

By: Senator(s) Harden

To: Business and  
Financial  
Institutions

## SENATE BILL NO. 2773

1 AN ACT TO CREATE THE "MISSISSIPPI CONSUMER COLLECTION  
2 PRACTICES ACT"; TO DEFINE CERTAIN TERMS; TO REQUIRE REGISTRATION  
3 OF CONSUMER COLLECTION AGENCIES ENGAGING IN BUSINESS IN  
4 MISSISSIPPI; TO PROHIBIT CERTAIN PRACTICES BY CONSUMER COLLECTION  
5 AGENCIES WHEN COLLECTING CONSUMER DEBTS; TO PRESCRIBE CERTAIN  
6 DUTIES OF THE OFFICE OF CONSUMER PROTECTION WITHIN THE OFFICE OF  
7 THE ATTORNEY GENERAL AND THE DEPARTMENT OF BANKING AND CONSUMER  
8 FINANCE IN ENFORCING THE ACT; TO PROVIDE FOR ADMINISTRATIVE AND  
9 CIVIL REMEDIES FOR VIOLATIONS OF THE ACT; AND FOR RELATED  
10 PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF  
11 MISSISSIPPI:

12  
13 SECTION 1. This act may be cited as the "Mississippi  
14 Consumer Collection Practices Act."

15 SECTION 2. The following terms shall, unless the context  
16 otherwise indicates, have the following meanings for the purpose  
17 of this act:

18 (a) "Debt" or "consumer debt" means any obligation or  
19 alleged obligation of a consumer to pay money arising out of a  
20 transaction in which the money, property, insurance or services  
21 which are the subject of the transaction are primarily for  
22 personal, family or household purposes, whether or not such  
23 obligation has been reduced to judgment.

24 (b) "Debtor" or "consumer" means any natural person  
25 obligated or allegedly obligated to pay any debt.

26 (c) "Creditor" means any person who offers or extends  
27 credit creating a debt or to whom a debt is owed, but does not  
28 include any person to the extent that they receive an assignment  
29 or transfer of a debt in default solely for the purpose of  
30 facilitating collection of such debt for another.

31 (d) "Communication" means the conveying of information

32 regarding a debt directly or indirectly to any person through any  
33 medium.

34 (e) "Department" means the Department of Banking and  
35 Consumer Finance.

36 (f) "Debt collector" means any person who uses any  
37 instrumentality of commerce within this state, whether initiated  
38 from within or outside this state, in any business the principal  
39 purpose of which is the collection of debts, or who regularly  
40 collects or attempts to collect, directly or indirectly, debts  
41 owed or due or asserted to be owed or due another. The term "debt  
42 collector" includes any creditor who, in the process of collecting  
43 his own debts, uses any name other than his own which would  
44 indicate that a third person is collecting or attempting to  
45 collect such debts. The term does not include:

46 (i) Any officer or employee of a creditor while,  
47 in the name of the creditor, collecting debts for such creditor;

48 (ii) Any person while acting as a debt collector  
49 for another person, both of whom are related by common ownership  
50 or affiliated by corporate control, if the person acting as a debt  
51 collector for persons to whom it is so related or affiliated and  
52 if the principal business of such persons is not the collection of  
53 debts;

54 (iii) Any officer or employee of any federal,  
55 state or local governmental body to the extent that collecting or  
56 attempting to collect any debt is in the performance of his  
57 official duties;

58 (iv) Any person while serving or attempting to  
59 serve legal process on any other person in connection with the  
60 judicial enforcement of any debt;

61 (v) Any not-for-profit organization which, at the  
62 request of consumers, performs bona fide consumer credit  
63 counseling and assists consumers in the liquidation of their debts  
64 by receiving payments from such consumers and distributing such

65 amounts to creditors; or

66 (vi) Any person collecting or attempting to  
67 collect any debt owed or due or asserted to be owed or due another  
68 to the extent that such activity is incidental to a bona fide  
69 fiduciary obligation or a bona fide escrow arrangement; concerns a  
70 debt which was originated by such person; concerns a debt which  
71 was not in default at the time it was obtained by such person; or  
72 concerns a debt obtained by such person as a secured party in a  
73 commercial credit transaction involving the creditor.

