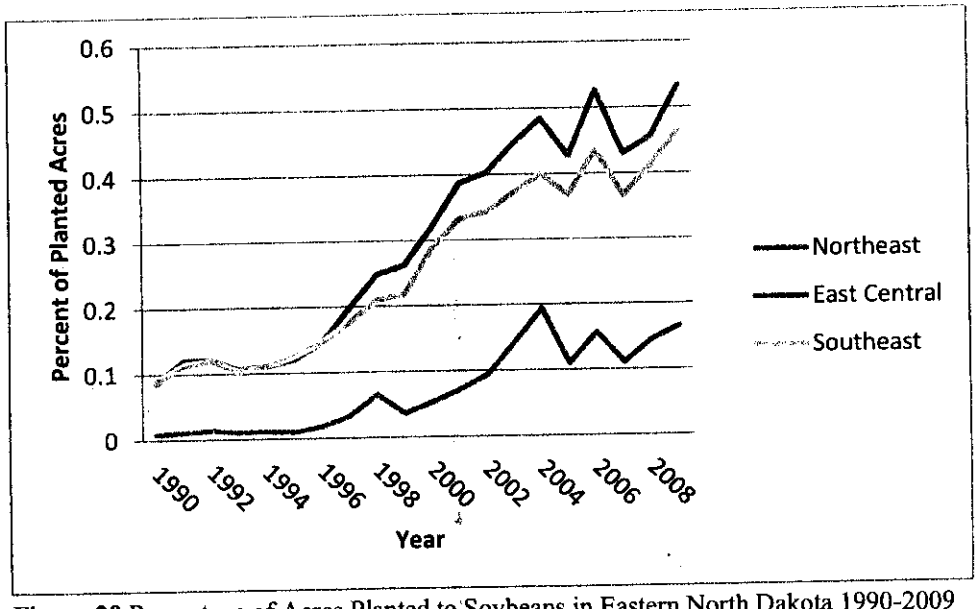

Figure 20 Percentage of Acres Planted to Soybeans in Eastern North Dakota 1990-2009

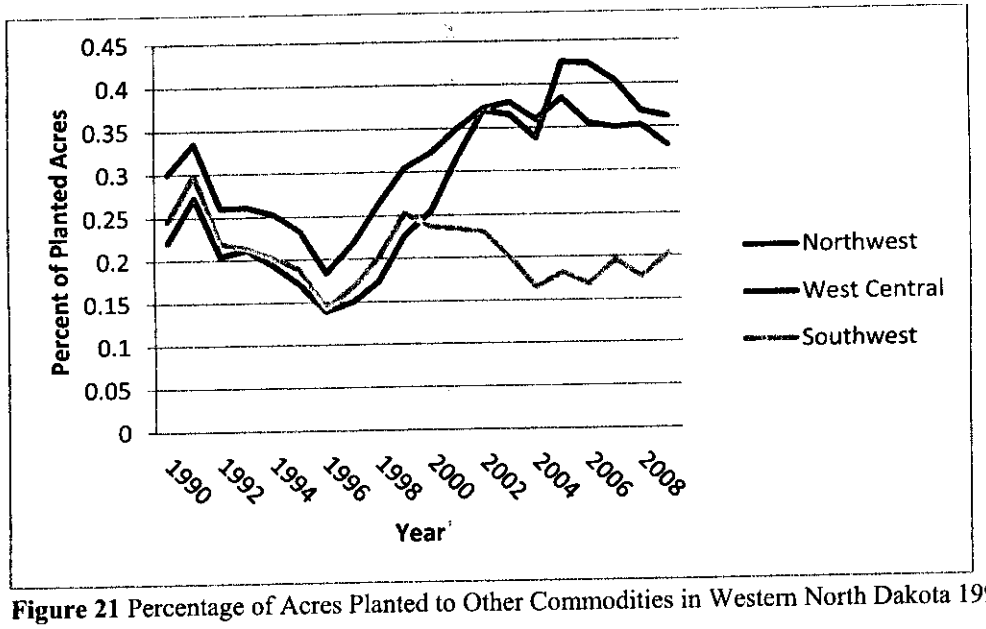

Figure 21 Percentage of Acres Planted to Other Commodities in Western North Dakota 1990-2009

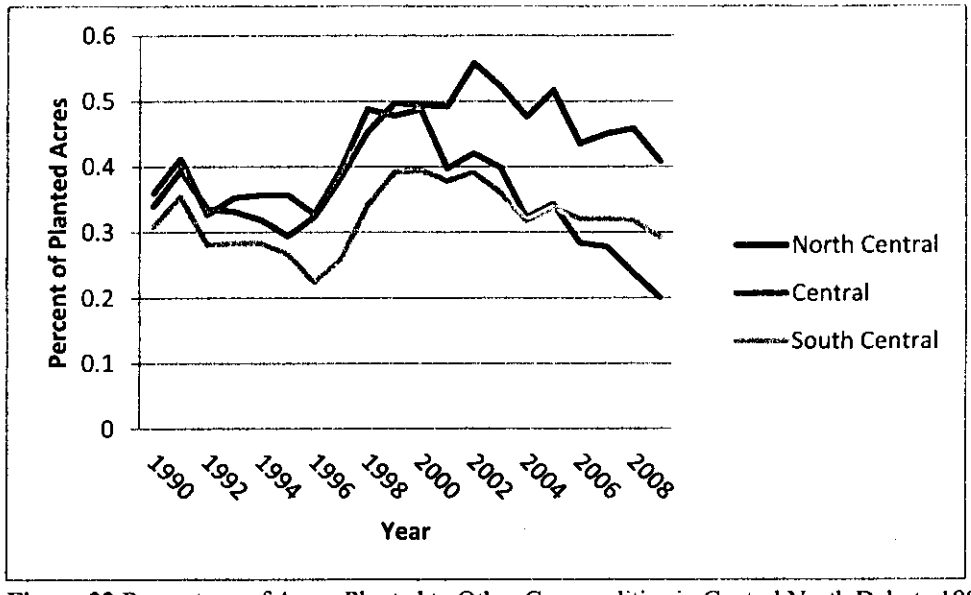

Figure 22 Percentage of Acres Planted to Other Commodities in Central North Dakota 1990-2009

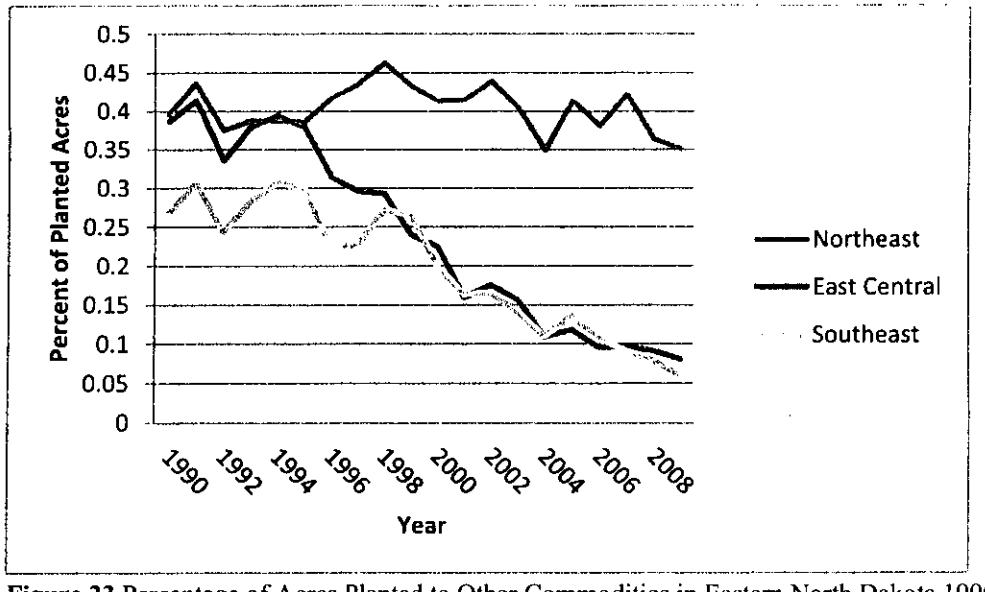

Figure 23 Percentage of Acres Planted to Other Commodities in Eastern North Dakota 1990-2009

(1)

March 8, 2011

Introduction to TASC and Debt Settlement Issues and Comment on North Dakota HB 1038

Introduction

TASC respectfully submits this comment/written testimony to the Judiciary Committee for HB 1038. TASC supports all of the consumer protection provisions in the bill, but the fee caps in HB 1038 are significantly less than what the service costs to provide. TASC recommends using the recently adopted FTC rule language in lieu of the fee cap language in HB 1038. The FTC rule only permits the charging of fees once 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 1038 including licensing, bonding, operational requirements, prohibitions, and strong enforcement provisions. While there are some provisions in the bill that now conflict with the FTC rule, with those technical changes and the adoption of the FTC fee language, TASC supports HB 1038. 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 1038 are unfair.
        a. The FTC Rule regarding fees for debt settlement companies provides significant protection.
        b. The fee cap in HB 1038 for debt settlement providers is much lower than what nonprofit credit counselors may charge in the bill.
        c. Debt settlement is a much more costly service to provide than credit counseling and should be paid more, not less than nonprofit credit counselors.
        d. 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 1038.
        e. A fee structure mandating fees as a percent of savings frequently fails to consider what would be in a consumer's best interest.
        f. HB 1038's fees are not comparable to an attorney's contingency fee.
    2. The true story and statistics about complaints.
    3. Myths about debt settlement.

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4. Testimonials by consumers who have been helped by debt settlement.

D. Specific Comment and proposals regarding bill language

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.

