

By: Harden

To: Business and
Financial
Institutions

SENATE BILL NO. 2265

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.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

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

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

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

25 (c) "Creditor" means any person who offers or extends

26 credit creating a debt or to whom a debt is owed, but does not
27 include any person to the extent that they receive an assignment
28 or transfer of a debt in default solely for the purpose of
29 facilitating collection of such debt for another.

30 (d) "Communication" means the conveying of information
31 regarding a debt directly or indirectly to any person through any
32 medium.

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

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

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

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

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

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

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

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

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

78 (h) "Out-of-state consumer debt collector" means any
79 person whose business activities in this state involve both
80 collecting or attempting to collect consumer debt from debtors
81 located in this state by means of interstate communication
82 originating from outside this state and soliciting consumer debt
83 accounts for collection from creditors who have a business
84 presence in this state. For purposes of this subsection, a

85 creditor has a business presence in this state if either the
86 creditor or an affiliate or subsidiary of the creditor has an
87 office in this state.

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

92 SECTION 3. Nothing in this act shall be construed to limit
93 or restrict the continued applicability of the Federal Fair Debt
94 Collection Practices Act to consumer collection practices in this
95 state. This act is in addition to the requirements and
96 regulations of the Federal Act. In the event of any inconsistency
97 between any provision of this act and any provision of the Federal
98 Act, the provision which is more protective of the consumer or
99 debtor shall prevail.

100 SECTION 4. (1) After July 1, 2000, no person shall engage
101 in business in this state as a consumer collection agency or
102 continue to do business in this state as a consumer collection
103 agency without first registering in accordance with this act, and
104 thereafter maintaining a valid registration.

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

108 (3) A prospective registrant shall be entitled to be
109 registered when registration information is complete on its face
110 and the applicable registration fee has been paid; however, the
111 department may reject a registration submitted by a prospective
112 registrant if the registrant or any principal of the registrant

113 previously has held any professional license or state registration
114 which was the subject of any suspension or revocation which has
115 not been explained by the prospective registrant to the
116 satisfaction of the department either in the registration
117 information submitted initially or upon the subsequent written
118 request of the department. In the event that an attempted
119 registration is rejected by the department the prospective
120 registrant shall be informed of the basis for rejection.

121 (4) This section shall not apply to:

122 (a) Any original creditor;

123 (b) Any member of The Mississippi Bar;

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

127 (d) Any licensed real estate broker;

128 (e) Any insurance company authorized to do business in
129 this state;

130 (f) Any consumer finance company and any wholly owned
131 subsidiary and affiliate thereof;

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

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

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

141 by the state as specified in Section 7 of this act.

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

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

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

162 (3) Renewal of registration shall be made between October 1
163 and December 31 of each year. There shall be no proration of the
164 fee for any registration.

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

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

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

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

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

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

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

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

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

207 (b) Use or threaten force or violence;

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

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

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

225 information or that the information is false;

226 (f) Disclose information concerning the existence of a
227 debt known to be reasonably disputed by the debtor without
228 disclosing that fact. If a disclosure is made prior to such
229 reasonable dispute having been asserted and written notice is
230 received from the debtor that any part of the debt is disputed and
231 if such dispute is reasonable, the person who made the original
232 disclosure shall reveal upon the request of the debtor within
233 thirty (30) days the details of the dispute to each person to whom
234 disclosure of the debt without notice of the dispute was made
235 within the preceding ninety (90) days;

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

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

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

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

252 (k) Communicate with a debtor under the guise of an

253 attorney by using the stationery of an attorney or forms or
254 instruments which only attorneys are authorized to prepare;

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

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

261 (n) Publish or post, threaten to publish or post, or
262 cause to be published or posted before the general public
263 individual names or any list of names of debtors, commonly known
264 as a deadbeat list, for the purpose of enforcing or attempting to
265 enforce collection of consumer debts;

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

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

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

278 SECTION 10. (1) The Office of Consumer Protection within
279 the Office of Attorney General shall serve as the registry for
280 receiving and maintaining records of inquiries, correspondence,

281 and complaints from consumers concerning any and all persons who
282 collect debts, including consumer collection agencies.

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

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

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

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

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

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

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

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

336 (10) The department shall issue a Notice of Intent either to

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

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

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

362 (2) The registration of a registrant shall not be revoked or
363 suspended if the registrant shows by a preponderance of the
364 evidence that the violations were not intentional and resulted

365 from bona fide error notwithstanding the maintenance of procedures
366 reasonably adapted to avoid any such error.

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

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

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

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

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

390 (8) Nothing in this act shall be construed to preclude any
391 person from pursuing remedies available under the Federal Fair
392 Debt Collection Practices Act for any violation of such act,

393 including specifically against any person who is exempt from the
394 registration provisions of this act.

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

410 SECTION 13. This act shall take effect and be in force from
411 and after July 1, 2000.