74 (g) "Consumer collection agency" means any debt  
75 collector or business entity engaged in the business of soliciting  
76 consumer debts for collection or of collecting consumer debts,  
77 which debt collector or business is not expressly exempted as set  
78 forth in Section 4 of this act.

79 (h) "Out-of-state consumer debt collector" means any  
80 person whose business activities in this state involve both  
81 collecting or attempting to collect consumer debt from debtors  
82 located in this state by means of interstate communication  
83 originating from outside this state and soliciting consumer debt  
84 accounts for collection from creditors who have a business  
85 presence in this state. For purposes of this subsection, a  
86 creditor has a business presence in this state if either the  
87 creditor or an affiliate or subsidiary of the creditor has an  
88 office in this state.

89 (i) "Federal Fair Debt Collection Practices Act" or  
90 "Federal Act" means the federal legislation regulating fair debt  
91 collection practices, as set forth in P.L. No. 95-109, as amended  
92 and published in 15 U.S.C. 1692 et seq.

93 SECTION 3. Nothing in this act shall be construed to limit  
94 or restrict the continued applicability of the Federal Fair Debt  
95 Collection Practices Act to consumer collection practices in this  
96 state. This act is in addition to the requirements and  
97 regulations of the Federal Act. In the event of any inconsistency

98 between any provision of this act and any provision of the Federal  
99 Act, the provision which is more protective of the consumer or  
100 debtor shall prevail.

101 SECTION 4. (1) After July 1, 1998, no person shall engage  
102 in business in this state as a consumer collection agency or  
103 continue to do business in this state as a consumer collection  
104 agency without first registering in accordance with this act, and  
105 thereafter maintaining a valid registration.

106 (2) Each consumer collection agency doing business in this  
107 state shall register with the department and renew such  
108 registration annually as set forth in Section 5 of this act.

109 (3) A prospective registrant shall be entitled to be  
110 registered when registration information is complete on its face  
111 and the applicable registration fee has been paid; however, the  
112 department may reject a registration submitted by a prospective  
113 registrant if the registrant or any principal of the registrant  
114 previously has held any professional license or state registration  
115 which was the subject of any suspension or revocation which has  
116 not been explained by the prospective registrant to the  
117 satisfaction of the department either in the registration  
118 information submitted initially or upon the subsequent written  
119 request of the department. In the event that an attempted  
120 registration is rejected by the department the prospective  
121 registrant shall be informed of the basis for rejection.

122 (4) This section shall not apply to:

123 (a) Any original creditor.

124 (b) Any member of The Mississippi Bar.

125 (c) Any financial institution authorized to do business  
126 in this state and any wholly owned subsidiary and affiliate  
127 thereof.

128 (d) Any licensed real estate broker.

129 (e) Any insurance company authorized to do business in  
130 this state.

131 (f) Any consumer finance company and any wholly owned  
132 subsidiary and affiliate thereof.

133 (g) Any out-of-state consumer debt collector who does  
134 not solicit consumer debt accounts for collection from credit  
135 grantors who have a business presence in this state.

136 (h) Any FDIC-insured institution or subsidiary or  
137 affiliate thereof.

138 (5) Any out-of-state consumer debt collector as defined in  
139 Section 2 of this act who is not exempt from registration by  
140 application of subsection (4) and who fails to register in  
141 accordance with this act shall be subject to an enforcement action  
142 by the state as specified in Section 7 of this act.

143 SECTION 5. Any person required to register as a consumer  
144 collection agency shall furnish to the department the registration  
145 fee and information as follows:

146 (1) The registrant shall pay to the department a  
147 registration fee in the amount of Two Hundred Dollars (\$200.00).

148 (2) Each registrant shall provide to the department the  
149 business name or trade name, the current mailing address, the  
150 current business location which constitutes its principal place of  
151 business and the full name of each individual who is a principal  
152 of the registrant. "Principal of a registrant" means the  
153 registrant's owners if a partnership or sole proprietorship,  
154 corporate officers, corporate directors other than directors of a  
155 not-for-profit corporation, and Mississippi resident agent if a  
156 corporate registrant. The registration information shall include  
157 a statement clearly identifying and explaining any occasion on  
158 which any professional license or state registration held by the  
159 registrant, by any principal of the registrant, or by any business  
160 entity in which any principal of the registrant was the owner of  
161 ten percent (10%) or more of such business, was the subject of any  
162 suspension or revocation.