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 and traditional credit counseling. 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%.[1] Nonprofit credit counseling companies historically have an approximate success rate of 21-26%[2]. Debt settlement completion rates for TASC members are higher – approximately 34.5%[3]. Further, those who only complete part of the debt settlement plan often benefit – for example, someone who had 10 debts coming into the program and now have 5 may leave the program citing his debt is not 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. If the debt settlement industry used similar measurements, our completion rates would be significantly higher as well.

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 1038 are unfair.

The significant consumer protections offered by the 25 pages of HB 1038 together with the prohibition against advance fees by the FTC rule are more than enough protection for consumers. Restricting the fees so drastically for debt settlement providers is unnecessary and, as shown below, are unfair compared to the fees for other debt relief providers. If the bill is unchanged, consumers will not have debt settlement as an option to manage their debts.

a. The FTC Rule regarding fees for debt settlement companies provides significant 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:

i. The FTC rule provides the following protections:
- The fees must be clearly and conspicuously disclosed prior to the consumer entering into an agreement with the provider.
- No fees are chargeable until a settlement is reached.

---

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

[2] *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.

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

- 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.
- 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 is structured to ensure that fees must be proportionately collected, thus, protecting against fees being front-loaded in the program. However, the fee structure is completely untested and insufficient time has passed to fully evaluate the model and what would be an appropriate fee cap.

iii. Consumers using debt settlement services in unregulated states actually pay less than those 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. The fee cap in HB 1038 for debt settlement providers is much lower than what nonprofit credit counselors may charge in the bill.

i. There are a number of states that allow a 15% fee for credit counselors who are usually nonprofits including **North Dakota**, Idaho, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, New Hampshire, Oregon, Virginia, Washington, and Wisconsin. <u>However, the 15% is calculated as **15% of the total debt or payment** made to the creditor</u>. This is a significantly different calculation than a percentage of savings for debt settlement and results in significantly greater fees for credit counseling than that permitted for debt settlement even though debt settlement is a much more labor intensive service.

1) Credit counseling contemplates paying back the full balance plus interest. So the 15% fee would equate to 15% of the principal <u>plus</u> 15% of the interest payment made to the creditor. Using the assumptions below[4] [5], the resulting fee is **20.5% of the principal debt.**

[4] 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%.

[5] Based on module of $10,000 debt amortized at 13% interest for 60 months run on Bankrate.com

2) Nonprofit credit counselors further receive a fair share. Again, using the authority cited in my comment, the fair share[6] adds **another 10.9% of the principal.**
3) **Total credit counseling fees equal 31.4% of principal.**
4) Nonprofit credit counselors also get the benefit of being tax exempt.

ii. The below is an analysis of the fees for debt settlement at 30% of savings.
1) Assume that the debt is settled for 50% of the balance.
2) The fee is 30% of the savings or 0.3 x 0.5 of the balance = **15% of the principal.**
3) This is less than ½ of what credit counselors get in the above example.
4) 15% of principal equates to about a **5% APR** for a typical 3 year program.
5) Debt settlement is also much more labor intensive of a process than credit counseling.

iii. Applied to $25,000 of debt, the difference in fees is as follows:
1) Nonprofit credit counseling fee = $25,000 x 0.314 = $7,850
2) Debt settlement fees under HB 1038 = $25,000 x 0.15 = $3,750
3) **Nonprofits make $4,100 more than for profit debt settlement.**

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

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 should be greater to compensate for this extra expense. HB 1038 does the reverse and 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 settlement plans are very individualized plans involving 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 four times as much work to perform debt settlement. TASC further knows of debt management providers who hire 10 times fewer staff for the same number of clients as debt settlement providers. Additionally, at least with respect to nonprofit providers, credit counselors receive fair share payments from creditors. A more detailed list of services performed by debt

[6] Fair share of 8% of payment - See page 2, lines 41-43 of H.P. 895, Legislative Document No. 1289, 124th Maine Legislature.

settlement providers is attached as **Exhibit A**. This list further illustrates the labor intensive nature of debt settlement services.

Further, debt settlement providers will provide significant services to individuals who end up not paying for those services when they cancel. 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.

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

The way the bill defines an individual's "savings" in debt settlement skews the fee to look much larger than it actually is and ignores the time value of money. For example, if HB 1038 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 1038 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 debt management plan or credit counseling plan or other debt relief options 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. With debt settlement, reduction in principal provides significantly greater consumer benefit even including fees. For instance, if there was a 50% reduction in principal and a 25% of principal fee (only paid if the consumer accepts settlement), the total consumer cost for debt settlement would equal $18,750 compared to $39,250 for credit counseling.

(see chart below)

$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	$5,120.00[5]	$1,500.00[6]	
Fair Share by Creditor to nonprofit CCCS		$2,730.00[7]		
Total fees	**$6,250.00[4]**	**$7,850.00**	**$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**	**$39,250.00[9]**	**$39,500.00**	**$82,377.37**

e. 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 in a term 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

[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%.
[3] Per Bankrate.com for Denver, Colorado area - Wells Fargo Bank.
[4] Assumes a fee of 25% of debt ($25,000 x 0.25).
[5] Assumes 15% of monthly payment for 5 years = 0.15 x ($25,000 principal + $9,130 interest) = $5,120.
[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 + $5,120 fees = $39,250. 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.

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.

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

(i) 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.

(ii) 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.

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

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

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

(vi) 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.

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 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 24 complaints a year. (See attached **Exhibit C** - summary of results of FOIA request by USOBA).

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.

Debt settlement clients are not usually low income individuals. In order for an individual to get into enough trouble 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 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 less 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.

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, so can credit counseling/debt management. However, these individuals 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. 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.

c. Debt settlement causes individuals who would otherwise pay their debts timely to default on their debt.

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. Interest and late fees do accrue, but interest accrues with any debt relief option a consumer may choose. Some critics have also misrepresented the problem. 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[7]. 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.

So, 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. These testimonials are available at www.ftc.gov. Also see www.consumercreditrights.org for video and

[7] The debtor may still incur collection charges.

audio recordings of consumers who have had positive experiences. TASC can provide more testimonials upon request.

D. Specific Comment and proposals regarding bill language

1. Page 7, line 23-26, Section 13-11-05 1.b.
This section sets out qualifications for obtaining a license. One of the requirements is that the applicant, managers, partners, officers and directors have never been convicted of a misdemeanor. Another requirement is that those individuals not be the subject of a license disciplinary hearing concerning allegations involving dishonesty or untrustworthiness. While these may certainly be factors that should be considered in granting licensure, the language in 13-11-05 would mandate that the applicant be denied. A misdemeanor could be something as simple as a traffic violation. Allegations may be incorrect and assumes guilt before the proceedings are complete. The regulator should have discretion in this matter.

   Recommendation:
   Make the following redline changes: "The applicant, managers, partners, officers, and directors have not been convicted of a felony or a misdemeanor involving dishonesty or untrustworthiness or ~~are not currently the subject of~~ in a license disciplinary proceeding ~~concerning allegations involving~~ has been found to have acted with dishonesty or untrustworthiness."

2. Page 8, lines 1-3, Section 13-11-05 1.d.
This section sets out qualifications for obtaining a license. One of the requirements is that the applicant, managers, partners, officers and directors have not violated any provision of the chapter. However, again this language is mandatory and gives the commissioner no discretion if the violating party has corrected or resolved the problem, or if the problem was not a serious violation. Instead, all violations are treated equally. . The regulator should have discretion in this matter.

   Recommendation:
   Insert at the end of the sentence, "unless any violations have been resolved to the commissioner's satisfaction."

3. Page 16, line 24-25, Section 13-11-19 2..
This states, "Any contract for the provision of debt settlement service entered in violation of this section is void." This fails to consider:
   (a) the seriousness of the violation;
   (b) the choice of the consumer; and
   (c) other provisions in the bill.

   Section 20 of the bill allows the consumer to cancel the contract for "material" violations. Section 28 of the bill provides for circumstances in which the contract is

voidable by the individual including (1) if the provider is not licensed and (2) if the fees exceed the authorized limits. These violations are conceivably more serious than some violations that might be technical or inconsequential or immaterial problems with the contract, yet the contract is not rendered void. Further, the consumer may not want the contract to be void.

Recommendation:

Make the following redline changes: "Any contract for the provision of debt settlement service entered in material violation of this section is voidable."

4. Page 19, lines 17-29, Sections 13-11-21 3. and 4.
Per the reasoning stated above in TASC Comment Section C1, the fee caps result in fees that are significantly less than what the service costs to provide. Further, the FTC fee language offers extremely strong consumer protection especially when combined together with the numerous other consumer protections offered in HB 1038. The FTC fee language prohibits the charging of any fees until the individual signs a written agreement at the start of the program, receives a settlement offer from a creditor, approves and accepts the settlement, and makes a payment towards that settlement. If the consumer does not think the settlement is favorable, he is free to reject the settlement and pay no fees. The FTC studied the industry for several years and spent approximately two years drafting and redrafting language it believed was appropriate. As such TASC recommends the FTC language as below.

Recommendation:
Replace 13-11-21 3. and 4. in its entirety with the FTC language below:

"3. A debt-settlement provider may not request or receive payment of any fee or consideration until and unless:

(i) the debt-settlement provider has settled the terms of at least one debt pursuant to a settlement agreement or other such valid contractual agreement executed by the consumer;

(ii) the consumer has made at least one payment pursuant to that settlement agreement or other valid contractual agreement between the consumer and the creditor or debt collector; and

(iii) the fee or consideration either:

(a) bears the same proportional relationship to the total fee for settling the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(b) is a percentage of the amount saved as a result of the settlement. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the plan and the amount actually paid to satisfy the debt."

