

By: Representative Davis

To: Banks and Banking

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1414

1 AN ACT TO CREATE THE MISSISSIPPI NONPROFIT DEBT MANAGEMENT
2 SERVICES ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE
3 LICENSING OF DEBT MANAGEMENT SERVICE PROVIDERS; TO REQUIRE
4 EVIDENCE OF A SURETY BOND BEFORE LICENSING; TO PROVIDE
5 REQUIREMENTS FOR THE HANDLING OF FUNDS RECEIVED FROM A CONSUMER;
6 TO REQUIRE EXECUTION OF A WRITTEN AGREEMENT BETWEEN THE DEBT
7 MANAGEMENT SERVICE PROVIDER AND THE CONSUMER; TO ESTABLISH THE
8 MAXIMUM FEES ALLOWED TO BE CHARGED TO THE CONSUMER BY THE DEBT
9 MANAGEMENT SERVICE PROVIDER; TO REQUIRE THE DEBT MANAGEMENT
10 SERVICE PROVIDER TO FURNISH EACH CONSUMER PERIODIC WRITTEN REPORTS
11 ACCOUNTING FOR THE FUNDS RECEIVED FOR PAYMENT; TO PROVIDE FOR THE
12 REGULATORY POWERS AND FUNCTIONS OF THE COMMISSIONER OF BANKING
13 WITH REGARD TO DEBT MANAGEMENT SERVICE PROVIDERS; TO PROHIBIT
14 CERTAIN ACTS BY DEBT MANAGEMENT SERVICE PROVIDERS; TO PROHIBIT
15 FALSE OR MISLEADING ADVERTISING BY DEBT SERVICE PROVIDERS; TO
16 PROVIDE ENFORCEMENT ACTIONS FOR VIOLATIONS OF THIS ACT; TO PROVIDE
17 FOR THE SUSPENSION OR REVOCATION OF DEBT MANAGEMENT SERVICE
18 PROVIDER LICENSES; TO REPEAL SECTIONS 85-9-1 THROUGH 85-9-5,
19 MISSISSIPPI CODE OF 1972, WHICH REGULATE DEBT ADJUSTING OR CREDIT
20 ARRANGING BUSINESSES; AND FOR RELATED PURPOSES.

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

22 **SECTION 1. Short title.** This act may be known and cited as
23 the "Mississippi Nonprofit Debt Management Services Act."

24 **SECTION 2. Definitions.** As used in this act, unless the
25 context otherwise indicates, the following terms have the
26 following meanings:

27 (a) "Commissioner" means the Commissioner of Banking
28 and Consumer Finance of the State of Mississippi.

29 (b) "Debt management service" means the receiving of
30 money from a consumer for the purpose of distributing that money
31 to or among one or more creditors of the consumer in full or
32 partial payment of the consumer's obligation.

33 (c) "Debt management service provider" means a person
34 that provides or offers to provide to a consumer in this state any
35 debt management services, in return for a fee or other



36 consideration. "Debt management service provider" does not
37 include:

38 (i) Those situations involving debt adjusting
39 incurred incidentally in the lawful practice of law in this state;

40 (ii) Title insurers who adjust debts out of escrow
41 funds only incidentally in the regular course of their principal
42 business;

43 (iii) Judicial officers or others acting under
44 court orders;

45 (iv) Those situations involving debt adjusting
46 incurred incidentally in connection with the lawful practice as a
47 certified public accountant;

48 (v) Bona fide trade or mercantile associations in
49 the course of arranging adjustment of debts with business
50 establishments;

51 (vi) Employers who adjust debts for their
52 employees;

53 (vii) Any person who, at the request of a debtor,
54 makes a loan to the debtor, and who, at the authorization of the
55 debtor, acts as an adjuster of the debtor's debts solely in the
56 disbursement of the proceeds of the loan, without compensation
57 for the services rendered in adjusting the debts; or

58 (viii) Any institution that is regulated,
59 supervised or licensed by the department or any out of state
60 institution that is insured by the Federal Deposit Insurance
61 Corporation or the National Credit Union Administration.

