

By: Representative Warren

To: Banking and Financial Services

HOUSE BILL NO. 598

1 AN ACT TO REENACT SECTIONS 81-22-1 THROUGH 81-22-29,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI NONPROFIT DEBT
3 MANAGEMENT SERVICES ACT; TO AMEND REENACTED SECTIONS 81-22-7,
4 81-22-11 AND 81-22-23, MISSISSIPPI CODE OF 1972, TO CORRECT
5 CERTAIN NONSUBSTANTIVE LANGUAGE IN THOSE SECTIONS; AMEND SECTION
6 16, CHAPTER 465, LAWS OF 2003, TO EXTEND THE DATE OF THE REPEALER
7 ON THE MISSISSIPPI NONPROFIT DEBT MANAGEMENT SERVICES ACT; AND FOR
8 RELATED PURPOSES.

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

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

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

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

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

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

21 (b) "Debt management service" means:

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

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

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

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

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) Title insurers who adjust debts out of escrow
47 funds only incidentally in the regular course of their principal
48 business;

49 (iii) Judicial officers or others acting under
50 court orders;

51 (iv) Those situations involving debt adjusting
52 incurred incidentally in connection with the lawful practice as a
53 certified public accountant;

54 (v) Bona fide trade or mercantile associations in
55 the course of arranging adjustment of debts with business
56 establishments;

57 (vi) Employers who adjust debts for their
58 employees;

59 (vii) Any person who, at the request of a debtor,
60 makes a loan to the debtor, and who, at the authorization of the
61 debtor, acts as an adjuster of the debtor's debts solely in the

62 disbursement of the proceeds of the loan, without compensation
63 for the services rendered in adjusting the debts; or

64 (viii) Any institution that is regulated,
65 supervised or licensed by the department or any out of state
66 institution that is insured by the Federal Deposit Insurance
67 Corporation or the National Credit Union Administration.

68 (d) "Department" means the Department of Banking and
69 Consumer Finance of the State of Mississippi.

70 (e) "Person" means an individual or an organization.

71 (f) "Records" or "documents" means any item in hard
72 copy or produced in a format of storage commonly described as
73 electronic, imaged, magnetic, microphotographic or otherwise, and
74 any reproduction so made shall have the same force and effect as
75 the original thereof and be admitted in evidence equally with the
76 original.

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

79 81-22-5. (1) **Nonprofit organizations.** No person or entity
80 may act as a debt management service provider with respect to
81 consumers who are residents of this state without a license issued
82 under this chapter. Only a nonprofit organization that is exempt
83 from taxation under the United States Internal Revenue Code,
84 Section 501(c)(3), may apply for and receive a license under this
85 chapter.

86 (2) **Licensure and relicensure.** A nonprofit organization
87 that is exempt from taxation under the United States Internal
88 Revenue Code, Section 501(c)(3), that desires to act or continue
89 to act as a debt management service provider with respect to
90 consumers in this state shall apply to the commissioner for a
91 license or renewal thereof in accordance with this chapter. The
92 application must be in a form prescribed by the commissioner. The
93 commissioner may refuse the application if it contains erroneous
94 or incomplete information. A license may not be issued unless the

95 commissioner, upon investigation, finds that the financial
96 soundness and responsibility, insurance coverage, consumer
97 education programs and services component, character and fitness
98 of the applicant and, when applicable, its partners, officers or
99 directors, warrant belief that the business will be operated
100 honestly and fairly within the purposes of this chapter. Each
101 license shall remain in full force and effect until relinquished,
102 suspended, revoked or expired. With each initial application for
103 a license, the applicant shall pay to the commissioner a license
104 fee of Seven Hundred Fifty Dollars (\$750.00), and on or before
105 December 31 of each year thereafter, an annual renewal fee of Four
106 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee
107 remains unpaid after December 31, the license shall expire. If
108 any person engages in business as provided for in this chapter
109 without paying the license fee provided for in this subsection
110 before beginning business or before the expiration of the person's
111 current license, as the case may be, then the person shall be
112 liable for the full amount of the license fee, plus a penalty in
113 an amount not to exceed Twenty-five Dollars (\$25.00) for each day
114 that the person has engaged in such business without a license or
115 after the expiration of a license. All licensing fees and
116 penalties shall be paid into the Consumer Finance Fund of the
117 department.

118 (3) **Action on registration application.** The commissioner
119 shall take action on an application within thirty (30) days after
120 the commissioner has accepted the application as complete. Upon
121 written request, the applicant is entitled to a hearing on the
122 question of the applicant's qualifications for license if the
123 commissioner has notified the applicant in writing that the
124 application has been denied or the commissioner has not issued a
125 license within thirty (30) days after the application for the
126 license was accepted as complete by the commissioner. A request
127 for a hearing may not be made more than sixty (60) days after the

128 application was accepted as complete or the commissioner has
129 mailed a written notice to the applicant stating that the
130 application has been denied and stating the reasons for the denial
131 of the application.