5. Page 19, lines 17-29, Sections 13-11-21 4.
   TASC also has a specific comment about subsection 4 of the fees section. This section prohibits collecting fees even after an individual accepts a settlement and the first payment has been made as allowed by the FTC Rule. Subsection 4 requires that the settlement be completely paid, even if it is a settlement involving installments. Thus, the provider may not get paid even though it provided support services to the individual, provided financial education, negotiated debt, obtained a settlement, the individual accepts the settlement, and the individual makes some payments towards the settlement. If the individual does not finish making the payments or is late and the creditor withdraws, the provider gets paid nothing. Further, there is a class action against a large creditor alleging that the creditor would settle with individuals and then reject the last payment to avoid a final resolution. In such circumstances, the provider also would not get paid anything for all of its work.

   Recommendation:
   Use the FTC language.

In closing, TASC believes the FTC Rule alone provides sufficient and significant protection for consumers, and addresses the key concern, the charging and collection of advance fees. Together with the other protections offered by HB 1038 including licensing, bonding, operational requirements, prohibitions, and strong enforcement provisions, consumers in North Dakota would be amongst the strongest protected in the country. However, without changes, HB 1038 would result in no licensed debt settlement providers, which seems contrary to its purpose, as providers simply could not afford to provide services. Consumers today need more options to help manage their debts, not fewer options. Further, consumer protection involves not only preventing harm, but providing help. TASC's changes would accomplish both of these goals.

Respectfully submitted,
The Association of Settlement Companies (TASC)

Exhibit A

Summary of work performed by a debt settlement provider

Once the consumer is determined to be qualified for the program and after all of the consultations, disclosures and "front-end" work is done and the consumer has signed an agreement and is enrolled in the debt settlement program, the following preliminary tasks are performed at the start of the consumer's program:

1. Gather additional necessary personal and account information from consumer for placement into database.
2. Mail program packet to consumer, containing company contact information, etc.
3. Contact consumer by phone to welcome them to the program, answer any questions they may have, go over again significant aspects of the program, ensure that client contact information is complete and accurate.

During the typical two to three-year program length:

1. Receive, review and process into database monthly account statements received from consumer.
2. Discuss with client needed changes to program, such as payment amounts or dates, banking information, personal contact or employment information, etc., and process into database.
3. Contact and locate creditors, collectors and debt buyers to maintain information on the accounts.
4. Consult with consumer regarding particular settlement offers, often working out exact timing and, if needed, number of monthly payments, and then coordinating final arrangements with the creditor. This often takes a significant number of calls back and forth between the settlement company, the consumer and the creditor.
5. Field calls from creditors, collectors and debt buyers who want to discuss possible settlement scenarios.
6. Obtain and process settlement documentation and terms.
7. Audit settlement terms for accuracy, verify funds available, and payment method.
8. Maintain official settlement documents, sending copy to consumer.
9. At the end of each day send updated consumer, account and settlement information to third-party payment processing company, and each day receive downloads from same.
10. Ensure that creditor receives funds from client
11. Address and resolve issues dealing with previously settled accounts.
12. Obtain satisfaction/zero balance letters when necessary.
13. Provide guidance to consumer regarding the handling of creditor calls, an on-going process, especially as accounts progress through the collection process with additional creditors.
14. Contact creditors in regards to possible harassment of the consumer, at times having the creditor call a different number or at a different time.

15. Educate consumers regarding their rights in regards to dealings with creditors.
16. Direct consumers to sources of legal assistance when needed.
17. Pro-actively call consumers on a regular basis (every 30) days to go over progress of program.
18. Comfort consumers who may be feeling overwhelmed, pressured, depressed or otherwise agitated by various aspects of the program or even generally what is going on in their lives at the moment.
19. Provide coaching and support to the consumer in regards to staying on budget with the program.
20. Provide needed educational information to the consumer.
21. Build, maintain and nurture relationships between the company and creditors, collections agencies and debt buyer/holders- these relationships are critical to securing favorable results.
22. Utilize technology to keep client data secure.

Aspects of specific negotiations:

1. Identify the proper creditor, collector or debt buyer that has the account.
2. Prepare for negotiation by verifying account balance, savings balance, status of the account and who now is holding the account.
3. Communicate hardship to the creditor, collector or debt buyer, especially as a means of advocating for the consumer the best possible settlement.
4. Propose settlement offer.
5. Entertain counter offer, consulting with consumer as necessary.
6. Document finalized settlement with creditor.
7. Communicate finalized settlement documents with consumer and with third party payment processor.

Exhibit B

FOIA-2010-00701

Database: Consumer Sentinel Network
Purpose of search: To find the top 100 companies who have received the highest number of complaints under the product service code "Debt negotiation/ Credit Counseling"

The search included all records available through April 28, 2010.

Rank	Subject Name	Responsive Complaints
1	HSBC Finance Corp	3,209
2	Unknown	1,651
3	Capital One	460
4	CARD Services	421
5	Green Tree Servicing LLC	207
6	Debt Solutions	184
7	UNKNOWN	175
8	Mortgage Help Services	151
9	America's Servicing Company	150
10	Citifinancial Service Inc	149
11	Mutual Consolidated Savings	129
12	ACCOUNT services	122
13	Peak5	97
14	Sears Roebuck & Company	83
15	Alternative Funding	72
16	Chrysler Financial	68
17	Clear Breeze Solutions	67
18	INC Credit Services	67
19	Direct Capital Corporation	63
20	Real Talk Radio Network	59
21	Prestige Financial Services Inc	57
22	Express Debt Elimination	51
23	Credit Solutions	47
24	Debt Relief USA	47
25	Credit Consultants	43
26	Ideal Wealth Builder Club	43
27	Careone Services, Inc	39
28	AMS Financial	38
29	Chase Health Advance	36
30	Card Holder Services	35
31	Innovative Wealth Builders, Inc.	34
32	Allegro Law, LLC	32
33	Money Works	32
34	Consumer Services	29
35	National Deed Service, Inc.	29

36	Amscot	28
37	Card Member Services	28
38	Financial Freedom Resources, Inc.	28
39	TD Ameritrade, Inc.	28
40	Blue Harbor Financial	27
41	CardHolder Services	27
42	United First Financial, LLC	27
43	DEBT Relief	26
44	Federal Loan Modification Law Center	26
45	Freedom Financial Management	25
46	Lifeguard Financial	25
47	Wells Fargo	24
48	Vericrest Financial	22
49	Consumer Financial Advisory Board	21
50	Morgan Drexen	20
51	Premier Credit Services, Inc.	20
52	Wells Fargo Financial	20
53	Consumer Education Services, Inc.	19
54	Phoenix Debt Management	19
56	World Financial Group	19
57	Aqua Finance, Inc.	18
58	Credit Card Reduction	18
59	Debtscape	18
60	Nationwide Bi-weekly Administration, Inc.	18
61	Suburban Debt Solutions	18
62	Clear Financial Solutions	17
63	Credit Answers	17
64	FINANCIAL Services	17
65	Freedom Debt Relief	17
66	GE Financial Assurance	17
67	Money Express Pos Solutions Inc.	17
68	Sales Department	17
69	21st Century Legal Services	16
70	Commercial Debt Counseling Corporation	16
71	Credit Attorney Pc	16
72	Debtyz	16
73	Financial Solutions	16
74	Ranger Financial Services Inc.	16
75	Bank of America	15
76	Citi Financial Services	15
77	Consumer Relief	15
78	Express Consolidation	15
79	Federal Debt Relief System	15

80	Geneva-Roth Ventures	15
81	JK Harris	15
82	Northside Services	15
83	Allegro Law	14
84	Authorize.net	14
85	Consumer Finance Services LLC	14
86	Platinum Advantage	14
87	Real Talk Network	14
88	Unkown	14
89	Wachovia Bank, Na	14
90	Ameridebt	13
91	Client Services	13
92	DELL Financial Services	13
93	GHS Solutions	13
94	National Foreclosure Relief	13
95	Web Transaction Services	13
96	Clear Debt Solution	12
97	Financial Consulting Services	12
98	Financial Freedom	12
99	Global Client Solutions LLC	12
100	Pioneer Services, A Division of Midcountry Bank	12

Exhibit C

Summary of Complaint Information for debt settlement received from AG's office per FOIA request for period 2007-2009

320	Total Complaints
85	Misclassified/non debt settlement
164	Total Complaints for Richard Brennan/Frederick Law Group
71	**Remaining complaints against debt settlement co.'s**

EXCERPT FROM 2009-10 JUDICIARY COMMITTEE REPORT

REGARDING ENGROSSED HOUSE BILL NO. 1038

PROVIDED BY: VONETTE RICHTER, LEGISLATIVE COUNCIL

MARCH 8, 2011

UNIFORM DEBT-MANAGEMENT SERVICES ACT STUDY

The Uniform Debt-Management Services Act was among the 2008 recommendations of the North Dakota Commission on Uniform State Laws for introduction in the 2009 legislative session. Before the 2009 legislative session, concerns were expressed by members of the commission, the Attorney General, and the director of the Department of Financial Institutions that before the uniform Act is introduced for adoption in North Dakota, a determination should be made as to which state agency would be the most appropriate agency for the administration and enforcement of the Uniform Debt-Management Services Act. It was noted that the Uniform Debt-Management Services Act is a complicated Act that will require additional staffing and budget to implement. Because of these concerns, it was recommended that a study of the Uniform Debt-Management Services Act be conducted to address these concerns before introduction.

The Uniform Debt-Management Services Act has been adopted in Colorado, Delaware, Missouri, Nevada, Rhode Island, Tennessee, and Utah.

Background

The National Conference completed the Uniform Debt-Management Services Act in 2005. The uniform Act is intended to provide the states with a comprehensive Act governing these services that will allow for the national administration of debt counseling and management in a fair and effective way.

