

By: Senator(s) Parks

To: Business and Financial
Institutions

SENATE BILL NO. 2441

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 REPEALER ON THE MISSISSIPPI DEBT
5 MANAGEMENT SERVICES ACT; AND FOR RELATED PURPOSES.

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

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

9 81-22-1. This chapter may be known and cited as the
10 "Mississippi Debt Management Services Act."

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

13 81-22-3. As used in this chapter, unless the context
14 otherwise indicates, the following terms have the following
15 meanings:

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

18 (b) "Debt management service" means:



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

71 (x) Licensed attorneys engaged in the lawful
72 practice of law; or

73 (xi) For-profit debt management service providers
74 who do not receive or hold consumer funds, who do not receive a
75 fee until a settlement is approved by the consumer and who are
76 regulated by the Federal Trade Commission.

77 (d) "Department" means the Department of Banking and
78 Consumer Finance of the State of Mississippi.

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

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

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

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



91 (i) "Third-party payment processor" means any entity
92 that holds, or has access to, or can effectuate possession of, by
93 any means, the monies of a licensee's debtors, or distributes, or
94 is in the chain or distribution of such monies, to the creditors
95 of such debtors, pursuant to an agreement or contract with the
96 licensee. This term shall not include entities that solely
97 provide the electronic routing and settlement of financial
98 transactions and their sponsoring banks.

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

101 81-22-5. (1) **Licensure and relicensure.** No person or
102 entity may act as a debt management service provider with respect
103 to consumers who are residents of this state without a license
104 issued under this chapter. The license application must be in a
105 form prescribed by the commissioner. The commissioner may refuse
106 the application if it contains erroneous or incomplete
107 information. A license may not be issued unless the commissioner,
108 upon investigation, finds that the financial soundness and
109 responsibility, insurance coverage, consumer education programs
110 and services component, character and fitness of the applicant
111 and, when applicable, its partners, officers or directors, warrant
112 belief that the business will be operated honestly and fairly
113 within the purposes of this chapter. Each license shall remain in
114 full force and effect until relinquished, suspended, revoked or
115 expired. With each initial application for a license, the



116 applicant shall pay to the commissioner a license fee of Seven
117 Hundred Fifty Dollars (\$750.00), and on or before December 31 of
118 each year thereafter, an annual renewal fee of Four Hundred
119 Seventy-five Dollars (\$475.00). If the annual renewal fee remains
120 unpaid after December 31, the license shall expire. If any person
121 engages in business as provided for in this chapter without paying
122 the license fee provided for in this subsection before beginning
123 business or before the expiration of the person's current license,
124 as the case may be, then the person shall be liable for the full
125 amount of the license fee, plus a penalty in an amount not to
126 exceed Twenty-five Dollars (\$25.00) for each day that the person
127 has engaged in such business without a license or after the
128 expiration of a license. All licensing fees and penalties shall
129 be paid into the Consumer Finance Fund of the department.

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



141 mailed a written notice to the applicant stating that the
142 application has been denied and stating the reasons for the denial
143 of the application.

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

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

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

163 81-22-9. (1) **Funds deposited in escrow account.** The debt
164 management service provider shall deposit, within two (2) business
165 days of receipt, all funds received from or on behalf of a



166 consumer for payment to a creditor or creditors in a federally
167 insured escrow account for the benefit of the consumer in a
168 supervised financial organization. Any escrow account established
169 to receive consumer funds is free from trustee process and
170 unavailable to creditors of the debt management service provider.

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

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

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

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

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

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

188 81-22-11. (1) **Written agreement.** A debt management service
189 provider may not perform debt management services for a consumer
190 unless the consumer and the debt management service provider first



191 have executed a written agreement with regard to the debt
192 management services to be provided. A copy of the completed
193 agreement must be given to the consumer.

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

197 (a) The name and address of the consumer and the debt
198 management service provider;

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

203 (c) Disclosure of the existence of the surety bond on
204 file with the commissioner under Section 81-22-7 and a notice that
205 the consumer may contact the Department of Banking and Consumer
206 Finance at P.O. Box 23729, Jackson, MS 39225-3729 or
207 1-800-844-2499 with any questions or complaints regarding the debt
208 management service provider;

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

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



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

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

221 (h) A notice to the consumer that by executing the
222 agreement the consumer authorizes the federally insured
223 institution to disclose financial records relating to the escrow
224 account in which the consumer's funds are held under Section
225 81-22-9 to the commissioner during the course of any examination
226 of the debt management service provider by the commissioner; and

227 (i) The following notice:

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

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

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

235 (a) A maintenance fee not to exceed Thirty Dollars
236 (\$30.00) per month after a consumer has received a free initial
237 counseling session;



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

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

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

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

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

257 81-22-15. (1) **Written reports to consumers.** A debt
258 management service provider shall provide to each consumer
259 receiving debt management services periodic written reports
260 accounting for funds received from the consumer for payment to the
261 consumer's creditor or creditors whose obligations are listed in
262 the consumer's agreement with the debt management service provider



263 and disbursements made to each such creditor on the consumer's
264 behalf since the last report. The debt management service
265 provider shall provide those reports to the consumer not less than
266 once each calendar quarter.

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

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



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

291 (a) The filing for bankruptcy or reorganization by the
292 licensee;

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

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

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

300 81-22-17. The commissioner may exercise the following powers
301 and functions:

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

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

310 (c) **Examination of licensees.** To assure compliance
311 with the provisions of this chapter, the department may examine



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

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



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

339 81-22-19. A debt management service provider may not:

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

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

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

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

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

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

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

359 (2) **Required words.** A debt management service provider may
360 not advertise its services in Mississippi in any media



361 disseminated primarily in this state, whether print or electronic,
362 without the words "Licensed Debt Management Service Provider."

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

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

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

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

381 (a) When the commissioner has reasonable cause to
382 believe that a person is violating any provision of this chapter,
383 the commissioner, in addition to and without prejudice to the
384 authority provided elsewhere in this chapter, may enter an order
385 requiring the person to stop or to refrain from the violation.



386 The commissioner may sue in any chancery court of the state having
387 jurisdiction and venue to enjoin the person from engaging in or
388 continuing the violation or from doing any act in furtherance of
389 the violation. In such an action, the court may enter an order or
390 judgment awarding a preliminary or permanent injunction;

391 (b) The commissioner may, after notice and hearing,
392 impose a civil penalty against any licensee if the licensee,
393 individual required to be registered, or employee is adjudged by
394 the commissioner to be in violation of the provisions of this
395 chapter. The civil penalty shall not exceed Five Hundred Dollars
396 (\$500.00) per violation and shall be deposited into the Consumer
397 Finance Fund of the department;

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

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

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

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



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

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

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

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

424 (c) The licensee is insolvent;

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

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

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

432 81-22-27. The commissioner may employ the necessary
433 full-time employees above the number of permanent full-time
434 employees authorized for the department for the fiscal year 2003,
435 to carry out and enforce the provisions of this chapter. The



436 commissioner also may expend the necessary funds and equip and
437 provide necessary travel expenses for those employees.

438 **SECTION 15.** Section 81-22-31, Mississippi Code of 1972, is
439 amended as follows:

440 81-22-31. Sections 81-22-1 through 81-22-28, Mississippi
441 Code of 1972, shall stand repealed on July 1, * * * 2022.

442 **SECTION 16.** This act shall take effect and be in force from
443 and after July 1, 2019.

