

By: Representative Warren

To: Banking and Financial Services

HOUSE BILL NO. 172

1 AN ACT TO REENACT SECTIONS 81-22-1 THROUGH 81-22-28,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE "MISSISSIPPI DEBT
3 MANAGEMENT SERVICES ACT"; TO AMEND REENACTED SECTION 81-22-13,
4 MISSISSIPPI CODE OF 1972, TO INFORM THE CODE PUBLISHER OF CERTAIN
5 NONSUBSTANTIVE LANGUAGE THAT SHOULD BE REVISED; TO AMEND SECTION
6 81-22-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL
7 ON THOSE REENACTED SECTIONS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 81-22-1, Mississippi Code of 1972, is
10 reenacted as follows:

11 81-22-1. This chapter may be known and cited as the
12 "Mississippi Debt Management Services Act."

13 **SECTION 2.** Section 81-22-3, Mississippi Code of 1972, is
14 reenacted as follows:

15 81-22-3. As used in this chapter, unless the context
16 otherwise indicates, the following terms have the following
17 meanings:

18 (a) "Commissioner" means the Commissioner of Banking
19 and Consumer Finance of the State of Mississippi.

20 (b) "Debt management service" means:

21 (i) The receiving of money from a consumer for the
22 purpose of distributing one or more payments to or among one or
23 more creditors of the consumer in full or partial payment of the
24 consumer's obligation;

25 (ii) Arranging or assisting a consumer to arrange
26 for the distribution of one or more payments to or among one or
27 more creditors of the consumer in full or partial payment of the
28 consumer's obligation;



29 (iii) Exercising control, directly or indirectly,
30 or arranging for the exercise of control over funds of the
31 consumer for the purpose of distributing payments to or among one
32 or more creditors of the consumer;

33 (iv) Acting or offering to act as an intermediary
34 between a consumer and one or more creditors of the consumer for
35 the purpose of adjusting, compromising, negotiating, settling,
36 discharging or otherwise deferring, reducing or altering the terms
37 of payment of the consumer's obligation; or

38 (v) Improving or offering to improve a consumer's
39 credit record, history or rating.

40 (c) "Debt management service provider" means a person
41 that provides or offers to provide to a consumer in this state any
42 debt management services, in return for a fee or other
43 consideration. "Debt management service provider" does not
44 include:

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

47 (ii) Those situations involving credit report
48 error correction services and situations covered under paragraph
49 (b) (v) of this section when performed in the lawful practice of
50 law in this state;

51 (iii) Title insurers who adjust debts out of
52 escrow funds only incidentally in the regular course of their
53 principal business;

54 (iv) Judicial officers or others acting under
55 court orders;

56 (v) Those situations involving debt adjusting
57 incurred incidentally in connection with the lawful practice as a
58 certified public accountant;

59 (vi) Bona fide trade or mercantile associations in
60 the course of arranging adjustment of debts with business
61 establishments;



62 (vii) Employers who adjust debts for their
63 employees;

64 (viii) Any person who, at the request of a debtor,
65 makes a loan to the debtor, and who, at the authorization of the
66 debtor, acts as an adjuster of the debtor's debts solely in the
67 disbursement of the proceeds of the loan, without compensation
68 for the services rendered in adjusting the debts;

69 (ix) Any institution that is regulated, supervised
70 or licensed by the department or any out-of-state institution that
71 is insured by the Federal Deposit Insurance Corporation or the
72 National Credit Union Administration; or

73 (x) Licensed attorneys engaged in the lawful
74 practice of law.

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

77 (e) "Fair share contribution" means voluntary
78 contributions paid to the licensee by the creditor for collecting
79 funds from clients pursuant to debt management services.

80 (f) "Licensee" means a person or entity who is required
81 to be licensed as a debt management service provider.

82 (g) "Person" means an individual or an organization.

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

89 (i) "Third-party payment processor" means any entity
90 that holds, or has access to, or can effectuate possession of, by
91 any means, the monies of a licensee's debtors, or distributes, or
92 is in the chain or distribution of such monies, to the creditors
93 of such debtors, pursuant to an agreement or contract with the
94 licensee. This term shall not include entities that solely



95 provide the electronic routing and settlement of financial
96 transactions and their sponsoring banks.