62 (d) "Department" means the Department of Banking and
63 Consumer Finance of the State of Mississippi.

64 (f) "Person" means an individual or an organization.

65 (g) "Records" or "documents" means any item in hard
66 copy or produced in a format of storage commonly described as
67 electronic, imaged, magnetic, microphotographic or otherwise, and
68 any reproduction so made shall have the same force and effect as



69 the original thereof and be admitted in evidence equally with the
70 original.

71 **SECTION 3. Licensure and annual relicensure.** (1) **Nonprofit**
72 **organizations.** No person or entity may act as a debt management
73 service provider with respect to consumers who are residents of
74 this state without a license issued under this act. Only a
75 nonprofit organization that is exempt from taxation under the
76 United States Internal Revenue Code, Section 501(c)(3), may apply
77 for and receive a license under this act.

78 (2) **Licensure and relicensure.** A nonprofit organization
79 that is exempt from taxation under the United States Internal
80 Revenue Code, Section 501(c)(3), that desires to act or continue
81 to act as a debt management service provider with respect to
82 consumers in this state shall apply to the commissioner for a
83 license or renewal thereof in accordance with this act. The
84 application must be in a form prescribed by the commissioner. The
85 commissioner may refuse the application if it contains erroneous
86 or incomplete information. A license may not be issued unless the
87 commissioner, upon investigation, finds that the financial
88 soundness and responsibility, insurance coverage, consumer
89 education programs and services component, character and fitness
90 of the applicant and, when applicable, its partners, officers or
91 directors, warrant belief that the business will be operated
92 honestly and fairly within the purposes of this act. Each license
93 shall remain in full force and effect until relinquished,
94 suspended, revoked or expired. With each initial application for
95 a license, the applicant shall pay to the commissioner a license
96 fee of Seven Hundred Fifty Dollars (\$750.00), and on or before
97 December 31 of each year thereafter, an annual renewal fee of Four
98 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee
99 remains unpaid after December 31, the license shall expire. If
100 any person engages in business as provided for in this act without
101 paying the license fee provided for in this subsection before



102 beginning business or before the expiration of the person's
103 current license, as the case may be, then the person shall be
104 liable for the full amount of the license fee, plus a penalty in
105 an amount not to exceed Twenty-five Dollars (\$25.00) for each day
106 that the person has engaged in such business without a license or
107 after the expiration of a license. All licensing fees and
108 penalties shall be paid into the Consumer Finance Fund of the
109 department.

110 (3) **Action on registration application.** The commissioner
111 shall take action on an application within thirty (30) days after
112 the commissioner has accepted the application as complete. Upon
113 written request, the applicant is entitled to a hearing on the
114 question of the applicant's qualifications for license if the
115 commissioner has notified the applicant in writing that the
116 application has been denied or the commissioner has not issued a
117 license within thirty (30) days after the application for the
118 license was accepted as complete by the commissioner. A request
119 for a hearing may not be made more than sixty (60) days after the
120 application was accepted as complete or the commissioner has
121 mailed a written notice to the applicant stating that the
122 application has been denied and stating the reasons for the denial
123 of the application.

124 **SECTION 4. Bond required.** To be eligible for a license, an
125 applicant shall file with the commissioner a bond with good
126 security in the penal sum of Fifty Thousand Dollars (\$50,000.00),
127 payable to the State of Mississippi for the faithful performance
128 by the licensee of the duties and obligations pertaining to the
129 business so licensed and the prompt payment of any judgment that
130 may be recovered against the licensee on account of charges or
131 other claims arising directly or collectively from any violation
132 of the provisions of this act. The applicant may file, in lieu of
133 the bond, cash, a certificate of deposit or government bonds in
134 the amount of Fifty Thousand Dollars (\$50,000.00). Those deposits



135 shall be filed with the commissioner and is subject to the same
136 terms and conditions as are provided for in the surety bond
137 required in this paragraph. Any interest or earnings on those
138 deposits are payable to the depositor.