132 **SECTION 4.** Section 81-22-7, Mississippi Code of 1972, is
133 reenacted and amended as follows:

134 81-22-7. To be eligible for a license, an applicant shall
135 file with the commissioner a bond with good security in the penal
136 sum of Fifty Thousand Dollars (\$50,000.00), payable to the State
137 of Mississippi for the faithful performance by the licensee of the
138 duties and obligations pertaining to the business so licensed and
139 the prompt payment of any judgment that may be recovered against
140 the licensee on account of charges or other claims arising
141 directly or collectively from any violation of the provisions of
142 this chapter. The applicant may file, in lieu of the bond, cash,
143 a certificate of deposit or government bonds in the amount of
144 Fifty Thousand Dollars (\$50,000.00). Those deposits shall be
145 filed with the commissioner and are subject to the same terms and
146 conditions as are provided for in the surety bond required in this
147 paragraph. Any interest or earnings on those deposits are payable
148 to the depositor.

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

151 81-22-9. (1) **Funds deposited in trust account.** The debt
152 management service provider shall deposit, within two (2) business
153 days of receipt, all funds received from or on behalf of a
154 consumer for payment to a creditor or creditors in a federally
155 insured trust account for the benefit of the consumer in a
156 supervised financial organization. Any trust account established
157 to receive consumer funds is free from trustee process and
158 unavailable to creditors of the debt management service provider.

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

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

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

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

170 (3) **Commingling of funds.** The debt management service
171 provider may not commingle trust accounts established for the
172 benefit of consumers with any operating accounts of the debt
173 management service provider.

174 **SECTION 6.** Section 81-22-11, Mississippi Code of 1972, is
175 reenacted and amended as follows:

176 81-22-11. (1) **Written agreement.** A debt management service
177 provider may not perform debt management services for a consumer
178 unless the consumer and the debt management service provider first
179 have executed a written agreement with regard to the debt
180 management services to be provided. A copy of the completed
181 agreement must be given to the consumer.

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

185 (a) The name and address of the consumer and the debt
186 management service provider and the state license number of the
187 debt management service provider;

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

192 (c) Disclosure of the existence of the surety bond on
193 file with the commissioner under Section 81-22-7 * * * and a

194 notice that the consumer may contact the Department of Banking and
195 Consumer Finance with any questions or complaints regarding the
196 debt management service provider;

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

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

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

205 (g) A full description and schedule of the periodic
206 amounts to be remitted to the debt management service provider for
207 payment to the consumer's creditor or creditors and the amounts to
208 be remitted to each creditor;

209 (h) A notice to the consumer that by executing the
210 agreement the consumer authorizes the federally insured
211 institution to disclose financial records relating to the trust
212 account in which the consumer's funds are held under Section
213 81-22-9 * * * to the commissioner during the course of any
214 examination of the debt management service provider by the
215 commissioner; and

216 (i) The following notice:

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

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

221 81-22-13. A debt service management provider may charge a
222 consumer the following fees for providing debt management
223 services:

224 (a) A fee not to exceed Twenty-five Dollars (\$25.00)
225 per month to maintain a debt management plan for a consumer who

226 has chosen that course voluntarily after a free initial counseling
227 session;

228 (b) A one-time fee not to exceed Seventy-five Dollars
229 (\$75.00) for setting up a debt management plan for a consumer;

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

233 (d) A fee for educational courses/products that will
234 assist the consumer in achieving financial stability. Products
235 shall be educational in nature and may include, but not be limited
236 to, the following topics: Home Buyer Education, Financial
237 Literacy Education, and Credit Report Review. However, the
238 consumer must be informed that those courses and products are not
239 a mandatory condition to receive debt management services.

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

242 81-22-15. (1) **Written reports to consumers.** A debt
243 management service provider shall provide to each consumer
244 receiving debt management services periodic written reports
245 accounting for funds received from the consumer for payment to the
246 consumer's creditor or creditors whose obligations are listed in
247 the consumer's agreement with the debt management service provider
248 and disbursements made to each such creditor on the consumer's
249 behalf since the last report. The debt management service
250 provider shall provide those reports to the consumer not less than
251 once each calendar quarter.

252 (2) **Maintenance of records.** Any person required to be
253 licensed under this chapter shall maintain in its offices, or such
254 other location as the department permits, the books, accounts and
255 records necessary for the department to determine whether or not
256 the person is complying with the provisions of this chapter and
257 the rules and regulations adopted by the department under this
258 chapter. These books, accounts and records shall be maintained

259 apart and separate from any other business in which the person is
260 involved. A debt management service provider shall maintain books
261 and records for each consumer for whom it provides debt management
262 services for six (6) years following the final transaction with
263 the consumer.

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

266 81-22-17. The commissioner may exercise the following powers
267 and functions:

268 (a) **Complaint investigation.** The commissioner may
269 receive and act on complaints, take action to obtain voluntary
270 compliance with this chapter or refer cases to the Attorney
271 General, who shall appear for and represent the commissioner in
272 court.

