

CHAPTER NO. 199

HOUSE BILL NO. 1351

By Representative Curtiss

Substituted for: Senate Bill No. 1234

By Senators Cooper, Herron

AN ACT to amend Tennessee Code Annotated, Title 39 and Title 47, relative to credit services businesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following language as an appropriately numbered subdivision:

(34)

(A) Engaging in the business of debt adjusting and:

(i) Failing to disburse all funds to the appropriate creditors within thirty (30) days of receipt of the funds from the debtor, less any contributions or fees not prohibited by subdivisions (iii) – (vi) below; or

(ii) Failing to maintain a separate trust account for the receipt of any funds from debtors and the disbursement of the funds to creditors on behalf of the debtors; or

(iii) Accepting a contribution or fee exceeding seventy five dollars (\$75) from a debtor for an initial set up; or

(iv) Accepting a consultation contribution or fee exceeding fifty dollars (\$50) per calendar year from a debtor; or

(v) Accepting a periodic contribution or fee from a debtor that exceeds the greater of eight and one-half percent (8.5%) of the amount paid by a debtor each month for distribution to the debtor's creditors or thirty dollars (\$30); or

(vi) Charging the debtor a bad check handling fee in excess of twenty dollars (\$20); or

(vii) Failing to obtain and at all times maintain insurance coverage for errors and omissions, employee dishonesty, depositor's forgery, and computer fraud, with a minimum limit of one hundred thousand dollars (\$100,000) and that names the division of consumer affairs of the department of commerce and insurance and the consumer protection division of the office of the attorney general as additional interested parties; or

(viii) Failing to provide prior to the execution of a contract, agreement debt management or adjustment plan, the following statement, printed in bold and capital letters, following which shall be an area on the information statement for the consumer to sign and date the information statement:

With respect to my credit history, I understand that my participation in the DMP may affect my credit report either favorably or unfavorably according to my creditor's policies with respect to the DMP and my payment history prior to and during my participating in the DMP. I also understand that, for any joint accounts, my spouse's credit rating may affect my credit rating either favorably or unfavorably.

(B) The fees or contributions described in (A) (iii)-(v) above may be adjusted on an annual basis by the amount no greater than the equivalent to any increase in the consumer price index – all urban consumers, not seasonally adjusted, 1982-84 = 100 – published by the United States department of labor, bureau of labor statistics.

(C) For the purposes of the subsection, "debt adjusting" means doing business in debt adjusting, budget counseling, debt management, or debt pooling service or holding

oneself out, by words of similar import, as providing services to debtors in the management of their debts to do any of the following:

(i) Effect the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor; or

(ii) Receive from the debtor and disburse to the debtor's creditors any money or other thing of value; or

(iii) Solicit business and advertise as a debt adjuster.

(D) The following persons shall not be considered adjusters for the purposes of this subsection:

(i) Any attorney-at-law of this state;

(ii) Any person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts;

(iii) Any person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this state or of the United States;

(iv) Any person who is a creditor of the debtor, or an agent of one (1) or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor;

(v) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts; and

(vi) Any charitable, religious or educational organization, determined to be exempt from taxation under Section (501)(c)(3) of the Internal Revenue Code that is not in the business of debt adjusting.

SECTION 2. Tennessee Code Annotated, Section 39-14-142, is amended by deleting the section in its entirety.

SECTION 3. This act shall take effect on July 1, 2005, the public welfare requiring it.

PASSED: May 2, 2005


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 19th day of May 2005


PHIL BREDEESEN, GOVERNOR