139 **SECTION 5. Handling of consumer funds.** (1) **Funds deposited**
140 **in trust account.** The debt management service provider shall
141 deposit, within two (2) business days of receipt, all funds
142 received from or on behalf of a consumer for payment to a creditor
143 or creditors in a federally insured trust account for the benefit
144 of the consumer in a supervised financial organization. Any trust
145 account established to receive consumer funds is free from trustee
146 process and unavailable to creditors of the debt management
147 service provider.

148 (2) **Requirements for handling of funds.** The debt management
149 service provider shall:

150 (a) Maintain separate records of account for each
151 consumer receiving debt management services;

152 (b) Remit funds received from or on behalf of a
153 consumer to the consumer's creditor or creditors within fifteen
154 (15) business days of receipt of the funds; and

155 (c) Correct or remedy any misdirected payments
156 resulting from an error by the debt management service provider
157 and reimburse the consumer for any actual costs or fees imposed by
158 a creditor as a result of such misdirection.

159 (3) **Commingling of funds.** The debt management service
160 provider may not commingle trust accounts established for the
161 benefit of consumers with any operating accounts of the debt
162 management service provider.

163 **SECTION 6. Requirement for written agreement.** (1) **Written**
164 **agreement.** A debt management service provider may not perform
165 debt management services for a consumer unless the consumer and
166 the debt management service provider first have executed a written
167 agreement with regard to the debt management services to be



168 provided. A copy of the completed agreement must be given to the
169 consumer.

170 (2) **Required provisions.** Each agreement between a consumer
171 and a debt management service provider must be dated and signed by
172 the consumer and must include the following:

173 (a) The name and address of the consumer and the debt
174 management service provider and the state license number of the
175 debt management service provider;

176 (b) A full description of the services to be performed
177 for the consumer, any fees to be charged to the consumer for those
178 services and any contributions, fees or charges the consumer has
179 agreed to make or pay to the debt management service provider;

180 (c) Disclosure of the existence of the surety bond on
181 file with the commissioner under Section 4 of this act and a
182 notice that the consumer may contact the Department of Banking and
183 Consumer Finance with any questions or complaints regarding the
184 debt management service provider;

185 (d) The identification of the federally insured
186 institution where funds remitted by a consumer for payment to one
187 or more creditors will be held;

188 (e) The right of a party to cancel the agreement by
189 providing a written notice of cancellation to the other party;

190 (f) A complete list of the consumer's obligations that
191 are subject to the agreement and the names and addresses of the
192 creditors holding those obligations;

193 (g) A full description and schedule of the periodic
194 amounts to be remitted to the debt management service provider for
195 payment to the consumer's creditor or creditors and the amounts to
196 be remitted to each creditor;

197 (h) A notice to the consumer that by executing the
198 agreement the consumer authorizes the federally insured
199 institution to disclose financial records relating to the trust
200 account in which the consumer's funds are held under Section 5 of



201 this act to the commissioner during the course of any examination
202 of the debt management service provider by the commissioner; and

203 (i) The following notice:

204 **NOTICE TO CONSUMER:** Do not sign this agreement before you
205 read it. You must be given a copy of this agreement.

206 **SECTION 7. Fees charged to the consumer.** A debt service
207 management provider may charge a consumer the following fees for
208 providing debt management services:

209 (a) A fee not to exceed Twenty-five Dollars (\$25.00)
210 per month to maintain a debt management plan for a consumer who
211 has chosen that course voluntarily after a free initial counseling
212 session;

213 (b) A one-time fee not to exceed Seventy-five Dollars
214 (\$75.00) for setting up a debt management plan for a consumer;

215 (c) A fee for obtaining the consumer's credit report
216 not to exceed Fifteen Dollars (\$15.00) for an individual report or
217 Twenty-five Dollars (\$25.00) for a joint report; and

218 (d) A fee for educational courses/products that will
219 assist the consumer in achieving financial stability. Products
220 shall be educational in nature and may include, but not be limited
221 to, the following topics: Home Buyer Education, Financial
222 Literacy Education, and Credit Report Review. However, the
223 consumer must be informed that those courses and products are not
224 a mandatory condition to receive debt management services.

