

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



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

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

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



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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

(i) The following notice:

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



(c) The licensee is insolvent;

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

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

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

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

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

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

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