Uniform Debt-Management Services Act Summary

The Uniform Debt-Management Services Act may be divided into three basic parts--registration of services, service-debtor agreements, and enforcement.

Registration

The Uniform Debt-Management Services Act provides that a service may not enter an agreement with any debtor in a state without registering as a consumer debt-management service in that state. Under the uniform Act, registration requires submission of detailed information concerning the service, including its financial condition, the identity of principals, locations at which service will be offered, form for agreements with debtors, and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft, and the like in an amount no less than $250,000. The service also must provide a security bond of a minimum of $50,000 which has the state administrator as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in a state. A satisfactory application results in a certificate to do business from the administrator. A yearly renewal is required.

Agreements

In order to enter agreements with debtors, the uniform Act requires a disclosure requirement respecting fees and services to be offered and the risks and benefits of entering such a contract. The service must offer counseling services from a certified counselor, and a plan must be created in consultation by the counselor for debt-management service to commence. The contents of the agreements and fees that may be charged are set by the statute. The uniform Act provides for a penalty-free three-day right of rescission on the part of the debtor. The debtor may cancel the agreement also after 30 days but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days.

Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. The uniform Act contains strict accounting requirements and periodic reporting requirements respecting funds held.

Enforcement

The uniform Act prohibits specific acts on the part of a service, including misappropriation of funds in trust, settlement for more than 50 percent of a debt with a creditor without a debtor's consent, gifts or premiums to enter an agreement, and representation that settlement has occurred without certification from a creditor. Enforcement of the uniform Act occurs at two levels--the administrator and the individual level. The administrator has investigative powers, power to order an individual to cease and desist, power to assess a civil penalty up to $10,000, and power to bring a civil action. An individual may bring a civil action for compensatory damages, including triple damages if a service obtains payments not authorized in the uniform Act, and may seek punitive damages and attorney's fees. A service has a good-faith mistake defense against liability. The statute of limitations pertaining to an action by the administrator is four years and two years for a private right of action.

Banks as regulated entities under other law are not subject to the uniform Act, as are other kinds of activities that are incidental to other functions performed. For

example, a title insurer that provides a bill-paying service that is incidental to title insurance is not subject to it.

North Dakota Statutory Provisions

There are several areas of North Dakota law which may be impacted by the enactment of the Uniform Debt-Management Services Act. North Dakota law regarding debt adjustment and consumer credit counseling services are contained in Chapters 13-06 and 13-07. Chapter 13-06, which relates to debt adjusting, provides that unless exempted, any person who engages in the business of debt adjusting is guilty of a Class A misdemeanor. Section 13-06-03 provides for exemptions from the prohibition on debt adjusting, including situations involving debt adjusting incurred incidentally in the lawful practice of law in this state; banks and fiduciaries; title insurers and abstract companies; judicial officers or others acting under court orders; nonprofit or charitable corporations or associations engaged in debt adjusting; situations involving debt adjusting incurred incidentally in connection with lawful practice as a certified public accountant and licensed public accountant; bona fide trade or mercantile associations in the course of arranging adjustment or debts with business establishments; any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for services rendered in adjusting the debts; and licensed and bonded collection agencies.

Chapter 13-07, which was enacted in 1993, provides for the regulation of consumer credit counseling services. Under Section 13-07-01, a consumer credit counseling service is defined as "a nonprofit corporation engaged in the business of debt adjusting as defined in section 13-06-01." Section 13-07-02, which sets forth the contract requirements in an agreement between the consumer credit counseling service and the debtor, provides that a consumer credit counseling service may not enter an agreement with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and that the debtor will be benefited by the plan. Section 13-07-06 authorizes the consumer credit counseling service to charge an origination fee of up to $50. Section 13-07-07 prohibits a consumer credit counseling service from taking a confession of judgment or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding. This section also authorizes the Attorney General to receive and investigate complaints against a consumer credit counseling service. The remaining sections in this chapter set forth the surety bond, trust account, and accounting requirements for a consumer credit counseling service.

Testimony and Committee Considerations

The committee received extensive testimony and assistance from the Department of Financial Institutions and the Consumer Protection and Antitrust Division of the Attorney General's office.

The committee received testimony regarding the feasibility and impact of enacting the Uniform Debt-Management Services Act, as well as testimo regarding consumer protection services that are bei provided by the state. The testimony indicated that other states have reported problems with some debt-management companies. According to the testimony, there are debt-management companies that lead consumers to believe the company can settle the debtor's debt for less than one-half of the debt owed. It was noted, however, when the company cannot deliver what has been promised, the debtor suffers. The Uniform Debt-Management Services Act would regulate debt-management companies.

Nonprofit consumer credit counseling services companies that do business in the state are required to register with the Attorney General. The registration process includes the posting of a bond. Actions that have been taken against consumer credit counseling services companies were the result of the companies' failure to post a bond or contact the Attorney General's office. According to the testimony there are about 25 consumer credit counseling services companies registered in the state; however, about 15 to 20 companies may be doing business in the state without following the bond and registration requirements. Complaints regarding consumer credit counseling services companies are received by the Attorney General's office. It was noted that there are three to fiv enforcement actions per year against consumer cred counseling services companies. According to the testimony, most of the consumer credit counseling services companies, which are nonprofit, are legitimate.

The testimony indicated the Attorney General has received few complaints from consumers regarding debt-management services companies in the state; however, it was noted that the office has received complaints from bankruptcy trustees regarding these companies. According to the testimony, the deceptive practices among debt-management services companies have become a real problem over the past several years. The industry is ripe for abuse because the industry targets consumers who are desperate for help, and the Uniform Debt-Management Services Act may be a proactive way to prevent problems before they get to North Dakota. It was also noted that current law regarding consumer fraud is very broad and would allow the Attorney General to take action if needed; however, a specific law may allow the Attorney General to move more quickly against a company. According to the testimony, the Uniform Debt-Management Services Act would meld current consumer credit counseling services laws with the debt-management regulations. The testimony indicated that the topic of regulating debt-management companies is one of concern to consumer protection offices throughout the country. It was noted, however, that many of the states do not lik the uniform Act because it does not provide enough consumer protection.

The committee also received testimony regarding the appropriate agency to administer the Uniform Debt-Management Services Act. According to the testimony, while both the Attorney General and the Department of Financial Institutions are willing to administer the regulation provided for in the uniform Act, the Department of Financial Institutions would be the more appropriate agency. The testimony indicated that the regulation of debt-management services companies in other states is typically done by either a consumer fraud department or a banking department.

Testimony from the Department of Financial Institutions indicated that there are concerns about some of the provisions in the Uniform Debt-Management Services Act. The testimony indicated that one of the concerns is whether to require licensure of both for-profit and nonprofit companies. According to the testimony, if the state is going to regulate the industry, both types of companies should be regulated. The testimony indicated that the department would prefer licensing over registering as a method of regulating debt-management companies because when a license is issued the license can be revoked for violations. It was estimated that there may be 100 to 200 companies that potentially could be licensed under the uniform Act. It was suggested that any legislation should address the collection of fees and the department's ability to issue enforcement actions that are consistent with other entities that the department licenses. It was noted that significant resources for licensing, bonding, and monitoring will be needed to regulate the debt-management services industry. It was estimated that two to three FTE positions would be necessary to handle the regulation of the debt-management services companies that would be licensed in the state. The testimony indicated that the goal is to have a law that provides for accountability but that allows legitimate companies to do business.

During the course of the committee's study, the committee considered a bill draft relating to the regulation of debt-settlement providers. According to testimony, the bill draft incorporated some of the provisions of the uniform Act but also included provisions modeled after current North Dakota consumer protection laws, as well as provisions contained in Illinois debt-settlement provider legislation. Testimony in explanation of the bill draft indicated the changes were made to the uniform Act to make the legislation more workable for North Dakota consumers. It was noted that the uniform Act only requires registration of the debt-management companies; however, the bill draft would require licensure. Another distinction noted between the uniform Act and the bill draft was that the uniform Act allows for the regulation of either for-profit or nonprofit companies, or both; however, the bill draft would require the regulation of both types of companies. The testimony noted that the regulations in the bill draft do not apply to professions such as lawyers and accountants because those professions are already regulated and licensed by their respective licensing bodies. The bill draft retained private rights of action which would allow a person to sue a company in civil court. Under the bill draft, the Department of Financial Institutions would be responsible for the regulation of the debt-settlement companies, and the Attorney General would be given enforcement authority.

The testimony indicated that the bill draft is consistent with other state laws. It was noted that many of the provisions of the Uniform Debt-Management Services Act are included in the bill draft but are located in different sections. The committee reviewed several documents that detailed the distinctions between the Uniform Debt-Management Services Act and the bill draft.

Other testimony regarding the bill draft indicated that even if a federal law is enacted on debt-management services, a state law is helpful because a state is usually able to react much more quickly than the federal government.

One committee member expressed concern about the bill draft and its deviations from the Uniform Debt-Management Services Act. It was noted that the area of debt management is very complicated, and the state's laws will not be uniform if the bill draft is adopted. It was noted that while the intent of uniform laws is to attain uniformity across the country, a state does not have to adopt uniform Acts, and a state can change a uniform Act to suit the state's needs. Concern was expressed about the effect this bill draft would have on a company located in another state if the other state adopted the uniform Act and North Dakota did not.

Recommendation

The committee recommends House Bill No. 1038 to provide for the regulation of debt-settlement providers.