225 **SECTION 8. Reports and records.** (1) **Written reports to**
226 **consumers.** A debt management service provider shall provide to
227 each consumer receiving debt management services periodic written
228 reports accounting for funds received from the consumer for
229 payment to the consumer's creditor or creditors whose obligations
230 are listed in the consumer's agreement with the debt management
231 service provider and disbursements made to each such creditor on
232 the consumer's behalf since the last report. The debt management



233 service provider shall provide those reports to the consumer not
234 less than once each calendar quarter.

235 (2) **Maintenance of records.** Any person required to be
236 licensed under this act shall maintain in its offices, or such
237 other location as the department permits, the books, accounts and
238 records necessary for the department to determine whether or not
239 the person is complying with the provisions of this act and the
240 rules and regulations adopted by the department under this act.
241 These books, accounts and records shall be maintained apart and
242 separate from any other business in which the person is involved.
243 A debt management service provider shall maintain books and
244 records for each consumer for whom it provides debt management
245 services for six (6) years following the final transaction with
246 the consumer.

247 **SECTION 9.** **Powers and functions of commissioner.** The
248 commissioner may exercise the following powers and functions:

249 (a) **Complaint investigation.** The commissioner may
250 receive and act on complaints, take action to obtain voluntary
251 compliance with this act or refer cases to the Attorney General,
252 who shall appear for and represent the commissioner in court.

253 (b) **Rules.** The commissioner may adopt reasonable
254 administrative regulations, not inconsistent with law, for the
255 enforcement of this act.

256 (c) **Examination of licensees.** To assure compliance
257 with the provisions of this act, the department may examine the
258 books and records of any licensee without notice during normal
259 business hours. The commissioner shall charge the licensee an
260 examination fee in an amount not less than Three Hundred Dollars
261 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
262 office or location within the State of Mississippi, plus any
263 actual expenses incurred while examining the licensee's records or
264 books that are located outside the State of Mississippi. However,
265 in no event shall a licensee be examined more than once in a



266 two-year period unless for cause shown based upon consumer
267 complaint and/or other exigent reasons as determined by the
268 commissioner.

269 (d) **Examination of nonlicensees.** The department, its
270 designated officers and employees, or its duly authorized
271 representatives, for the purposes of discovering violations of
272 this act and for the purpose of determining whether any person or
273 individual reasonably suspected by the commissioner of conducting
274 business that requires a license under this act, may investigate
275 those persons and individuals and examine all relevant books,
276 records and papers employed by those persons or individuals in the
277 transaction of business, and may summon witnesses and examine them
278 under oath concerning matters as to the business of those persons,
279 or other such matters as may be relevant to the discovery of
280 violations of this act including, without limitation, the conduct
281 of business without a license as required under this act.

282 **SECTION 10. Prohibited acts.** A debt management service
283 provider may not:

284 (a) **Purchase debt.** Purchase any debt or obligation of
285 a consumer;

286 (b) **Lend money.** Lend money or provide credit to any
287 consumer;

288 (c) **Mortgage interest.** Obtain a mortgage or other
289 security interest in property of a consumer;

290 (d) **Debt collector.** Operate as a debt collector in
291 this state; or

292 (e) **Negative amortization.** Structure an agreement for
293 the consumer that, at the conclusion of the projected term for the
294 consumer's participation in the debt management service agreement,
295 would result in negative amortization of any of the consumer's
296 obligations to creditors.

297 **SECTION 11. Advertising.** (1) **False advertising.** A debt
298 management service provider may not engage in this state in false



299 or misleading advertising concerning the terms and conditions of
300 any services or assistance offered.

301 (2) **Required words.** A debt management service provider may
302 not advertise its services in Mississippi in any media
303 disseminated primarily in this state, whether print or electronic,
304 without the words "Licensed Debt Management Service Provider."

305 (3) **Dissemination; no liability.** This section does not
306 impose liability on the owner or personnel of any medium in which
307 an advertisement appears or through which an advertisement is
308 disseminated.

