

By: Representative White

To: Banking and Financial Services

HOUSE BILL NO. 470

1 AN ACT TO REENACT SECTIONS 81-22-1 THROUGH 81-22-28,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI DEBT
3 MANAGEMENT SERVICES ACT; TO AMEND SECTION 81-22-31, MISSISSIPPI
4 CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON THE
5 MISSISSIPPI DEBT MANAGEMENT SERVICES ACT; AND FOR RELATED
6 PURPOSES.

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

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

10 81-22-1. This chapter may be known and cited as the
11 "Mississippi Debt Management Services Act."

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

14 81-22-3. As used in this chapter, unless the context
15 otherwise indicates, the following terms have the following
16 meanings:

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

19 (b) "Debt management service" means:



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

88 (i) "Third-party payment processor" means any entity
89 that holds, or has access to, or can effectuate possession of, by
90 any means, the monies of a licensee's debtors, or distributes, or
91 is in the chain or distribution of such monies, to the creditors
92 of such debtors, pursuant to an agreement or contract with the



93 licensee. This term shall not include entities that solely
94 provide the electronic routing and settlement of financial
95 transactions and their sponsoring banks.

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

98 81-22-5. (1) **Licensure and relicensure.** No person or
99 entity may act as a debt management service provider with respect
100 to consumers who are residents of this state without a license
101 issued under this chapter. The license application must be in a
102 form prescribed by the commissioner. The commissioner may refuse
103 the application if it contains erroneous or incomplete
104 information. A license may not be issued unless the commissioner,
105 upon investigation, finds that the financial soundness and
106 responsibility, insurance coverage, consumer education programs
107 and services component, character and fitness of the applicant
108 and, when applicable, its partners, officers or directors, warrant
109 belief that the business will be operated honestly and fairly
110 within the purposes of this chapter. Each license shall remain in
111 full force and effect until relinquished, suspended, revoked or
112 expired. With each initial application for a license, the
113 applicant shall pay to the commissioner a license fee of Seven
114 Hundred Fifty Dollars (\$750.00), and on or before December 31 of
115 each year thereafter, an annual renewal fee of Four Hundred
116 Seventy-five Dollars (\$475.00). If the annual renewal fee remains
117 unpaid after December 31, the license shall expire. If any person



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

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

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



143 81-22-7. To be eligible for a license, an applicant shall
144 file with the commissioner a bond with good security in the penal
145 sum of Fifty Thousand Dollars (\$50,000.00), payable to the State
146 of Mississippi for the faithful performance by the licensee of the
147 duties and obligations pertaining to the business so licensed and
148 the prompt payment of any judgment that may be recovered against
149 the licensee on account of charges or other claims arising
150 directly or collectively from any violation of the provisions of
151 this chapter. The applicant may file, in lieu of the bond, cash,
152 a certificate of deposit or government bonds in the amount of
153 Fifty Thousand Dollars (\$50,000.00). Those deposits shall be
154 filed with the commissioner and are subject to the same terms and
155 conditions as are provided for in the surety bond required in this
156 paragraph. Any interest or earnings on those deposits are payable
157 to the depositor.

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

160 81-22-9. (1) **Funds deposited in escrow account.** The debt
161 management service provider shall deposit, within two (2) business
162 days of receipt, all funds received from or on behalf of a
163 consumer for payment to a creditor or creditors in a federally
164 insured escrow account for the benefit of the consumer in a
165 supervised financial organization. Any escrow account established
166 to receive consumer funds is free from trustee process and
167 unavailable to creditors of the debt management service provider.



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

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

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

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

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

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

185 81-22-11. (1) **Written agreement.** A debt management service
186 provider may not perform debt management services for a consumer
187 unless the consumer and the debt management service provider first
188 have executed a written agreement with regard to the debt
189 management services to be provided. A copy of the completed
190 agreement must be given to the consumer.