97 **SECTION 3.** Section 81-22-5, Mississippi Code of 1972, is
98 reenacted as follows:

99 81-22-5. (1) **Licensure and relicensure.** No person or
100 entity may act as a debt management service provider with respect
101 to consumers who are residents of this state without a license
102 issued under this chapter. The license application must be in a
103 form prescribed by the commissioner. The commissioner may refuse
104 the application if it contains erroneous or incomplete
105 information. A license may not be issued unless the commissioner,
106 upon investigation, finds that the financial soundness and
107 responsibility, insurance coverage, consumer education programs
108 and services component, character and fitness of the applicant
109 and, when applicable, its partners, officers or directors, warrant
110 belief that the business will be operated honestly and fairly
111 within the purposes of this chapter. Each license shall remain in
112 full force and effect until relinquished, suspended, revoked or
113 expired. With each initial application for a license, the
114 applicant shall pay to the commissioner a license fee of Seven
115 Hundred Fifty Dollars (\$750.00), and on or before December 31 of
116 each year thereafter, an annual renewal fee of Four Hundred
117 Seventy-five Dollars (\$475.00). If the annual renewal fee remains
118 unpaid after December 31, the license shall expire. If any person
119 engages in business as provided for in this chapter without paying
120 the license fee provided for in this subsection before beginning
121 business or before the expiration of the person's current license,
122 as the case may be, then the person shall be liable for the full
123 amount of the license fee, plus a penalty in an amount not to
124 exceed Twenty-five Dollars (\$25.00) for each day that the person
125 has engaged in such business without a license or after the
126 expiration of a license. All licensing fees and penalties shall
127 be paid into the Consumer Finance Fund of the department.



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

142 **SECTION 4.** Section 81-22-7, Mississippi Code of 1972, is
143 reenacted as follows:

144 81-22-7. To be eligible for a license, an applicant shall
145 file with the commissioner a bond with good security in the penal
146 sum of Fifty Thousand Dollars (\$50,000.00), payable to the State
147 of Mississippi for the faithful performance by the licensee of the
148 duties and obligations pertaining to the business so licensed and
149 the prompt payment of any judgment that may be recovered against
150 the licensee on account of charges or other claims arising
151 directly or collectively from any violation of the provisions of
152 this chapter. The applicant may file, in lieu of the bond, cash,
153 a certificate of deposit or government bonds in the amount of
154 Fifty Thousand Dollars (\$50,000.00). Those deposits shall be
155 filed with the commissioner and are subject to the same terms and
156 conditions as are provided for in the surety bond required in this
157 paragraph. Any interest or earnings on those deposits are payable
158 to the depositor.

159 **SECTION 5.** Section 81-22-9, Mississippi Code of 1972, is
160 reenacted as follows:



161 81-22-9. (1) **Funds deposited in escrow account.** The debt
162 management service provider shall deposit, within two (2) business
163 days of receipt, all funds received from or on behalf of a
164 consumer for payment to a creditor or creditors in a federally
165 insured escrow account for the benefit of the consumer in a
166 supervised financial organization. Any escrow account established
167 to receive consumer funds is free from trustee process and
168 unavailable to creditors of the debt management service provider.

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

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

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

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

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

184 **SECTION 6.** Section 81-22-11, Mississippi Code of 1972, is
185 reenacted as follows:

186 81-22-11. (1) **Written agreement.** A debt management service
187 provider may not perform debt management services for a consumer
188 unless the consumer and the debt management service provider first
189 have executed a written agreement with regard to the debt
190 management services to be provided. A copy of the completed
191 agreement must be given to the consumer.



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

195 (a) The name and address of the consumer and the debt
196 management service provider;

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

201 (c) Disclosure of the existence of the surety bond on
202 file with the commissioner under Section 81-22-7 and a notice that
203 the consumer may contact the Department of Banking and Consumer
204 Finance at P.O. Box 23729, Jackson, MS 39225-3729 or
205 1-800-844-2499 with any questions or complaints regarding the debt
206 management service provider;

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

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

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

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

219 (h) A notice to the consumer that by executing the
220 agreement the consumer authorizes the federally insured
221 institution to disclose financial records relating to the escrow
222 account in which the consumer's funds are held under Section
223 81-22-9 to the commissioner during the course of any examination
224 of the debt management service provider by the commissioner; and



225 (i) The following notice:

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

228 **SECTION 7.** Section 81-22-13, Mississippi Code of 1972, is
229 reenacted and amended as follows:

230 81-22-13. A debt service management provider may only charge
231 a consumer the following fees for providing debt management
232 services:

233 (a) A maintenance fee not to exceed Thirty Dollars
234 (\$30.00) per month after a consumer has received a free initial
235 counseling session;

236 (b) A one-time setup fee not to exceed Seventy-five
237 Dollars (\$75.00);

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

241 (d) A fee not to exceed Fifty Dollars (\$50.00) for
242 educational courses/products that will assist the consumer in
243 achieving financial stability. Products shall be educational in
244 nature and may include, but not be limited to, the following
245 topics: Home Buyer Education, Financial Literacy Education, and
246 Credit Report Review. However, the consumer must be informed that
247 those courses and products are not a mandatory condition to
248 receive debt management services; and

249 (e) A bankruptcy consultation fee, not to exceed Fifty
250 Dollars (\$50.00) per consumer, may be charged by nonprofit credit
251 counseling agencies approved by the U.S. Trustees pursuant to 11
252 USC Section 111.