03-08-2011

TESTIMONY FOR ENGROSSED HOUSE BILL NO. 1038

Senate Industry Business and Labor Committee

Testimony of Robert J. Entringer, Commissioner, Department of Financial Institutions relating to the revised fiscal note for House Bill No. 1038

Chairman Klein and members of the Committee, I am Bob Entringer, Commissioner for the Department of Financial Institutions. I am here today to testify in regard to the revised Fiscal Note provided by the Department of Financial Institutions for HB 1038 related to the regulation of debt-settlement providers.

FISCAL NOTE

Mr. Chairman, as you are aware the Fiscal Note submitted by the Department of Financial Institutions projects Revenue of $85,950 in the 2011-2013 biennium. The projected revenue is based on an estimate of 35 applications for licensure at an annual licensing fee of $400 and a one-time investigation fee of $400 per licensee. In addition we are anticipating conducting an examination of at least 6 licensees in the first biennium; included in the revenue are examination fees which recoup the cost of examiner's salary and benefits as well as expenses associated with the examination such as transportation, lodging, meals.

The expenditures for the biennium are estimated to be $173,907. Primarily, the expenditures are $85,650 to update our Financial Institutions Records Management system which is our database upon which we record pertinent information regarding all of our regulated entities. This estimate is based upon: 1) the current costs from ITD for the upcoming biennium, and 2) we estimated the number of programming hours based on a similar update from a prior legislative session when our Department added a new license type. In addition we are projecting On-Line Application programming costs of $30,000; this is to upgrade our website to allow this new license type to apply for and renew license applications electronically. We based our estimate on the current ITD programming charges using an estimate of 300 hours to develop the programming. Mr. Chairman, we did not have time to request a formal estimate from ITD for the programming so we based our estimate on previous experience.

Additional operating costs include travel of $24,750, which will be recouped through examination fees; printing of $2,200, which includes forms for paper applications; IT Data Processing of $17,160, which is the ongoing IT cost for our database; professional development of $3,200, which is for training to examine and regulate these entities and includes some travel costs; professional services of $7,700, which is an estimate of

legal expenses to the Attorney General's office and again is based on previous experience with adding a new license type; and operating fees and services which is primarily OMB costs.

The revenue for the 2013-2015 biennium is based on a projected increase in licenses of 20 and an estimate of 14 examinations conducted in the biennium. The major increase in expenditures is in travel which is related to the increase in the number of examinations conducted and, again these costs are recouped in examination fees.

Mr. Chairman and members of the Committee thank you for your time and I would be happy to answer any questions you may have.

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE
SENATOR JERRY KLEIN, CHAIRMAN
MARCH 8, 2011

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL

Mr. Chairman and members of the Senate Industry, Business & Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of Attorney General Wayne Stenehjem in support of Engrossed House Bill 1038.

This legislation providing for the regulation of debt settlement services is legislation introduced by the Judiciary Interim Committee after a study of debt settlement practices and the Uniform Debt Services Management Act. The Attorney General recognizes the importance and benefit of uniform laws. However, the conduct and problems of fraudulent debt settlement service providers has rapidly outpaced the well-intentioned model legislation proposed by the National Conference of Commissioners on Uniform Laws in 2008. The Attorney General could not recommend to the Judiciary Committee or this Legislature the adoption of the model act without significant changes. In my 17 years with the Attorney General's Office I cannot recall any model uniform law that raised more discussion amongst my colleagues, the directors of Attorneys General Consumer Protection Divisions throughout the nation, due to concerns that the debt settlement model legislation simply did not meet the needs of actual fraud or industry abuse. Only a small number of states (less than 5) have adopted the Uniform Debt Services Management Act.

Due to the rampant debt settlement fraud, this matter has been a topic of frequent discussion for Attorney General Stenehjem and other attorneys general throughout the country. He is particularly concerned about the consumer fraud in this industry. In 2010 Attorney General Stenehjem ramped up consumer protection enforcement in this area. In addition he has been working closely with the Department of Financial Institutions in a plan to more effectively protect North Dakota consumers. We jointly drafted new legislation for the Interim Committee's consideration and now consideration by this legislature. New legislation will be the most important component in enforcement efforts. For this reason the Attorney General is supporting enhanced legislation which incorporates many of the model law provisions.

Before detailing some of the financial concerns with debt settlement companies the Attorney General wants to inform you that some debt reduction and debt settlement companies are among the worst offenders of North Dakota's do not call laws. They often utilize pre-recorded messages without providing caller identification or use fictitious "telephone numbers" for which it is difficult to determine the source of the calls, often originating from outside the country. The calls are not necessarily made directly by the debt adjusting entities, but are made by entities seeking clients on their behalf.

I want to briefly inform you of the North Dakota complaints and enforcement. During 2010 and March 7, 2011 the Attorney General's Consumer Protection Division (CPAT) received approximately 38 complaints against companies that sold services categorized as "Debt Adjusting." These services included debt reduction, interest rate reduction services, debt negotiation and debt settlement services. The consumers reported to CPAT a total of $71,351 lost to these companies and were seeking restitution. As a result of complaint mediation, investigation and litigation, the Attorney General recovered a total of $51,394 in consumer restitution. The Attorney General has initiated 10 investigations. To date 3 of the matters have been resolved through legal action resulting in total civil penalties of $5,000 and consumer restitution of $40,534. Debt Settlement companies currently are a serious problem for North Dakota consumers and a significant enforcement issue for the Attorney General.

The Attorney General is currently enforcing debt settlement violations under ch. 13-06 "Debt Adjusting" which prohibits debt adjusting by for profit entities. That chapter provides criminal sanctions and lacks specific mention of any civil authority by the Attorney General. When conduct is illegal the Attorney General's authority is inherent, so we have used the statute, nonetheless, in conjunction with the Attorney General's authority in the consumer fraud law in chapter 51-15. State's attorneys prosecute crime and 13-06 should be enforced by state's attorneys. They, however, are faced with more serious crimes and aren't able to make prosecutions in debt settlement complaints a priority. Chapter 13-06 would require a complete overhaul and Engrossed HB 1038 more directly and effectively addresses the debt settlement issues through both a regulatory and enforcement scheme.

I have attached, for sample purposes, four consumer complaints that are not of particular or unique importance and demonstrate the nature of complaints by North Dakota consumers. One consumer paid almost $2,900 to the debt settlement company. Between May and June 2010 that sum was withdrawn from her bank account. About $2,600 was paid to the debt settlement company and $240 was retained for future negotiating. The consumer's first three months of payments went directly to the debt settlement company. That entity told her to quit paying her credit card bills. Shortly after, she started receiving constant daily collection calls. She alleges the entity did nothing to assist her. In June she was sued by the credit card company on a $24,000 obligation. Ultimately she retained an attorney and that particular debt was settled for $12,000. Another consumer maintains she paid a debt settlement company $7,100 between May and November 2010 when she filed the complaint. The consumer complained the entity intended to keep about half of the $7,100 and had done nothing for the money. The third consumer paid $2,500, believed the debt settlement company did nothing to resolve her debt and was very dissatisfied. The fourth consumer paid hundreds of dollars, settled his debt himself, and was very upset with the company and their treatment of him.

We have been advised by an individual very involved with North Dakota bankruptcy filings that many bankruptcy debtors have unsuccessfully used the services of debt settlement companies, and after paying thousands of dollars for bad advice to stop paying their debts, ultimately turn to bankruptcy to try and solve financial problems that have substantially worsened during the debt settlement relationships.

A coordinated, structured two-pronged licensing and enforcement statutory scheme appears to be the best approach to regulate the industry and ensure consumers receive the services they were promised for reasonable fees. Fees under chapter 13-07, the consumer credit counseling statutes, have been regulated for years. In our experience in enforcing chapter 13-07 it is not the nonprofit entities that will take advantage of consumers in financial trouble. The victims of debt settlement fraud are well intentioned consumers who want to avoid bankruptcies and are vulnerable to sales pitches that falsely promise results.

The fees for debt settlement often are heavily front end loaded. Many of the entities never deliver results. Consumers become very frustrated when they are sued after they are advised to stop paying their obligations and it is conveniently the consumer's fault for failing to follow through with a plan that isn't working. The debt settlement entity keeps the consumers' advance payments. Only the debt settlement entities are satisfied with that arrangement.

The Attorney General encourages you to review, if time permits, the attached GAO report, "Debt Settlement. Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers." The case studies and undercover calls are very informative of the industry abuses. I won't separately detail the findings but those findings are very enlightening. The Association of Settlement Companies ("TASC"), a national association of settlement companies, will be submitting its comments to the committee today, through the appearance of Mr. Wesley Young. Commissioner Entringer and I have had some pleasant and productive discussions with Mr. Young on the proposed legislation. In fact, we agreed to some amendments in the House and we have now agreed to some proposed amendments that I will be submitting to this committee today. I believe we have reached an agreement, through joint compromise, on all aspects of this legislation, except the fees that may be charged by debt settlement companies.

The legislation originally proposed the debt settlement fees would not exceed 15% of the savings. Different states allow different fees. Some states allow fees based upon a percentage of the enrolled debt. Some states allow a choice between a percentage on the enrolled debt or the savings. Illinois allows 15% of the savings. Minnesota law allows debt settlement companies to charge 30% of the savings. The House raised the fees to 30% of the savings. The Interim Committee's original legislation contained considerable thought or discussion about the appropriate fee structure in proposing the 15% of savings. Attorney General Stenehjem's preference for changes by the House was 20% of the savings and respectfully asks this committee to hold the line on any further fee increases. The Attorney General does not want North Dakota to have the distinction of leading the nation in terms of the highest allowable fees for debt settlement companies. If a debt settlement entity saves a consumer $5,000 on a $20,000 credit card debt, the 30% fee of $1,500 is probably commensurate with the results. If the entity saves the consumer $10,000, the fee of $3,000 is plenty considering the consumer will have paid a total of $13,000. Debt settlement companies will advocate higher fees and compare their fees to the fees nonprofit entities charge for consumer credit counseling fees. For many reasons it is an "apples to oranges" comparison. One significant reason is the legitimacy, reputation and credibility of consumer credit counseling services versus debt settlement entities. The Attorney General doesn't

receive complaints against nonprofit consumer credit counseling agencies and isn't investigating or suing those entities as the result of fraud or unsatisfied consumers.

