

By: Representative White

To: Banking and Financial Services

HOUSE BILL NO. 800

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;

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

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

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

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

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

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

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



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

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

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



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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

228 (i) The following notice:

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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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

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

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

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

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

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

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



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

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



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

340 81-22-19. A debt management service provider may not:

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

425 (c) The licensee is insolvent;

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

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

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

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



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

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

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

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

455 (3) Each third-party payment processor shall file with the
456 commissioner a surety bond, issued by a bonding company or
457 insurance company authorized to do business in the State of
458 Mississippi, in the principal sum of Fifty Thousand Dollars
459 (\$50,000.00) and in an additional principal sum of Fifty Thousand
460 Dollars (\$50,000.00) for each additional licensee it contracts
461 with, but in no event shall the bond be required to be in excess



462 of One Hundred Fifty Thousand Dollars (\$150,000.00). In lieu of
463 the surety bond, a third-party payment processor may file other
464 assets such as cash, a certificate of deposit or government bonds.

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

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

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

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



487 surety bond or maintain other assets on deposit with the
488 department.

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

491 81-22-31. Sections 81-22-1 through 81-22-28, Mississippi
492 Code of 1972, shall stand repealed on July 1, * * * 2022.

493 **SECTION 17.** This act shall take effect and be in force from
494 and after July 1, 2019.

