

By: Representative Davis

To: Banks and Banking

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.** Only a nonprofit organization that is exempt from  
73 taxation under the United States Internal Revenue Code, Section  
74 501(c)(3), may apply for a license under this act to act as a debt  
75 management service provider with respect to consumers who are  
76 residents of this state.

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



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

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

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



135 required in this paragraph. Any interest or earnings on those  
136 deposits are payable to the depositor.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

195           (h) A notice to the consumer that by executing the  
196 agreement the consumer authorizes the federally insured  
197 institution to disclose financial records relating to the trust  
198 account in which the consumer's funds are held under Section 5 of  
199 this act to the commissioner during the course of any examination  
200 of the debt management service provider by the commissioner; and



201 (i) The following notice:

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

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

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

211 (b) A one-time fee not to exceed Twenty Dollars  
212 (\$20.00) for setting up a debt management plan for a consumer;

213 (c) A fee for obtaining the consumer's credit report  
214 not to exceed Eight Dollars (\$8.00) for an individual report or  
215 Fifteen Dollars (\$15.00) for a joint report; and

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

223 **SECTION 8. Reports and records.** (1) **Written reports to**  
224 **consumers.** A debt management service provider shall provide to  
225 each consumer receiving debt management services periodic written  
226 reports accounting for funds received from the consumer for  
227 payment to the consumer's creditor or creditors whose obligations  
228 are listed in the consumer's agreement with the debt management  
229 service provider and disbursements made to each such creditor on  
230 the consumer's behalf since the last report. The debt management  
231 service provider shall provide those reports to the consumer not  
232 less than once each calendar quarter.



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

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

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

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

254           (c) **Examination of licensees.** To assure compliance  
255 with the provisions of this act, the department may examine the  
256 books and records of any licensee without notice during normal  
257 business hours. The commissioner shall charge the licensee an  
258 examination fee consisting of actual expenses per examination of  
259 each office or location within the State of Mississippi, plus any  
260 actual expenses incurred while examining the licensee's records or  
261 books that are located outside the State of Mississippi. However,  
262 in no event shall a licensee be examined more than once in a  
263 two-year period unless for cause shown based upon consumer  
264 complaint and/or other exigent reasons as determined by the  
265 commissioner.





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

279 **SECTION 10. Prohibited acts.** A debt management service  
280 provider may not:

281 (a) **Purchase debt.** Purchase any debt or obligation of  
282 a consumer;

283 (b) **Lend money.** Lend money or provide credit to any  
284 consumer;

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

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

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

294 **SECTION 11. Advertising.** (1) **False advertising.** A debt  
295 management service provider may not engage in this state in false  
296 or misleading advertising concerning the terms and conditions of  
297 any services or assistance offered.



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

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

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

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

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

329           (b) The commissioner may, after notice and hearing,  
330 impose a civil penalty against any licensee if the licensee,



331 individual required to be registered, or employee is adjudged by  
332 the commissioner to be in violation of the provisions of this act.  
333 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)  
334 per violation and shall be deposited into the Consumer Finance  
335 Fund of the department;

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

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

345 (e) Revocation, suspension or nonrenewal of the debt  
346 management service provider's license under Section 12 of this  
347 act.

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

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

353 (2) **Conditions for suspension or revocation.** The following  
354 conditions are grounds for suspension or revocation of a  
355 registration:

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

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

362 (c) The licensee is insolvent;



363 (d) The licensee refuses to permit the commissioner to  
364 make an examination authorized by this act; or

365 (e) The licensee fails to respond within a reasonable  
366 time and in an appropriate manner to communications from the  
367 commissioner.

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

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

382 **SECTION 16.** Sections 85-9-1 through 85-9-5, Mississippi Code  
383 of 1972, which regulate debt adjusting or credit arranging  
384 businesses, are repealed.

385 **SECTION 17.** This act shall take effect and be in force from  
386 and after July 1, 2003.