I'm certain there are legitimate debt settlement companies. TASC will present that perspective and explain that it sets standards for its members. When considering TASC's comments the Attorney General directs you to the GAO report which notes that TASC's written standards for member companies, requiring strict adherence for members, explicitly state "No Members shall direct a potential or current client to stop making monthly payments to their creditors." Yet, the undercover investigation revealed a number of TASC members advised the undercover callers to stop making their monthly payments. We believe you should consider this information in deciding the effectiveness of TASC's written standards for its members. The significance is that despite TASC's good intentions, it can't control all of its members and has not control over unscrupulous debt settlement entities that are not TASC members. The Attorney General is not suggesting that TASC and its members are not interesting in addressing debt settlement and industry abuses. TASC appears interested in promoting reasonable regulation and legitimate debt settlement entities and the Attorney General appreciates that cooperation.

There is an important balance in regulating relationships between consumers and businesses, and the Attorney General does not interfere with those relationships, absent compelling circumstances revealing fraud and abuse. Unfortunately, the debt settlement/debt reduction industry, however, is plagued with fraud and abuse and the regulatory balance here is grossly imbalanced to the serious detriment or disadvantage of North Dakota consumers. This legislation will restore that balance and allow legitimate debt settlement entities to conduct business in North Dakota and while protecting consumers from fraudulent and abusive conduct. We believe that with this new legislation the Department of Financial Institutions and the Attorney General will be able to effectively regulate this industry.

The Attorney General has some proposed amendments for the committee's consideration and I will attempt to explain those amendments. In addition, I will try to answer any questions.

The Attorney General respectfully requests the Senate Industry, Business and Labor Committee give Engrossed House Bill 1308 a "do pass" recommendation.

Thank you.

Proposed Senate Amendments to Engrossed HB1038
Senate Industry, Business & Labor Committee
March 8, 2011

Page 7, line 23, insert a colon after "directors" and remove "have not been"

Page 7, remove lines 24 through 26 and replace with:

(1) Have not been convicted of a felony;
(2) Have not been convicted of a misdemeanor involving dishonesty or untrustworthiness; and
(3) Have not been the subject of an adverse finding or adjudication in a license disciplinary or other administrative proceeding concerning allegations involving dishonesty or untrustworthiness.

Page 8, line 3, after "commissioner" insert "unless the commissioner determines the violation is not material"

Page 16, line 25, replace "void" with "voidable"

Page 25, line 4 replace "**Voidable**" with "**Void**"

Page 25, line 6 replace "individual may void the contract " with "contract is void"

Page 25, line 7, after "and" insert "the individual may"

Page 25, line 9, replace "voidable by the individual" with "void"

Page 25, line 10, replace "If an individual voids a contract" with "For a void contract"

Renumber accordingly.

CONSUMER COMPLAINT

OFFICE OF ATTORNEY GENERAL - CONSUMER PROTECTION DIVISION

SFN 7418 (Rev.11-2009)

For [redacted]

main office → [redacted]

of Person or Firm Complained Against: gal Helpers Debt Resolution LLC	Your Name: [redacted]
Address: [redacted]	Address: [redacted]
City: [redacted] State: CA Zip Code: [redacted]	City: Bismarck State: ND Zip Code: 58501
Telephone Number (Include Area Code): [redacted]	Home Telephone Number: [redacted] Work Telephone Number:
Cell Phone Number: Fax Number: [redacted]	Cell Phone Number: Age*: 61 Sex*: F

*Optional - (For Statistical & Enforcement Purposes Only.)

When filling out this form, please keep in mind that a copy of this complaint form may be forwarded to the party or firm complained against.
(PLEASE DO NOT COMPLETE FORM IN PENCIL)

Date of Transaction: 2-4-10	Product or Service Involved: Credit card debt Resolution
Amount of money you have already paid: $ 2,864.17	Amount of money person or firm says you still owe: $ 2,621.79 retained

How would you like to have your complaint resolved?
refunded 242.38 received 7/23/10
I would like to receive the money CDS retained because they never contacted the creditor by phone or mail. See Richard Baer's correspondense

FIRST CONTACT BETWEEN YOU AND PERSON OR FIRM *(CHECK THE MOST APPROPRIATE ANSWER)*	WHERE DID THE TRANSACTION TAKE PLACE? *(CHECK THE MOST APPROPRIATE ANSWER)*
☐ I contacted or went to the firm's regular place of business.	☐ At the firm's place of business.
☐ The firm contacted me in person at my home or place of work.	☐ At my home.
☐ I contacted or went to the firm's temporary place of business.	☐ Away from the firm's place of business (for example, at your place of employment, etc.).
☐ I received a telephone call from the firm.	☒ Over the telephone.
☐ I responded to a radio/TV ad.	☐ By mail.
☐ I responded to a written advertisement.	☐ There was no transaction.
☒ I received information in the mail from the firm.	☐ On the Internet.
☐ Yellow pages of telephone book.	
☐ On the Internet.	

Did you sign a contract or written agreement? ☐ NO ☒ YES -- If "YES" attach a copy

Did you receive a contract or a receipt? ☐ NO ☒ YES -- If "YES" attach a copy

Name of person(s) with whom you dealt, if any.
Jennifer Carona CDA (866) 328-9316
Albert Navarani 866-528-9169

Have you contacted a private attorney or another agency? ☐ NO ☒ YES -- If "YES", Identify below.
Richard Baer

urt action pending or completed? ☐ NO ☒ YES -- If "YES", what was the result?

CONTINUE WITH EXPLANATION ON OTHER SIDE OF FORM

102971

CONSUMER COMPLAINT - CONTINUED SFN 7418 (Rev. 11-2009)

EXPLANATION OF TRANSACTION

Explain the facts and circumstances of the fraud, deception or misrepresentation fully and specifically. If you need more room, use additional sheets of paper and attach to Complaint.

My complaint is I paid LHDS $2,864.17. They refunded $242.48. The company didn't represent my interests in my credit debt resolution no contact or correspondence was made by LHDS to my creditor. Eventually I received a lawsuit from one creditor and increasing credit calls from both creditors I hired my own attorney I've settled with one creditor and I settled with the second creditor. Nether creditors recieved documentation that I was being represented by LHDS. So... a letter dated 8/3/10 from LHDS from Jeffrey S. Hyslip is incorrect retainer fee of $2,621.79 will not earned because their attorney didn't have any calls from my creditor. Richard Baer and I both asked for proof of correspondence creditors nether one of us recieved a response. LHDS never took action on this to creditors. I would like to receive what I paid in refunded.

(cont.)

The statements contained in this complaint are true and accurate to the best of my knowledge. I wish to file a complaint against the part named. I understand the Consumer Protection and Antitrust Division is not permitted to engage in the private practice of law, and therefore is not my lawyer or legal representative. I am, however, filing this complaint to notify the Consumer Protection and Antitrust Division of the activities of the person/firm about which I have a complaint.

(Complaint forms not signed will be returned)

Date	Signature

ATTACH THE FOLLOWING TO THE COMPLAINT

1 - Copy of any contract or written agreement.
2 - Copy of any receipt.
3 - Copy of any cancelled check or other proof of payment.
4 - Copy of any written advertisement.
5 - Copy of any correspondence.
6 - Copy of any other related documents.

SEND TO:

CONSUMER PROTECTION DIVISION
Office of Attorney General
Gateway Professional Center
1050 E Interstate Ave Suite 200
Bismarck ND 58503-6574

Thank you for taking the time to complete this Consumer Complaint form. The information you have provided will help us in our efforts to resolve your consumer problem.

Office of Attorney General
RECEIVED
SEP 10 2010
Consumer Protection
Bismarck North Dakota

Wayne Stenehjem
ATTORNEY GENERAL

Feb. 2010 I was current with both creditors but the interest rate and high debt was difficult to make payment. Both cards were not in use trying to payoff.

On Feb. 200 I contacted, LHDR and discussed the high interest rate on two credit cards. After investigating the company I sign on. LHDR told me to quit paying my credit cards that they would contact my creditors to notify them LHDR was representing me to dissolve the debt. I was told by LHDR not to talk with creditor or make any payments. With-in 3 months collection calls started 2-20 times a day. I notified LHDR regarding all the calls and faxed all correspondence received from creditors they said they would handle it. On May 2010 received a phone call from attorney [redacted] from Fargo. stating he was hired by LHDR to represent clients in N.D. He left me a message on my phone if I had any concerns to call him. (I still have message on my phone) June 2010 received a lawsuit from one of my creditors. At that time I faxed the lawsuit to [redacted] with my concerns. He was surprised that I received a lawsuit also that I was receiving statement and credit call. advised me to contact LHDR all futher calls to [redacted] were never returned.

[redacted]

called LHDR explained the lawsuit was transfered to the Arbitration department. Intact person Albert Via varani. He was no help. I asked how do I respond to this lawsuit in short he said its not their problem. I asked if he had contacted my creditors regarding my debt his responds was "NO" because there was no money in my account. I asked for proof that my creditors were notified that LHDR was representing me I never received any correspondence This is when Richard Baer was notified. Mr. Baer concluded letter dated 6/21/10 no one represented my interests in the above matter, bottom line I paid hundreds of dollar for nothing through Richard Baer we settled with one creditor and other creditor I took care of debt. account at LHDR closed they refunded $242.48 retaining $2,621.79 for what representation. would like a much Higher amount refund than just 242.48

Thank you!

