

By: Senator(s) King

To: Finance

SENATE BILL NO. 2414
(As Sent to Governor)

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:

30 (i) The receiving of money from a consumer for the
31 purpose of distributing one or more payments to or among one or
32 more creditors of the consumer in full or partial payment of the
33 consumer's obligation;

34 (ii) Arranging or assisting a consumer to arrange
35 for the distribution of one or more payments to or among one or



36 more creditors of the consumer in full or partial payment of the
37 consumer's obligation;

38 (iii) Exercising control, directly or indirectly,
39 or arranging for the exercise of control over funds of the
40 consumer for the purpose of distributing payments to or among one
41 or more creditors of the consumer; or

42 (iv) Acting or offering to act as an intermediary
43 between a consumer and one or more creditors of the consumer for
44 the purpose of adjusting, compromising, settling, discharging or
45 otherwise altering the terms of payment of the consumer's
46 obligation.

47 (c) "Debt management service provider" means a person
48 that provides or offers to provide to a consumer in this state any
49 debt management services, in return for a fee or other
50 consideration. "Debt management service provider" does not
51 include:

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

54 (ii) Title insurers who adjust debts out of escrow
55 funds only incidentally in the regular course of their principal
56 business;

57 (iii) Judicial officers or others acting under
58 court orders;

59 (iv) Those situations involving debt adjusting
60 incurred incidentally in connection with the lawful practice as a
61 certified public accountant;

62 (v) Bona fide trade or mercantile associations in
63 the course of arranging adjustment of debts with business
64 establishments;

65 (vi) Employers who adjust debts for their
66 employees;

67 (vii) Any person who, at the request of a debtor,
68 makes a loan to the debtor, and who, at the authorization of the



69 debtor, acts as an adjuster of the debtor's debts solely in the
70 disbursement of the proceeds of the loan, without compensation
71 for the services rendered in adjusting the debts; or

72 (viii) Any institution that is regulated,
73 supervised or licensed by the department or any out of state
74 institution that is insured by the Federal Deposit Insurance
75 Corporation or the National Credit Union Administration.

76 (d) "Department" means the Department of Banking and
77 Consumer Finance of the State of Mississippi.

78 (e) "Person" means an individual or an organization.

79 (f) "Records" or "documents" means any item in hard
80 copy or produced in a format of storage commonly described as
81 electronic, imaged, magnetic, microphotographic or otherwise, and
82 any reproduction so made shall have the same force and effect as
83 the original thereof and be admitted in evidence equally with the
84 original.

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

92 (2) **Licensure and relicensure.** A nonprofit organization
93 that is exempt from taxation under the United States Internal
94 Revenue Code, Section 501(c)(3), that desires to act or continue
95 to act as a debt management service provider with respect to
96 consumers in this state shall apply to the commissioner for a
97 license or renewal thereof in accordance with this act. The
98 application must be in a form prescribed by the commissioner. The
99 commissioner may refuse the application if it contains erroneous
100 or incomplete information. A license may not be issued unless the
101 commissioner, upon investigation, finds that the financial



102 soundness and responsibility, insurance coverage, consumer
103 education programs and services component, character and fitness
104 of the applicant and, when applicable, its partners, officers or
105 directors, warrant belief that the business will be operated
106 honestly and fairly within the purposes of this act. Each license
107 shall remain in full force and effect until relinquished,
108 suspended, revoked or expired. With each initial application for
109 a license, the applicant shall pay to the commissioner a license
110 fee of Seven Hundred Fifty Dollars (\$750.00), and on or before
111 December 31 of each year thereafter, an annual renewal fee of Four
112 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee
113 remains unpaid after December 31, the license shall expire. If
114 any person engages in business as provided for in this act without
115 paying the license fee provided for in this subsection before
116 beginning business or before the expiration of the person's
117 current license, as the case may be, then the person shall be
118 liable for the full amount of the license fee, plus a penalty in
119 an amount not to exceed Twenty-five Dollars (\$25.00) for each day
120 that the person has engaged in such business without a license or
121 after the expiration of a license. All licensing fees and
122 penalties shall be paid into the Consumer Finance Fund of the
123 department.

124 (3) **Action on registration application.** The commissioner
125 shall take action on an application within thirty (30) days after
126 the commissioner has accepted the application as complete. Upon
127 written request, the applicant is entitled to a hearing on the
128 question of the applicant's qualifications for license if the
129 commissioner has notified the applicant in writing that the
130 application has been denied or the commissioner has not issued a
131 license within thirty (30) days after the application for the
132 license was accepted as complete by the commissioner. A request
133 for a hearing may not be made more than sixty (60) days after the
134 application was accepted as complete or the commissioner has



135 mailed a written notice to the applicant stating that the
136 application has been denied and stating the reasons for the denial
137 of the application.