163 (3) Renewal of registration shall be made between October 1

164 and December 31 of each year. There shall be no proration of the  
165 fee for any registration.

166 SECTION 6. Any registration made under this act based upon  
167 false identification or false information, or identification not  
168 current with respect to name, address, and business location, or  
169 other fact which is material to such registration, shall be void.

170 Any registration made and subsequently void under this section  
171 shall not be construed as creating any defense in any action by  
172 the department to impose any sanction for any violation of this  
173 act.

174 SECTION 7. The remedies of this section are cumulative to  
175 other sanctions and enforcement provisions of this act for any  
176 violation by an out-of-state consumer debt collector, as defined  
177 in Section 2 of this act.

178 (1) Any out-of-state consumer debt collector who collects or  
179 attempts to collect consumer debts in this state without first  
180 registering in accordance with this act shall be subject to an  
181 administrative fine not to exceed One Thousand Dollars (\$1,000.00)  
182 together with reasonable attorney's fees and court costs in any  
183 successful action by the state to collect such fines.

184 (2) Any person, whether or not exempt from registration  
185 under this act, who violates the provisions of Section 9 of this  
186 act shall be subject to sanctions for such violations the same as  
187 any other consumer debt collector, including imposition of an  
188 administrative fine. The registration of a duly registered  
189 out-of-state consumer debt collector shall be subject to  
190 revocation or suspension in the same manner as the registration of  
191 any other registrant under this act.

192 (3) In order to effectuate the provisions of this section  
193 and enforce the requirements of this act as it relates to  
194 out-of-state consumer debt collectors, the Attorney General is  
195 expressly authorized to initiate such action on behalf of the  
196 state as he deems appropriate in any court of competent

197 jurisdiction.

198       SECTION 8. This act does not prohibit the assignment, by a  
199 creditor, of the right to bill and collect a consumer debt.  
200 However, the assignee must give the debtor written notice of such  
201 assignment within thirty (30) days after the assignment. The  
202 assignee is a real party in interest and may bring an action in a  
203 court of competent jurisdiction to collect a debt that has been  
204 assigned to such assignee and is in default.

205       SECTION 9. In collecting consumer debts, no person shall:

206           (a) Simulate in any manner a law enforcement officer or  
207 a representative of any governmental agency;

208           (b) Use or threaten force or violence;

209           (c) Tell a debtor who disputes a consumer debt that he  
210 or any person employing him will disclose to another, orally or in  
211 writing, directly or indirectly, information affecting the  
212 debtor's reputation for credit worthiness without also informing  
213 the debtor that the existence of the dispute will also be  
214 disclosed as required by paragraph (f).

215           (d) Communicate or threaten to communicate with a  
216 debtor's employer prior to obtaining final judgment against the  
217 debtor, unless the debtor gives his permission in writing to  
218 contact his employer or acknowledges in writing the existence of  
219 the debt after the debt has been placed for collection, but this  
220 shall not prohibit a person from telling the debtor that his  
221 employer will be contacted if a final judgment is obtained;

222           (e) Disclose to a person other than the debtor or his  
223 family information affecting the debtor's reputation, whether or  
224 not for credit worthiness, with knowledge or reason to know that  
225 the other person does not have a legitimate business need for the  
226 information or that the information is false;

227           (f) Disclose information concerning the existence of a  
228 debt known to be reasonably disputed by the debtor without  
229 disclosing that fact. If a disclosure is made prior to such

230 reasonable dispute having been asserted and written notice is  
231 received from the debtor that any part of the debt is disputed and  
232 if such dispute is reasonable, the person who made the original  
233 disclosure shall reveal upon the request of the debtor within  
234 thirty (30) days the details of the dispute to each person to whom  
235 disclosure of the debt without notice of the dispute was made  
236 within the preceding ninety (90) days;

237 (g) Willfully communicate with the debtor or any member  
238 of his family with such frequency as can reasonably be expected to  
239 harass the debtor or his family, or willfully engage in other  
240 conduct which can reasonably be expected to abuse or harass the  
241 debtor or any member of his family;

242 (h) Use profane, obscene, vulgar, or willfully abusive  
243 language in communicating with the debtor or any member of his  
244 family;

