By: Representative White

To: Banking and Financial

Services

HOUSE BILL NO. 470

- 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:

- 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:

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

disbursement of the proceeds of the loan, without compensation

(i) Those situations involving debt adjusting

for the services rendered in adjusting the debts;

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68	(ix)	Anv	institution	that :	is 1	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 Licensed attorneys engaged in the lawful
- 73 practice of law.
- 74 "Department" means the Department of Banking and (d)
- 75 Consumer Finance of the State of Mississippi.
- 76 "Fair share contribution" means voluntary (e)
- 77 contributions paid to the licensee by the creditor for collecting
- 78 funds from clients pursuant to debt management services.
- 79 "Licensee" means a person or entity who is required (f)
- 80 to be licensed as a debt management service provider.
- 81 "Person" means an individual or an organization. (a)
- 82 "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
- any reproduction so made shall have the same force and effect as 85
- 86 the original thereof and be admitted in evidence equally with the
- 87 original.
- "Third-party payment processor" means any entity 88 (i)
- 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

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- 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
- 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.

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. Section 81-22-7, Mississippi Code of 1972, is reenacted as follows:

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

81-22-9. (1) Funds deposited in escrow 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 escrow account for the benefit of the consumer in a supervised financial organization. Any escrow account established to receive consumer funds is free from trustee process and unavailable to creditors of the debt management service provider.

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168	(2)	Require	ments	for	handling	of	funds.	The	debt	management
169	service p	orovider	shall:							

- 170 (a) Maintain separate records of account for each 171 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
- 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.
- SECTION 6. Section 81-22-11, Mississippi Code of 1972, is 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
- 1-800-844-2499 with any questions or complaints regarding the debt 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 pa	ayment	to	the	consumer's	credito:	or	creditors	and	the	amounts	to
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- 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.
- 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;

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

behalf since the last report. The debt management service

provider shall provide those reports to the consumer not less than

(d) A fee not to exceed Fifty Dollars (\$50.00) for

once each calendar quarter.

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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.

- participate in fair share contributions with creditors shall maintain records that reflect client accounts were credited for the full amount of any payments due and not the net amount as a result of a fair share contribution. Such records may consist of either a copy of the client's statement from the creditor or the licensee may send a monthly or quarterly statement to clients that reflect payments remitted to creditors.
- (4) Within fifteen (15) days of the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities on the licensee's business in this state:

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288		(a)	The	filing	for	bankruptcy	or	reorganization	bу	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

- 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 business of those persons, or other such matters as may be 330 331 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:

commissioner.

337	(a)	Purchase debt.	Purchase	any	debt	or	obligation	of
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- 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

an advertisement appears or through which an advertisement is disseminated.

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

deceptive practices. A debt management service provider that violates any provision of this chapter 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 chapter or any rule adopted under this chapter, or for unfair, unconscionable or deceptive practices that cause actual damage to a consumer:
- 378 When the commissioner has reasonable cause to (a) believe that a person is violating any provision of this chapter, 379 380 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

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386	the violat	tion. In	such	an actio	on,	the	court	may	enter	an	order	or
387	judgment a	awarding a	a pre	liminary	or	perm	anent	inju	nction	ı ;		

- 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
- 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;

Finance Fund of the department;

- 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.
- SECTION 13. Section 81-22-25, Mississippi Code of 1972, is 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 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 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 The licensee is insolvent; (c)
- 422 The licensee refuses to permit the commissioner to (d)
- 423 make an examination authorized by this chapter; or
- 424 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,
- to carry out and enforce the provisions of this chapter. 432
- 433 commissioner also may expend the necessary funds and equip and
- provide necessary travel expenses for those employees. 434

- 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

- the surety bond, a third-party payment processor may file other 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.
 - (5) Prior to performing any of its services, the third-party payment processor shall provide written authorization for the department to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the consumers' monies held by, or distributed by the third-party payment processor to the creditors of the consumers and shall have received written confirmation from the department that the written authorization is sufficient. The cost of the examination shall be 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.
- (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

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- 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.