138 **SECTION 4. Bond required.** To be eligible for a license, an
139 applicant shall file with the commissioner a bond with good
140 security in the penal sum of Fifty Thousand Dollars (\$50,000.00),
141 payable to the State of Mississippi for the faithful performance
142 by the licensee of the duties and obligations pertaining to the
143 business so licensed and the prompt payment of any judgment that
144 may be recovered against the licensee on account of charges or
145 other claims arising directly or collectively from any violation
146 of the provisions of this act. The applicant may file, in lieu of
147 the bond, cash, a certificate of deposit or government bonds in
148 the amount of Fifty Thousand Dollars (\$50,000.00). Those deposits
149 shall be filed with the commissioner and is subject to the same
150 terms and conditions as are provided for in the surety bond
151 required in this paragraph. Any interest or earnings on those
152 deposits are payable to the depositor.

153 **SECTION 5. Handling of consumer funds. (1) Funds deposited**
154 **in trust account.** The debt management service provider shall
155 deposit, within two (2) business days of receipt, all funds
156 received from or on behalf of a consumer for payment to a creditor
157 or creditors in a federally insured trust account for the benefit
158 of the consumer in a supervised financial organization. Any trust
159 account established to receive consumer funds is free from trustee
160 process and unavailable to creditors of the debt management
161 service provider.

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

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



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

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

173 (3) **Commingling of funds.** The debt management service
174 provider may not commingle trust accounts established for the
175 benefit of consumers with any operating accounts of the debt
176 management service provider.

177 **SECTION 6. Requirement for written agreement.** (1) **Written**
178 **agreement.** A debt management service provider may not perform
179 debt management services for a consumer unless the consumer and
180 the debt management service provider first have executed a written
181 agreement with regard to the debt management services to be
182 provided. A copy of the completed agreement must be given to the
183 consumer.

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

187 (a) The name and address of the consumer and the debt
188 management service provider and the state license number of the
189 debt management service provider;

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

194 (c) Disclosure of the existence of the surety bond on
195 file with the commissioner under Section 4 of this act and a
196 notice that the consumer may contact the Department of Banking and
197 Consumer Finance with any questions or complaints regarding the
198 debt management service provider;



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

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

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

207 (g) A full description and schedule of the periodic
208 amounts to be remitted to the debt management service provider for
209 payment to the consumer's creditor or creditors and the amounts to
210 be remitted to each creditor;

211 (h) A notice to the consumer that by executing the
212 agreement the consumer authorizes the federally insured
213 institution to disclose financial records relating to the trust
214 account in which the consumer's funds are held under Section 5 of
215 this act to the commissioner during the course of any examination
216 of the debt management service provider by the commissioner; and

217 (i) The following notice:

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

220 **SECTION 7. Fees charged to the consumer.** A debt service
221 management provider may charge a consumer the following fees for
222 providing debt management services:

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

227 (b) A one-time fee not to exceed Seventy-five Dollars
228 (\$75.00) for setting up a debt management plan for a consumer;

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



232 (d) A fee for educational courses/products that will
233 assist the consumer in achieving financial stability. Products
234 shall be educational in nature and may include, but not be limited
235 to, the following topics: Home Buyer Education, Financial
236 Literacy Education, and Credit Report Review. However, the
237 consumer must be informed that those courses and products are not
238 a mandatory condition to receive debt management services.

239 **SECTION 8. Reports and records.** (1) **Written reports to**
240 **consumers.** A debt management service provider shall provide to
241 each consumer receiving debt management services periodic written
242 reports accounting for funds received from the consumer for
243 payment to the consumer's creditor or creditors whose obligations
244 are listed in the consumer's agreement with the debt management
245 service provider and disbursements made to each such creditor on
246 the consumer's behalf since the last report. The debt management
247 service provider shall provide those reports to the consumer not
248 less than once each calendar quarter.

249 (2) **Maintenance of records.** Any person required to be
250 licensed under this act shall maintain in its offices, or such
251 other location as the department permits, the books, accounts and
252 records necessary for the department to determine whether or not
253 the person is complying with the provisions of this act and the
254 rules and regulations adopted by the department under this act.
255 These books, accounts and records shall be maintained apart and
256 separate from any other business in which the person is involved.
257 A debt management service provider shall maintain books and
258 records for each consumer for whom it provides debt management
259 services for six (6) years following the final transaction with
260 the consumer.

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

263 (a) **Complaint investigation.** The commissioner may
264 receive and act on complaints, take action to obtain voluntary



265 compliance with this act or refer cases to the Attorney General,
266 who shall appear for and represent the commissioner in court.