245 (i) Claim, attempt, or threaten to enforce a debt when  
246 such person knows that the debt is not legitimate or assert the  
247 existence of some other legal right when such person knows that  
248 the right does not exist;

249 (j) Use a communication which simulates in any manner  
250 legal or judicial process or which gives the appearance of being  
251 authorized, issued or approved by a government, governmental  
252 agency, or attorney-at-law, when it is not;

253 (k) Communicate with a debtor under the guise of an  
254 attorney by using the stationery of an attorney or forms or  
255 instruments which only attorneys are authorized to prepare;

256 (l) Orally communicate with a debtor in such a manner  
257 as to give the false impression or appearance that such person is  
258 or is associated with an attorney;

259 (m) Advertise or threaten to advertise for sale any  
260 debt as a means to enforce payment except under court order or  
261 when acting as an assignee for the benefit of a creditor;

262 (n) Publish or post, threaten to publish or post, or



263 cause to be published or posted before the general public  
264 individual names or any list of names of debtors, commonly known  
265 as a deadbeat list, for the purpose of enforcing or attempting to  
266 enforce collection of consumer debts;

267 (o) Refuse to provide adequate identification of  
268 himself or his employer or other entity whom he represents when  
269 requested to do so by a debtor from whom he is collecting or  
270 attempting to collect a consumer debt;

271 (p) Mail any communication to a debtor in an envelope  
272 or postcard with words typed, written, or printed on the outside  
273 of the envelope or postcard calculated to embarrass the debtor.  
274 An example of this would be an envelope addressed to "Deadbeat,  
275 John Doe"; or

276 (q) Communicate with the debtor between the hours of 9  
277 p.m. and 8 a.m. in the debtor's time zone without the prior  
278 consent of the debtor.

279 SECTION 10. (1) The Office of Consumer Protection within  
280 the Office of Attorney General shall serve as the registry for  
281 receiving and maintaining records of inquiries, correspondence,  
282 and complaints from consumers concerning any and all persons who  
283 collect debts, including consumer collection agencies.

284 (2) The Office of Consumer Protection shall classify  
285 complaints by type and identify the number of written complaints  
286 against persons collecting or attempting to collect debts in this  
287 state, including credit grantors collecting their own debts, debt  
288 collectors generally, and, specifically, consumer collection  
289 agencies as distinguished from other persons who collect debts.

290 (3) The Office of Consumer Protection shall inform and  
291 furnish relevant information to the appropriate regulatory body of  
292 the state, or The Mississippi Bar in the case of attorneys, when  
293 any consumer debt collector exempt from registration under this  
294 act has been named in five (5) or more written consumer complaints  
295 alleging violations of Section 9 of this act within a twelve-month

296 period.

297 (4) The Office of Consumer Protection shall furnish a form  
298 to each complainant whose complaint concerns an alleged violation  
299 of Section 9 of this act by a consumer collection agency. Such  
300 form may be filed with the Department of Banking and Consumer  
301 Finance. The form shall identify the accused consumer collection  
302 agency and provide for the complainant's summary of the nature of  
303 the alleged violation and facts which allegedly support the  
304 complaint. The form shall include a provision for the complainant  
305 to state under oath before a notary public that the allegations  
306 therein made are true.

307 (5) Upon receipt of such sworn complaint, the department  
308 shall promptly furnish a copy of the sworn complaint to the  
309 accused consumer collection agency.

310 (6) The department shall investigate sworn complaints by  
311 direct written communication with the complainant and the affected  
312 consumer collection agency. In addition, the department shall  
313 attempt to resolve each sworn complaint and shall record the  
314 resolution of such complaints.

315 (7) Periodically, the department shall identify consumer  
316 collection agencies that have unresolved sworn consumer complaints  
317 from five (5) or more different consumers within a twelve-month  
318 period under the provisions of this act.

319 (8) The department shall issue a written warning notice to  
320 the accused consumer collection agency if the department is unable  
321 to resolve all such sworn complaints and fewer than five (5)  
322 unresolved complaints remain. Such notice shall include a  
323 statement that the warning may constitute evidence in any future  
324 investigation of similar complaints against that agency and in any  
325 future administrative determination of the imposition of other  
326 administrative remedies available to the department under this  
327 act.