[redacted]

Bismarck, N.D.
58501

CONSUMER COMPLAINT
OFFICE OF ATTORNEY GENERAL - CONSUMER PROTECTION DIVISION
SFN 7418 (Rev.11-2009)

Name of Person or Firm Complained Against	
npact DS	
Address [redacted]	
City [redacted]	State AZ / Zip Code [redacted]
Telephone Number (Include Area Code) [redacted]	
Cell Phone Number [redacted]	Fax Number

Your Name [redacted]	
Address [redacted]	
City Mandan	State ND / Zip Code 58554
Home Telephone Number [redacted]	Work Telephone Number [redacted]
Cell Phone Number [redacted]	Age * 35 / Sex * F

*Optional - (For Statistical & Enforcement Purposes Only.)

When filling out this form, please keep in mind that a copy of this complaint form may be forwarded to the party or firm complained against.
(PLEASE DO NOT COMPLETE FORM IN PENCIL)

Date of Transaction	Product or Service Involved
May/2010	Debt Settlement Services
Amount of money you have already paid: $ 7,119.52	Amount of money person or firm says you still owe: $ —

How would you like to have your complaint resolved?
I am getting back $3786.98. They say I owe $3433.41 in monthly fees. I was supposed to get updates monthly and have not gotten a thing. Totally Misled by Micha @ Company.

FIRST CONTACT BETWEEN YOU AND PERSON OR FIRM
(CHECK THE MOST APPROPRIATE ANSWER)

- [ ] I contacted or went to the firm's regular place of business.
- [ ] The firm contacted me in person at my home or place of work.
- [ ] I contacted or went to the firm's temporary place of business.
- [ ] I received a telephone call from the firm.
- [ ] I responded to a radio/TV ad.
- [ ] I responded to a written advertisement.
- [x] I received information in the mail from the firm.
- [ ] Yellow pages of telephone book.
- [ ] On the Internet.

WHERE DID THE TRANSACTION TAKE PLACE?
(CHECK THE MOST APPROPRIATE ANSWER)

- [ ] At the firm's place of business.
- [ ] At my home.
- [ ] Away from the firm's place of business (for example, at your place of employment, etc.).
- [x] Over the telephone.
- [x] By mail.
- [ ] There was no transaction.
- [ ] On the Internet.

Did you sign a contract or written agreement? [ ] NO [x] YES – If "YES" attach a copy — I don't have copy yet.

Did you receive a contract or a receipt? [x] NO [ ] YES – If "YES" attach a copy

Name of person(s) with whom you dealt, if any.
Micah Hey - Enrollment Rep. (800) 581-6020

Have you contacted a private attorney or another agency? [x] NO [ ] YES – If "YES", identify below.

Court action pending or completed? [x] NO [ ] YES – If "YES", what was the result?

CONTINUE WITH EXPLANATION ON OTHER SIDE OF FORM

104030

CONSUMER COMPLAINT - CONTINUED SFN 7418 (Rev. 11-2009)

EXPLANATION OF TRANSACTION

Explain the facts and circumstances of the fraud, deception or misrepresentation fully and specifically. If you need more room, use additional sheets of paper and attach to Complaint.

Secure Account Services (3rd Party) They held the trust account (All Funds) ph # (877) 505-5510
Impact Debt services - quote 350.38/month
=$51/month
=$49/month

I did not receive ANY monthly statement as promised.
Also, new law states that consumers will get all monies returned including fees if they drop program??

The statements contained in this complaint are true and accurate to the best of my knowledge. I wish to file a complaint against the part named. I understand the Consumer Protection and Antitrust Division is not permitted to engage in the private practice of law, and therefore is not my lawyer or legal representative. I am, however, filing this complaint to notify the Consumer Protection and Antitrust Division of the activities of the person/firm about which I have a complaint.
(Complaint forms not signed will be returned)

Date	Signature

ATTACH THE FOLLOWING TO THE COMPLAINT

1 - Copy of any contract or written agreement.
2 - Copy of any receipt.
3 - Copy of any cancelled check or other proof of payment.
4 - Copy of any written advertisement.
5 - Copy of any correspondence.
6 - Copy of any other related documents.

Office of Attorney General
RECEIVED
NOV 19 2010
Consumer Protection
Bismarck North Dakota

MAIL TO:
CONSUMER PROTECTION DIVISION
Office of Attorney General
Gateway Professional Center
1050 E Interstate Ave Suite 200
Bismarck ND 58503-5574

Thank you for taking the time to complete this Consumer Complaint form. The information you have provided will help us in our efforts to resolve your consumer problem.

Wayne Stenehjem
ATTORNEY GENERAL

CONSUMER COMPLAINT
OFFICE OF ATTORNEY GENERAL - CONSUMER PROTECTION DIVISION
SFN 7418 (Rev.11-2009)

Name of Person or Firm Complained Against		
Better Financial Freedom		
Address		
City	State: CA	Zip Code
Telephone Number (Include Area Code)		
Cell Phone Number	Fax Number	

Your Name		
Address		
City	State: ND	Zip Code
Home Telephone Number	Work Telephone Number	
Cell Phone Number	Age *	Sex *

*Optional - (For Statistical & Enforcement Purposes Only.)

When filling out this form, please keep in mind that a copy of this complaint form may be forwarded to the party or firm complained against.
(PLEASE DO NOT COMPLETE FORM IN PENCIL)

Date of Transaction	Product or Service Involved
Start June 2010	debt consolidation
Amount of money you have already paid: $ 2464.69	Amount of money person or firm says you still owe: $

How would you like to have your complaint resolved?
Recover money that was taken from my Acct.

FIRST CONTACT BETWEEN YOU AND PERSON OR FIRM *(CHECK THE MOST APPROPRIATE ANSWER)*

- ☐ I contacted or went to the firm's regular place of business.
- ☐ The firm contacted me in person at my home or place of work.
- ☐ I contacted or went to the firm's temporary place of business.
- ☐ I received a telephone call from the firm.
- ☐ I responded to a radio/TV ad.
- ☐ I responded to a written advertisement.
- ☒ I received information in the mail from the firm.
- ☐ Yellow pages of telephone book.
- ☐ On the Internet.

WHERE DID THE TRANSACTION TAKE PLACE? *(CHECK THE MOST APPROPRIATE ANSWER)*

- ☐ At the firm's place of business.
- ☐ At my home.
- ☐ Away from the firm's place of business (for example, at your place of employment, etc.).
- ☐ Over the telephone.
- ☒ By mail.
- ☐ There was no transaction.
- ☐ On the Internet.

Did you sign a contract or written agreement?	☐ NO	☒ YES -- If "YES" attach a copy
Did you receive a contract or a receipt?	☐ NO	☐ YES -- If "YES" attach a copy

Name of person(s) with whom you dealt, if any.
Mike Allen - Johnny Martin

Have you contacted a private attorney or another agency?	☒ NO	☐ YES -- If "YES", identify below.
Is court action pending or completed?	☒ NO	☐ YES -- If "YES", what was the result?

CONTINUE WITH EXPLANATION ON OTHER SIDE OF FORM

110070

CONSUMER COMPLAINT - CONTINUED SFN 7418 (Rev. 11 -2009)

EXPLANATION OF TRANSACTION

Explain the facts and circumstances of the fraud, deception or misrepresentation fully and specifically.
If you need more room, use additional sheets of paper and attach to Complaint.

I received the information in the mail and thought it would be a good idea to consolidate my unsecured debt and just have one payment. I called them and talked to Johnny Martin and got everything set up. After the set up it was Mike Allen that I was talking to.

I then took off some of my accounts and just left 3 credit cards for them to pay thus making the payment go from $654.27 to the $501.88. There has been 3 payments of the $654.27 taken out and one of the $501.88 for a total of $2464.69.

They have paid NOTHING on any of the credit cards that I included in the consolidation.

Being nothing has been paid to the companies, I feel I should be refunded the total amount of what I paid in.

By them not paying, one of the credit card companies have put a judgment on me. I am working with all three credit card companies and have a work out with them. But this has affected my credit terribly. It should have never gotten that far if they would have made the payments when I was paying them.

The statement contained in this complaint are true and accurate to the best of my knowledge. I wish to file a complaint against the party named. I understand the Consumer Protection and Antitrust Division is not permitted to engage in the private practice of law, and therefore is not my lawyer or legal representative. I am, however, filing this complaint to notify the Consumer Protection Division of activities of the person/firm about which I have a complaint. **(Complaint forms not signed will be returned)**

Date 1-4-11 | Signature Becky Peterson

ATTACH THE FOLLOWING TO THE COMPLAINT

1 - Copy of any contract or written agreement.
2 - Copy of any receipt.
3 - Copy of any cancelled check or other proof of payment.
4 - Copy of any written advertisement.
5 - Copy of any correspondence.
6 - Copy of any other related documents.

Office of Attorney General
RECEIVED
JAN 06 2011
Consumer Protection
Bismarck North Dakota

Thank you for taking the time to complete this Consumer Complaint form. The information you have provided will help us in our efforts to resolve your consumer problem.

Wayne Stenehjem
ATTORNEY GENERAL

SEND TO:
CONSUMER PROTECTION DIVISION
Office of Attorney General
Gateway Professional Center
1050 E Interstate Ave Suite 200
Bismarck ND 58503-5574

Better Financial Freedom
Mike Allen
fax 888-688-2154

12-28-2010

I Am cancelling doing business with you. You have NOT taken care of any of the credit card obligations so by not doing Anything I feel you should be refunding a check in the Amount of $2464.69 to me in the next 30days. Because of the way my account was handled I will be getting someone to check into your company and let others know the service I received.

