SENATE BILL NO. 2242

AN ACT TO CREATE THE "MISSISSIPPI CONSUMER COLLECTION PRACTICES ACT"; TO DEFINE CERTAIN TERMS; TO REQUIRE REGISTRATION OF CONSUMER COLLECTION AGENCIES ENGAGING IN BUSINESS IN MISSISSIPPI; TO PROHIBIT CERTAIN PRACTICES BY CONSUMER COLLECTION AGENCIES WHEN COLLECTING CONSUMER DEBTS; TO PRESCRIBE CERTAIN DUTIES OF THE OFFICE OF CONSUMER PROTECTION WITHIN THE OFFICE OF THE ATTORNEY GENERAL AND THE DEPARTMENT OF BANKING AND CONSUMER FINANCE IN ENFORCING THE ACT; TO PROVIDE FOR ADMINISTRATIVE AND CIVIL REMEDIES FOR VIOLATIONS OF THE ACT; AND FOR RELATED PURPOSES.

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

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

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

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

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

(c) "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but does not include any person to the extent that they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
(d) "Communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. (1) After July 1, 2002, no person shall engage in business in this state as a consumer collection agency or continue to do business in this state as a consumer collection agency without first registering in accordance with this act, and thereafter maintaining a valid registration.

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

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

(4) This section shall not apply to:

(a) Any original creditor;

(b) Any member of The Mississippi Bar;

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

(d) Any licensed real estate broker;
(e) Any insurance company authorized to do business in this state;
(f) Any consumer finance company and any wholly owned subsidiary and affiliate thereof;
(g) Any out-of-state consumer debt collector who does not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state; and
(h) Any FDIC-insured institution or subsidiary or affiliate thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Use or threaten force or violence;

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

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

(e) Disclose to a person other than the debtor or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false;
(f) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made prior to such reasonable dispute having been asserted and written notice is received from the debtor that any part of the debt is disputed and if such dispute is reasonable, the person who made the original disclosure shall reveal upon the request of the debtor within thirty (30) days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding ninety (90) days;

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

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

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

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

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

(l) Orally communicate with a debtor in such a manner as to give the false impression or appearance that such person is or is associated with an attorney;
(m) Advertise or threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) An administrative action by the department to impose revocation, suspension or fine shall be brought within two (2) years after the date of the last violation upon which the action is founded.
(8) Nothing in this act shall be construed to preclude any person from pursuing remedies available under the Federal Fair Debt Collection Practices Act for any violation of such act, including specifically against any person who is exempt from the registration provisions of this act.

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

SECTION 13. This act shall take effect and be in force from and after July 1, 2002.