328 (9) The department may issue a written reprimand when five

329 (5) or more such unresolved sworn complaints against a consumer  
330 collection agency collectively fall short of constituting apparent  
331 repeated violations that warrant more serious administrative  
332 sanctions. Such reprimand shall include a statement that the  
333 reprimand may constitute evidence in any future investigation of  
334 similar complaints against that agency and in any future  
335 administrative determination of the imposition of other  
336 administrative remedies available to the department.

337 (10) The department shall issue a Notice of Intent either to  
338 revoke or suspend the registration or to impose an administrative  
339 fine when the department preliminarily determines that repeated  
340 violations of Section 9 of this act by an accused registrant have  
341 occurred which would warrant more serious administrative sanctions  
342 being imposed under this act. The department shall advise each  
343 registrant of the right to require an administrative hearing prior  
344 to the agency's final action on the matter as authorized by  
345 Section 11 of this act.

346 (11) The department shall advise the Attorney General of any  
347 determination by the department of a violation of the requirements  
348 of this act by any consumer collection agency which is not  
349 registered as required by this act. The department shall furnish  
350 the Attorney General with the department's information concerning  
351 the alleged violations of such requirements.

352 SECTION 11. (1) The department may revoke or suspend the  
353 registration of any registrant under this act who has engaged in  
354 repeated violations which establish a clear pattern of abuse of  
355 prohibited collection practices under Section 9 of this act. The  
356 manner of giving notice and conducting a hearing shall be prepared  
357 in accordance with Mississippi Administrative Procedures Law,  
358 Section 25-43-1 et seq., Mississippi Code of 1972. The repeated  
359 violations of the law by one (1) employee shall not be grounds for  
360 revocation or suspension of the registration of the employing  
361 consumer collection agency, unless the employee is also the owner

362 of a majority interest in the collection agency.

363 (2) The registration of a registrant shall not be revoked or  
364 suspended if the registrant shows by a preponderance of the  
365 evidence that the violations were not intentional and resulted  
366 from bona fide error notwithstanding the maintenance of procedures  
367 reasonably adapted to avoid any such error.

368 (3) The department shall consider the number of complaints  
369 against the registrant in relation to the accused registrant's  
370 volume of business when determining whether suspension or  
371 revocation is the more appropriate sanction when circumstances  
372 warrant that one or the other should be imposed upon a registrant.

373 (4) The department shall impose suspension rather than  
374 revocation when circumstances warrant that one or the other should  
375 be imposed upon a registrant and the accused registrant  
376 demonstrates that the registrant has taken affirmative steps which  
377 can be expected to effectively eliminate the repeated violations  
378 and that the registrant's registration has never previously been  
379 suspended.

380 (5) The department may impose an administrative fine not to  
381 exceed One Thousand Dollars (\$1,000.00) against the offending  
382 registrant as a sanction for repeated violations of the provisions  
383 of Section 9 of this act when violations do not rise to the level  
384 of misconduct governed by subsection (1).

385 (6) Any administrative fine imposed under this act shall be  
386 payable to the department.

387 (7) An administrative action by the department to impose  
388 revocation, suspension or fine shall be brought within two (2)  
389 years after the date of the last violation upon which the action  
390 is founded.

391 (8) Nothing in this act shall be construed to preclude any  
392 person from pursuing remedies available under the Federal Fair  
393 Debt Collection Practices Act for any violation of such act,  
394 including specifically against any person who is exempt from the

395 registration provisions of this act.

396       SECTION 12. A debtor may bring a civil action against a  
397 person violating the provisions of Section 9 of this act in a  
398 court of competent jurisdiction of the county in which the alleged  
399 violator resides or has his principal place of business or in the  
400 county wherein the alleged violation occurred. Upon adverse  
401 adjudication, the defendant shall be liable for actual damages or  
402 Five Hundred Dollars (\$500.00), whichever is greater, together  
403 with court costs and reasonable attorney's fees incurred by the  
404 plaintiff. The court may, in its discretion, award punitive  
405 damages and may provide such equitable relief as it deems  
406 necessary or proper, including enjoining the defendant from  
407 further violations of this act. If the court finds that the suit  
408 fails to raise a justiciable issue of law or fact, the plaintiff  
409 shall be liable for court costs and reasonable attorney's fees  
410 incurred by the defendant.

411       SECTION 13. This act shall take effect and be in force from  
412 and after July 1, 1999.