309 **SECTION 12. Effects of violations on rights of parties.** (1)
310 **Violations; unfair, unconscionable or deceptive practices.** A debt
311 management service provider that violates any provision of this
312 act or any rule adopted by the commissioner, or that through any
313 unfair, unconscionable or deceptive practice causes actual damage
314 to a consumer is subject to enforcement action under subsection
315 (2) of this section.

316 (2) **Enforcement actions.** The following enforcement actions
317 may be taken by the commissioner or an aggrieved consumer against
318 a debt management service provider for violations of any provision
319 of this act or any rule adopted under to this act, or for unfair,
320 unconscionable or deceptive practices that cause actual damage to
321 a consumer:

322 (a) When the commissioner has reasonable cause to
323 believe that a person is violating any provision of this act, the
324 commissioner, in addition to and without prejudice to the
325 authority provided elsewhere in this act, may enter an order
326 requiring the person to stop or to refrain from the violation.
327 The commissioner may sue in any chancery court of the state having
328 jurisdiction and venue to enjoin the person from engaging in or
329 continuing the violation or from doing any act in furtherance of
330 the violation. In such an action, the court may enter an order or
331 judgment awarding a preliminary or permanent injunction;



332 (b) The commissioner may, after notice and hearing,
333 impose a civil penalty against any licensee if the licensee,
334 individual required to be registered, or employee is adjudged by
335 the commissioner to be in violation of the provisions of this act.
336 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)
337 per violation and shall be deposited into the Consumer Finance
338 Fund of the department;

339 (c) The state may enforce its rights under the surety
340 bond as required in Section 4 of this act as an available remedy
341 for the collection of any civil penalties, criminal fines or costs
342 of investigation and/or prosecution incurred;

343 (d) A civil action by an aggrieved consumer in which
344 that consumer has the right to recover actual damages from the
345 debt management service provider in an amount determined by the
346 court plus costs of the action together with reasonable attorney's
347 fees; or

348 (e) Revocation, suspension or nonrenewal of the debt
349 management service provider's license under Section 12 of this
350 act.

351 **SECTION 13. Suspension or revocation of registration.** (1)

352 **Suspension or revocation.** After notice and hearing, the
353 commissioner may suspend or revoke a debt management service
354 provider's license if the commissioner finds that one of the
355 conditions of subsection (2) of this section is met.

356 (2) **Conditions for suspension or revocation.** The following
357 conditions are grounds for suspension or revocation of a
358 registration:

359 (a) A fact or condition exists that, if it had existed
360 at the time when the licensee applied for a license, would have
361 been grounds for denying the application;

362 (b) The licensee knowingly violates a material
363 provision of this act or rule or order validly adopted by the
364 commissioner under authority of this act;



365 (c) The licensee is insolvent;
366 (d) The licensee refuses to permit the commissioner to
367 make an examination authorized by this act; or
368 (e) The licensee fails to respond within a reasonable
369 time and in an appropriate manner to communications from the
370 commissioner.

371 **SECTION 14. Commissioner authorized to hire additional**
372 **full-time employees.** The commissioner may employ the necessary
373 full-time employees above the number of permanent full-time
374 employees authorized for the department for the fiscal year 2003,
375 to carry out and enforce the provisions of this act. The
376 commissioner also may expend the necessary funds and equip and
377 provide necessary travel expenses for those employees.

378 **SECTION 15. Application deadline for existing businesses.**
379 Nonprofit corporations engaged in the business of debt adjusting
380 that have filed a registration statement and surety bond with the
381 Secretary of State's office as of July 1, 2003, shall have until
382 September 30, 2003, to apply for a license under this act, and
383 upon the approval of the application, the commissioner shall grant
384 a license under this act.

385 **SECTION 16.** Section 1 through 15 of this act shall stand
386 repealed on July 1, 2006.

387 **SECTION 17.** Sections 85-9-1 through 85-9-5, Mississippi Code
388 of 1972, which regulate debt adjusting or credit arranging
389 businesses, are repealed.

390 **SECTION 18.** This act shall take effect and be in force from
391 and after July 1, 2003.