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

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

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

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

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

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

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

214 (g) A full description and schedule of the periodic
215 amounts to be remitted to the debt management service provider for



216 payment to the consumer's creditor or creditors and the amounts to
217 be remitted to each creditor;

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

224 (i) The following notice:

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

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

229 81-22-13. A debt service management provider may only charge
230 a consumer the following fees for providing debt management
231 services:

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

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

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



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

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

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

254 81-22-15. (1) **Written reports to consumers.** A debt
255 management service provider shall provide to each consumer
256 receiving debt management services periodic written reports
257 accounting for funds received from the consumer for payment to the
258 consumer's creditor or creditors whose obligations are listed in
259 the consumer's agreement with the debt management service provider
260 and disbursements made to each such creditor on the consumer's
261 behalf since the last report. The debt management service
262 provider shall provide those reports to the consumer not less than
263 once each calendar quarter.



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

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

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



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

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

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

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

297 81-22-17. The commissioner may exercise the following powers
298 and functions:

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

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

307 (c) **Examination of licensees.** To assure compliance
308 with the provisions of this chapter, the department may examine
309 the books and records of any licensee without notice during normal
310 business hours. The commissioner shall charge the licensee an
311 examination fee in an amount not less than Three Hundred Dollars
312 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each



313 office or location within the State of Mississippi, plus any
314 actual expenses incurred while examining the licensee's records or
315 books that are located outside the State of Mississippi. However,
316 in no event shall a licensee be examined more than once in a
317 two-year period unless for cause shown based upon consumer
318 complaint and/or other exigent reasons as determined by the
319 commissioner.

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

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

336 81-22-19. A debt management service provider may not:



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

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

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

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

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

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

352 81-22-21. (1) **False advertising.** A debt management service
353 provider may not engage in this state in false or misleading
354 advertising concerning the terms and conditions of any services or
355 assistance offered.

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

360 (3) **Dissemination; no liability.** This section does not
361 impose liability on the owner or personnel of any medium in which



362 an advertisement appears or through which an advertisement is
363 disseminated.

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

366 81-22-23. (1) **Violations; unfair, unconscionable or**
367 **deceptive practices.** A debt management service provider that
368 violates any provision of this chapter or any rule adopted by the
369 commissioner, or that through any unfair, unconscionable or
370 deceptive practice causes actual damage to a consumer is subject
371 to enforcement action under subsection (2) of this section.

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

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



386 the violation. In such an action, the court may enter an order or
387 judgment awarding a preliminary or permanent injunction;

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

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

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

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

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

408 81-22-25. (1) **Suspension or revocation.** After notice and
409 hearing, the commissioner may suspend or revoke a debt management



410 service provider's license if the commissioner finds that one of
411 the conditions of subsection (2) of this section is met.

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

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

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

421 (c) The licensee is insolvent;

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

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

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

429 81-22-27. The commissioner may employ the necessary
430 full-time employees above the number of permanent full-time
431 employees authorized for the department for the fiscal year 2003,
432 to carry out and enforce the provisions of this chapter. The
433 commissioner also may expend the necessary funds and equip and
434 provide necessary travel expenses for those employees.



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

437 81-22-28. (1) If a licensee seeks to utilize a third-party
438 payment processor, to hold, have access to, effectuate possession
439 of, by any means, or to distribute or be in the chain of
440 distribution of the monies of another licensee's consumers, the
441 licensee shall give the Department of Banking and Consumer Finance
442 ten (10) days' written notice.

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

451 (3) Each third-party payment processor shall file with the
452 commissioner a surety bond, issued by a bonding company or
453 insurance company authorized to do business in the State of
454 Mississippi, in the principal sum of Fifty Thousand Dollars
455 (\$50,000.00) and in an additional principal sum of Fifty Thousand
456 Dollars (\$50,000.00) for each additional licensee it contracts
457 with, but in no event shall the bond be required to be in excess
458 of One Hundred Fifty Thousand Dollars (\$150,000.00). In lieu of



459 the surety bond, a third-party payment processor may file other
460 assets such as cash, a certificate of deposit or government bonds.

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

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

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

479 (7) In the event a licensee elects to maintain cash, a
480 certificate of deposit or government bonds on deposit, and
481 utilizes the services of a third-party payment processor, there is
482 no requirement that the third-party payment processor obtain a



483 surety bond or maintain other assets on deposit with the
484 department.

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

487 81-22-31. Sections 81-22-1 through 81-22-28, Mississippi
488 Code of 1972, shall stand repealed on July 1, * * * 2019.

489 **SECTION 17.** This act shall take effect and be in force from
490 and after July 1, 2016.