I will be awaiting my payback —

Becky Peterson
4678 108 Ave SE
Litchville, ND 58461

CONSUMER COMP .INT

OFFICE OF ATTORNEY GENERAL - CONSUMER PROTECTION DIVISION

SFN 7418 (Rev.11-2009)

Name of Person or Firm Complained Against		
[redacted] Organization Management Group		
Address [redacted]		
City [redacted]	State NJ	Zip Code [redacted]
Telephone Number (Include Area Code) [redacted]		
Phone Number (Cell) [redacted]	Fax Number [redacted]	

Your Name [redacted]		
Address [redacted]		
City [redacted]	State ND	Zip Code [redacted]
Home Telephone Number [redacted]	Work Telephone Number [redacted]	
Cell Phone Number	Age * [redacted]	Sex * [redacted]

*Optional - (For Statistical & Enforcement Purposes Only.)

When filling out this form, please keep in mind that a copy of this complaint form may be forwarded to the party or firm complained against.

(PLEASE DO NOT COMPLETE FORM IN PENCIL)

Date of Transaction	Product or Service Involved

Amount of money you have already paid: $	Amount of money person or firm says you still owe: $

How would you like to have your complaint resolved?

FIRST CONTACT BETWEEN YOU AND PERSON OR FIRM *(CHECK THE MOST APPROPRIATE ANSWER)*	WHERE DID THE TRANSACTION TAKE PLACE? *(CHECK THE MOST APPROPRIATE ANSWER)*
[X] I contacted or went to the firm's regular place of business.	[ ] At the firm's place of business.
[ ] The firm contacted me in person at my home or place of work.	[ ] At my home.
[ ] I contacted or went to the firm's temporary place of business.	[ ] Away from the firm's place of business (for example, at your place of employment, etc.).
[ ] I received a telephone call from the firm.	[X] Over the telephone.
[X] I responded to a radio/TV ad.	[ ] By mail.
[ ] I responded to a written advertisement.	[ ] There was no transaction.
[ ] I received information in the mail from the firm.	[X] On the Internet.
[ ] Yellow pages of telephone book.	
[ ] On the Internet.	

Did you sign a contract or written agreement?	[ ] NO	[X] YES -- If "YES" attach a copy
Did you receive a contract or a receipt?	[X] NO	[ ] YES -- If "YES" attach a copy
Name of person(s) with whom you dealt, if any.		
Have you contacted a private attorney or another agency?	[X] NO	[ ] YES -- If "YES", identify below.
Is court action pending or completed?	[X] NO	[ ] YES -- If "YES", what was the result?

CONTINUE WITH EXPLANATION ON OTHER SIDE OF FORM

110228

CONSUMER COMPLAINT - CONTINUED SFN 7418 (Rev. 11-2009)

EXPLANATION OF TRANSACTION

Explain the facts and circumstances of the fraud, deception or misrepresentation fully and specifically. If you need more room, use additional sheets of paper and attach to Complaint.

I contacted RMG after hearing an ad on the radio. My initial contact was Terry, who explained the program. She then emailed me the contract which I read and signed. I was then contacted by Eric, who I believe to be the person in charge of the company. From then on all phone conversations and follow ups were done by Adam. I soon became very frustrated with RMG because of repeated and harassing calls to me from Chase credit card company, which I expected RMG to handle. Repeated calls to RMG with voice messages left, went unanswered. I started wondering about the legitimacy of RMG. During a telephone conversation in late Nov. Adam told me that the credit card company probably would not negotiate with them (RMG). This remark left me wondering as to why I needed their services. When Chase offered to settle for $4,397, I accepted. My Mother loaned me the amount. When I contacted RMG to let them know I had settled with Chase - things got ugly. Greg tried to intimidate and said among other things, that he didn't know that I had access to other funds. I asked him to refund the remaining money in my Global Client account, to which he responded their fees come to all that was in the account plus more that I owed them. I started crying and hung up - My next conversation was with Adam -

The statements contained in this complaint are true and accurate to the best of my knowledge. I wish to file a complaint against the part named. I understand the Conusmer Protection and Antitrust Division is not permitted to engage in the private practice of law, and therefore is not my lawyer or legal representative. I am, however, filing this complaint to notify the Consumer Protection and Antitrust Division of the activities of the person/firm about which I have a complaint.

(Complaint forms not signed will be returned)

Date	Signature
2-3-2011	Bonell O'Brien

ATTACH THE FOLLOWING TO THE COMPLAINT

1 - Copy of any contract or written agreement.
2 - Copy of any receipt.
3 - Copy of any cancelled check or other proof of payment.
4 - Copy of any written advertisement.
5 - Copy of any correspondence.
6 - Copy of any other related document.

Office of Attorney General
RECEIVED
FEB 14 2011
Consumer Protection
Bismarck North Dakota

Thank you for taking the time to complete this Consumer Complaint form. The information you have provided will help us in our efforts to resolve your consumer problem.

SEND TO:

CONSUMER PROTECTION DIVISION
Office of Attorney General
Gateway Professional Center
1050 E Interstate Ave Suite 200
Bismarck ND 58503-5574

Wayne Stenehjem
ATTORNEY GENERAL

Continued -

His response was that they would refund $13.05 (which they did) no more and that I should be very happy to have settled at $16,000 debt for $6,987 ($4,391 to Chase and $2590 to RMG)

I truly believe that this company RMG defrauded me.

When I read the contract I believe it to state 25% of the saved money in the Global Client account goes to RMG as well as the $800 starting fee. No where does it state that all the money goes to RMG. I was planning on paying my mother with these funds.

Thank you

Global Client Solutions LLC
4500 S. 129th East Ave, Ste 177
Tulsa, Oklahoma 74134

Global Client Solutions LLC

Account #: 6036335099593446

RETURN SERVICE REQUESTED

February 03, 2011

Bonell O'Brien
410 4th Ave NW

Belfield, ND 58622

ACCOUNT ACTIVITY STATEMENT (THIS IS NOT A BILL)

DATE	DESCRIPTION	TYPE	AMOUNT	BALANCE
12/01/2010	Account Maintenance Fee - 11/10	Transaction Fee	-9.85	1,351.90
12/17/2010	monthy draft - 12/15/10	Deposit	370.00	1,721.90
01/03/2011	Account Maintenance Fee - 12/10	Transaction Fee	-9.85	1,712.05
01/14/2011	Withdrawal	Withdrawal	-212.05	1,500.00
14/2011	25% 11603=2900.75 -pro fee of 800 -600.75 discount - 01/14/11	Customer Fee	-1,500.00	0.00

Account Inquiries (800) 398-7191

Correspondence Address-
4500 S. 129th East Ave, Ste 177
Tulsa, Oklahoma 74134

Payment Address-
PO Box 690870
Tulsa, OK 74169-0870

Please note our new correspondence address. If you have any questions or need assistance you may contact us at the phone number referenced above or by email, customersupport@globalclientsolutions.com. Please note that the balances in your account are held in an FDIC-insured Custodial account at an FDIC-insured bank. The balance shown may not be the actual balance of your account due to pending transactions not yet processed.

Please see the reverse side for Error Resolution Procedures

03-08-2011

TESTIMONY FOR ENGROSSED HOUSE BILL NO. 1038

Senate Industry Business and Labor Committee

Testimony of Robert J. Entringer, Commissioner, Department of Financial Institutions relating to the revised fiscal note for House Bill No. 1038

Chairman Klein and members of the Committee, I am Bob Entringer, Commissioner for the Department of Financial Institutions. I am here today to testify in regard to the revised Fiscal Note provided by the Department of Financial Institutions for HB 1038 related to the regulation of debt-settlement providers.

FISCAL NOTE

Mr. Chairman, as you are aware the Fiscal Note submitted by the Department of Financial Institutions projects Revenue of $85,950 in the 2011-2013 biennium. The projected revenue is based on an estimate of 35 applications for licensure at an annual licensing fee of $400 and a one-time investigation fee of $400 per licensee. In addition we are anticipating conducting an examination of at least 6 licensees in the first biennium; included in the revenue are examination fees which recoup the cost of examiner's salary and benefits as well as expenses associated with the examination such as transportation, lodging, meals.

The expenditures for the biennium are estimated to be $173,907. Primarily, the expenditures are $85,650 to update our Financial Institutions Records Management system which is our database upon which we record pertinent information regarding all of our regulated entities. This estimate is based upon: 1) the current costs from ITD for the upcoming biennium, and 2) we estimated the number of programming hours based on a similar update from a prior legislative session when our Department added a new license type. In addition we are projecting On-Line Application programming costs of $30,000; this is to upgrade our website to allow this new license type to apply for and renew license applications electronically. We based our estimate on the current ITD programming charges using an estimate of 300 hours to develop the programming. Mr. Chairman, we did not have time to request a formal estimate from ITD for the programming so we based our estimate on previous experience.

Additional operating costs include travel of $24,750, which will be recouped through examination fees; printing of $2,200, which includes forms for paper applications; IT Data Processing of $17,160, which is the ongoing IT cost for our database; professional development of $3,200, which is for training to examine and regulate these entities and includes some travel costs; professional services of $7,700, which is an estimate of

legal expenses to the Attorney General's office and again is based on previous experience with adding a new license type; and operating fees and services which is primarily OMB costs.

The revenue for the 2013-2015 biennium is based on a projected increase in licenses of 20 and an estimate of 14 examinations conducted in the biennium. The major increase in expenditures is in travel which is related to the increase in the number of examinations conducted and, again these costs are recouped in examination fees.

Mr. Chairman and members of the Committee thank you for your time and I would be happy to answer any questions you may have.