253 **SECTION 8.** Section 81-22-15, Mississippi Code of 1972, is
254 reenacted as follows:

255 81-22-15. (1) **Written reports to consumers.** A debt
256 management service provider shall provide to each consumer
257 receiving debt management services periodic written reports



258 accounting for funds received from the consumer for payment to the
259 consumer's creditor or creditors whose obligations are listed in
260 the consumer's agreement with the debt management service provider
261 and disbursements made to each such creditor on the consumer's
262 behalf since the last report. The debt management service
263 provider shall provide those reports to the consumer not less than
264 once each calendar quarter.

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

277 (3) **Verification of Payments to Creditors.** Licensees that
278 participate in fair share contributions with creditors shall
279 maintain records that reflect client accounts were credited for
280 the full amount of any payments due and not the net amount as a
281 result of a fair share contribution. Such records may consist of
282 either a copy of the client's statement from the creditor or the
283 licensee may send a monthly or quarterly statement to clients that
284 reflect payments remitted to creditors.

285 (4) Within fifteen (15) days of the occurrence of any of the
286 following events, a licensee shall file a written report with the
287 commissioner describing the event and its expected impact on the
288 activities on the licensee's business in this state:

289 (a) The filing for bankruptcy or reorganization by the
290 licensee;



291 (b) The institution of revocation or suspension
292 proceedings against the licensee by any state or governmental
293 authority; or

294 (c) Any felony indictment or conviction of the licensee
295 or any of its directors or principal officers.

296 **SECTION 9.** Section 81-22-17, Mississippi Code of 1972, is
297 reenacted as follows:

298 81-22-17. The commissioner may exercise the following powers
299 and functions:

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

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

308 (c) **Examination of licensees.** To assure compliance
309 with the provisions of this chapter, the department may examine
310 the books and records of any licensee without notice during normal
311 business hours. The commissioner shall charge the licensee an
312 examination fee in an amount not less than Three Hundred Dollars
313 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
314 office or location within the State of Mississippi, plus any
315 actual expenses incurred while examining the licensee's records or
316 books that are located outside the State of Mississippi. However,
317 in no event shall a licensee be examined more than once in a
318 two-year period unless for cause shown based upon consumer
319 complaint and/or other exigent reasons as determined by the
320 commissioner.

321 (d) **Examination of nonlicensees.** The department, its
322 designated officers and employees, or its duly authorized
323 representatives, for the purposes of discovering violations of



324 this chapter and for the purpose of determining whether any person
325 or individual reasonably suspected by the commissioner of
326 conducting business that requires a license under this chapter,
327 may investigate those persons and individuals and examine all
328 relevant books, records and papers employed by those persons or
329 individuals in the transaction of business, and may summon
330 witnesses and examine them under oath concerning matters as to the
331 business of those persons, or other such matters as may be
332 relevant to the discovery of violations of this chapter,
333 including, without limitation, the conduct of business without a
334 license as required under this chapter.

335 **SECTION 10.** Section 81-22-19, Mississippi Code of 1972, is
336 reenacted as follows:

337 81-22-19. A debt management service provider may not:

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

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

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

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

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

351 **SECTION 11.** Section 81-22-21, Mississippi Code of 1972, is
352 reenacted as follows:

353 81-22-21. (1) **False advertising.** A debt management service
354 provider may not engage in this state in false or misleading
355 advertising concerning the terms and conditions of any services or
356 assistance offered.



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

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

365 **SECTION 12.** Section 81-22-23, Mississippi Code of 1972, is
366 reenacted as follows:

367 81-22-23. (1) **Violations; unfair, unconscionable or**
368 **deceptive practices.** A debt management service provider that
369 violates any provision of this chapter or any rule adopted by the
370 commissioner, or that through any unfair, unconscionable or
371 deceptive practice causes actual damage to a consumer is subject
372 to enforcement action under subsection (2) of this section.