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

270 (c) **Examination of licensees.** To assure compliance
271 with the provisions of this act, the department may examine the
272 books and records of any licensee without notice during normal
273 business hours. The commissioner shall charge the licensee an
274 examination fee in an amount not less than Three Hundred Dollars
275 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
276 office or location within the State of Mississippi, plus any
277 actual expenses incurred while examining the licensee's records or
278 books that are located outside the State of Mississippi. However,
279 in no event shall a licensee be examined more than once in a
280 two-year period unless for cause shown based upon consumer
281 complaint and/or other exigent reasons as determined by the
282 commissioner.

283 (d) **Examination of nonlicensees.** The department, its
284 designated officers and employees, or its duly authorized
285 representatives, for the purposes of discovering violations of
286 this act and for the purpose of determining whether any person or
287 individual reasonably suspected by the commissioner of conducting
288 business that requires a license under this act, may investigate
289 those persons and individuals and examine all relevant books,
290 records and papers employed by those persons or individuals in the
291 transaction of business, and may summon witnesses and examine them
292 under oath concerning matters as to the business of those persons,
293 or other such matters as may be relevant to the discovery of
294 violations of this act including, without limitation, the conduct
295 of business without a license as required under this act.

296 **SECTION 10. Prohibited acts.** A debt management service
297 provider may not:



298 (a) **Purchase debt.** Purchase any debt or obligation of
299 a consumer;

300 (b) **Lend money.** Lend money or provide credit to any
301 consumer;

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

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

306 (e) **Negative amortization.** Structure an agreement for
307 the consumer that, at the conclusion of the projected term for the
308 consumer's participation in the debt management service agreement,
309 would result in negative amortization of any of the consumer's
310 obligations to creditors.

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

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

319 (3) **Dissemination; no liability.** This section does not
320 impose liability on the owner or personnel of any medium in which
321 an advertisement appears or through which an advertisement is
322 disseminated.

323 **SECTION 12. Effects of violations on rights of parties.** (1)
324 **Violations; unfair, unconscionable or deceptive practices.** A debt
325 management service provider that violates any provision of this
326 act or any rule adopted by the commissioner, or that through any
327 unfair, unconscionable or deceptive practice causes actual damage
328 to a consumer is subject to enforcement action under subsection
329 (2) of this section.



330 (2) **Enforcement actions.** The following enforcement actions
331 may be taken by the commissioner or an aggrieved consumer against
332 a debt management service provider for violations of any provision
333 of this act or any rule adopted under this act, or for unfair,
334 unconscionable or deceptive practices that cause actual damage to
335 a consumer:

336 (a) When the commissioner has reasonable cause to
337 believe that a person is violating any provision of this act, the
338 commissioner, in addition to and without prejudice to the
339 authority provided elsewhere in this act, may enter an order
340 requiring the person to stop or to refrain from the violation.
341 The commissioner may sue in any chancery court of the state having
342 jurisdiction and venue to enjoin the person from engaging in or
343 continuing the violation or from doing any act in furtherance of
344 the violation. In such an action, the court may enter an order or
345 judgment awarding a preliminary or permanent injunction;

346 (b) The commissioner may, after notice and hearing,
347 impose a civil penalty against any licensee if the licensee,
348 individual required to be registered, or employee is adjudged by
349 the commissioner to be in violation of the provisions of this act.
350 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)
351 per violation and shall be deposited into the Consumer Finance
352 Fund of the department;

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

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



362 (e) Revocation, suspension or nonrenewal of the debt
363 management service provider's license under Section 13 of this
364 act.

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

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

370 (2) **Conditions for suspension or revocation.** The following
371 conditions are grounds for suspension or revocation of a
372 registration:

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

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

379 (c) The licensee is insolvent;

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

382 (e) The licensee fails to respond within a reasonable
383 time and in an appropriate manner to communications from the
384 commissioner.

385 **SECTION 14. Commissioner authorized to hire additional**

386 **full-time employees.** The commissioner may employ the necessary
387 full-time employees above the number of permanent full-time
388 employees authorized for the department for the fiscal year 2003,
389 to carry out and enforce the provisions of this act. The
390 commissioner also may expend the necessary funds and equip and
391 provide necessary travel expenses for those employees.

392 **SECTION 15. Application deadline for existing businesses.**

393 Nonprofit corporations engaged in the business of debt adjusting
394 that have filed a registration statement and surety bond with the



395 Secretary of State's office as of July 1, 2003, shall have until
396 September 30, 2003, to apply for a license under this act, and
397 upon the approval of the application, the commissioner shall grant
398 a license under this act.

399 **SECTION 16.** Sections 1 through 15 of this act shall stand
400 repealed on July 1, 2006.

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

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