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

276 (c) **Examination of licensees.** To assure compliance
277 with the provisions of this chapter, the department may examine
278 the books and records of any licensee without notice during normal
279 business hours. The commissioner shall charge the licensee an
280 examination fee in an amount not less than Three Hundred Dollars
281 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
282 office or location within the State of Mississippi, plus any
283 actual expenses incurred while examining the licensee's records or
284 books that are located outside the State of Mississippi. However,
285 in no event shall a licensee be examined more than once in a
286 two-year period unless for cause shown based upon consumer
287 complaint and/or other exigent reasons as determined by the
288 commissioner.

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

292 this chapter and for the purpose of determining whether any person
293 or individual reasonably suspected by the commissioner of
294 conducting business that requires a license under this chapter,
295 may investigate those persons and individuals and examine all
296 relevant books, records and papers employed by those persons or
297 individuals in the transaction of business, and may summon
298 witnesses and examine them under oath concerning matters as to the
299 business of those persons, or other such matters as may be
300 relevant to the discovery of violations of this chapter,
301 including, without limitation, the conduct of business without a
302 license as required under this chapter.

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

305 81-22-19. A debt management service provider may not:

306 (a) **Purchase debt.** Purchase any debt or obligation of
307 a consumer;

308 (b) **Lend money.** Lend money or provide credit to any
309 consumer;

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

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

314 (e) **Negative amortization.** Structure an agreement for
315 the consumer that, at the conclusion of the projected term for the
316 consumer's participation in the debt management service agreement,
317 would result in negative amortization of any of the consumer's
318 obligations to creditors.

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

321 81-22-21. (1) **False advertising.** A debt management service
322 provider may not engage in this state in false or misleading
323 advertising concerning the terms and conditions of any services or
324 assistance offered.

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

329 (3) **Dissemination; no liability.** This section does not
330 impose liability on the owner or personnel of any medium in which
331 an advertisement appears or through which an advertisement is
332 disseminated.

333 **SECTION 12.** Section 81-22-23, Mississippi Code of 1972, is
334 reenacted and amended as follows:

335 81-22-23. (1) A debt management service provider that
336 violates any provision of this chapter or any rule adopted by the
337 commissioner, or that through any unfair, unconscionable or
338 deceptive practice causes actual damage to a consumer is subject
339 to enforcement action under subsection (2) of this section.

340 (2) **Enforcement actions.** The following enforcement actions
341 may be taken by the commissioner or an aggrieved consumer against
342 a debt management service provider for violations of any provision
343 of this chapter or any rule adopted under this chapter, or for
344 unfair, unconscionable or deceptive practices that cause actual
345 damage to a consumer:

346 (a) When the commissioner has reasonable cause to
347 believe that a person is violating any provision of this chapter,
348 the commissioner, in addition to and without prejudice to the
349 authority provided elsewhere in this chapter, may enter an order
350 requiring the person to stop or to refrain from the violation.
351 The commissioner may sue in any chancery court of the state having
352 jurisdiction and venue to enjoin the person from engaging in or
353 continuing the violation or from doing any act in furtherance of
354 the violation. In such an action, the court may enter an order or
355 judgment awarding a preliminary or permanent injunction;

356 (b) The commissioner may, after notice and hearing,
357 impose a civil penalty against any licensee if the licensee,

358 individual required to be registered, or employee is adjudged by
359 the commissioner to be in violation of the provisions of this
360 chapter. The civil penalty shall not exceed Five Hundred Dollars
361 (\$500.00) per violation and shall be deposited into the Consumer
362 Finance Fund of the department;

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

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

372 (e) Revocation, suspension or nonrenewal of the debt
373 management service provider's license under Section
374 81-22-25 * * *.

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

377 81-22-25. (1) **Suspension or revocation.** After notice and
378 hearing, the commissioner may suspend or revoke a debt management
379 service provider's license if the commissioner finds that one of
380 the conditions of subsection (2) of this section is met.

381 (2) **Conditions for suspension or revocation.** The following
382 conditions are grounds for suspension or revocation of a
383 registration:

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

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

390 (c) The licensee is insolvent;

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

393 (e) The licensee fails to respond within a reasonable
394 time and in an appropriate manner to communications from the
395 commissioner.

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

398 81-22-27. The commissioner may employ the necessary
399 full-time employees above the number of permanent full-time
400 employees authorized for the department for the fiscal year 2003,
401 to carry out and enforce the provisions of this chapter. The
402 commissioner also may expend the necessary funds and equip and
403 provide necessary travel expenses for those employees.

404 **SECTION 15.** Section 81-22-29, Mississippi Code of 1972, is
405 reenacted as follows:

406 81-22-29. Nonprofit corporations engaged in the business of
407 debt adjusting that have filed a registration statement and surety
408 bond with the Secretary of State's office as of July 1, 2003,
409 shall have until September 30, 2003, to apply for a license under
410 this chapter, and upon the approval of the application, the
411 commissioner shall grant a license under this chapter.

412 **SECTION 16.** Section 16, Chapter 465, Laws of 2003, is
413 amended as follows:

414 Section 16. Sections 81-22-1 through 81-22-29 shall stand
415 repealed on July 1, 2008.

416 **SECTION 17.** Section 16 of this act shall be codified as
417 Section 81-22-31, Mississippi Code of 1972.

418 **SECTION 18.** This act shall take effect and be in force from
419 and after July 1, 2006.