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

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



389 (b) The commissioner may, after notice and hearing,
390 impose a civil penalty against any licensee if the licensee,
391 individual required to be registered, or employee is adjudged by
392 the commissioner to be in violation of the provisions of this
393 chapter. The civil penalty shall not exceed Five Hundred Dollars
394 (\$500.00) per violation and shall be deposited into the Consumer
395 Finance Fund of the department;

396 (c) The state may enforce its rights under the surety
397 bond as required in Section 81-22-7 as an available remedy for the
398 collection of any civil penalties, criminal fines or costs of
399 investigation and/or prosecution incurred;

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

405 (e) Revocation, suspension or nonrenewal of the debt
406 management service provider's license under Section 81-22-25.

407 **SECTION 13.** Section 81-22-25, Mississippi Code of 1972, is
408 reenacted as follows:

409 81-22-25. (1) **Suspension or revocation.** After notice and
410 hearing, the commissioner may suspend or revoke a debt management
411 service provider's license if the commissioner finds that one of
412 the conditions of subsection (2) of this section is met.

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

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

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



422 (c) The licensee is insolvent;
423 (d) The licensee refuses to permit the commissioner to
424 make an examination authorized by this chapter; or
425 (e) The licensee fails to respond within a reasonable
426 time and in an appropriate manner to communications from the
427 commissioner.

428 **SECTION 14.** Section 81-22-27, Mississippi Code of 1972, is
429 reenacted as follows:

430 81-22-27. The commissioner may employ the necessary
431 full-time employees above the number of permanent full-time
432 employees authorized for the department for the fiscal year 2003,
433 to carry out and enforce the provisions of this chapter. The
434 commissioner also may expend the necessary funds and equip and
435 provide necessary travel expenses for those employees.

436 **SECTION 15.** Section 81-22-28, Mississippi Code of 1972, is
437 reenacted as follows:

438 81-22-28. (1) If a licensee seeks to utilize a third-party
439 payment processor, to hold, have access to, effectuate possession
440 of, by any means, or to distribute or be in the chain of
441 distribution of the monies of another licensee's consumers, the
442 licensee shall give the Department of Banking and Consumer Finance
443 ten (10) days' written notice.

444 (2) Such notice shall contain the name and address of the
445 third-party payment processor, a description of the services, a
446 copy of the agreement or contract between the licensee and the
447 third-party payment processor and the highest daily amount of
448 consumer funds to be held or transmitted. The third-party payment
449 processor shall submit to the department, upon request, the
450 highest daily amount held or transmitted during the previous
451 month.

452 (3) Each third-party payment processor shall file with the
453 commissioner a surety bond, issued by a bonding company or
454 insurance company authorized to do business in the State of



455 Mississippi, in the principal sum of Fifty Thousand Dollars
456 (\$50,000.00) and in an additional principal sum of Fifty Thousand
457 Dollars (\$50,000.00) for each additional licensee it contracts
458 with, but in no event shall the bond be required to be in excess
459 of One Hundred Fifty Thousand Dollars (\$150,000.00). In lieu of
460 the surety bond, a third-party payment processor may file other
461 assets such as cash, a certificate of deposit or government bonds.

462 (4) A licensee shall not use a third-party payment processor
463 until the licensee receives written notice from the department
464 confirming that the department has received a surety bond or other
465 assets from the third-party payment processor.

466 (5) Prior to performing any of its services, the third-party
467 payment processor shall provide written authorization for the
468 department to examine all books, records, documents and materials,
469 including those maintained in electronic form, as they relate to
470 the consumers' monies held by, or distributed by the third-party
471 payment processor to the creditors of the consumers and shall have
472 received written confirmation from the department that the written
473 authorization is sufficient. The cost of the examination shall be
474 paid by the licensee.

475 (6) All agreements or contracts between a licensee and a
476 third-party payment processor shall provide for a thirty-day
477 written notice of termination to the party against whom
478 termination is being sought. A licensee shall immediately notify
479 the department in writing of the notice of termination.

480 (7) In the event a licensee elects to maintain cash, a
481 certificate of deposit or government bonds on deposit, and
482 utilizes the services of a third-party payment processor, there is
483 no requirement that the third-party payment processor obtain a
484 surety bond or maintain other assets on deposit with the
485 department.

486 **SECTION 16.** Section 81-22-31, Mississippi Code of 1972, is
487 amended as follows:



488 81-22-31. Sections 81-22-1 through 81-22-28, Mississippi
489 Code of 1972, shall stand repealed on July 1, 2013.

490 **SECTION 17.** This act shall take effect and be in force from
491 and after July 1, 2010.

