3/17 1:45pm

Chapter No. 396
10/SS02/R735SG
JN / AS/SG

SENATE BILL NO. 2427

Originated in Senate Teresa Hughes Secretary

SENATE BILL NO. 2427

AN ACT TO REENACT SECTIONS 81-22-1, 81-22-3, 81-22-5, 81-22-7, 81-22-9, 81-22-11, 81-22-13, 81-22-15, 81-22-17, 81-22-19, 81-22-21, 81-22-23, 81-22-25, 81-22-27 AND 81-22-28, MISSISSIPPI CODE OF 1972, WHICH ARE KNOWN AND CITED AS THE "MISSISSIPPI DEBT MANAGEMENT SERVICES ACT"; TO AMEND REENACTED SECTION 81-22-13, MISSISSIPPI CODE OF 1972, TO INFORM THE CODE PUBLISHER OF CERTAIN NONSUBSTANTIVE LANGUAGE THAT SHOULD BE REVISED; TO REENACT AND AMEND SECTION 81-22-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE SECTIONS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(b) "Debt management service" means:

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

(ii) Arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or

more creditors of the consumer in full or partial payment of the consumer's obligation;

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

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

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

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

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

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

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

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

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

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

(vii) Employers who adjust debts for their employees;

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

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

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

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

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

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

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

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

(i) "Third-party payment processor" means any entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or

is in the chain or distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

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

81-22-5. (1) **Licensure and relicensure.** No person or entity may act as a debt management service provider with respect to consumers who are residents of this state without a license issued under this chapter. The license application must be in a form prescribed by the commissioner. The commissioner may refuse the application if it contains erroneous or incomplete information. A license may not be issued unless the commissioner, upon investigation, finds that the financial soundness and responsibility, insurance coverage, consumer education programs and services component, character and fitness of the applicant and, when applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter. Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay to the commissioner a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before December 31 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid after December 31, the license shall expire. If any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before beginning business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person

has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department.

(2) **Action on registration application.** The commissioner 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:

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

paragraph. Any interest or earnings on those deposits are payable to the depositor.

SECTION 5. Section 81-22-9, Mississippi Code of 1972, is 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.

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

(a) Maintain separate records of account for each 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

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

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

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

81-22-11. (1) **Written agreement.** A debt management service provider may not perform debt management services for a consumer unless the consumer and the debt management service provider first have executed a written agreement with regard to the debt

management services to be provided. A copy of the completed agreement must be given to the consumer.

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

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

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

(c) Disclosure of the existence of the surety bond on file with the commissioner under Section 81-22-7 and a notice that the consumer may contact the Department of Banking and Consumer 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;

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

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

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

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

(h) A notice to the consumer that by executing the agreement the consumer authorizes the federally insured institution to disclose financial records relating to the escrow account in which the consumer's funds are held under Section

81-22-9 to the commissioner during the course of any examination of the debt management service provider by the commissioner; and

(i) The following notice:

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

SECTION 7. Section 81-22-13, Mississippi Code of 1972, is reenacted and amended as follows:

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

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

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

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

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

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

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

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

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

(3) **Verification of Payments to Creditors.** Licensees that 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:

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

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

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

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

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

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

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

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

complaint and/or other exigent reasons as determined by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

81-22-23. (1) **Violations; unfair, unconscionable or 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:

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

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

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

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

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

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

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

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

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

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

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

(c) The licensee is insolvent;

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

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

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

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

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

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

(2) Such notice shall contain the name and address of the third-party payment processor, a description of the services, a copy of the agreement or contract between the licensee and the third-party payment processor and the highest daily amount of consumer funds to be held or transmitted. The third-party payment

processor shall submit to the department, upon request, the highest daily amount held or transmitted during the previous month.

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

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

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

(7) In the event a licensee elects to maintain cash, a certificate of deposit or government bonds on deposit, and

utilizes the services of a third-party payment processor, there is no requirement that the third-party payment processor obtain a surety bond or maintain other assets on deposit with the department.

SECTION 16. Section 81-22-31, Mississippi Code of 1972, is reenacted and amended as follows:

81-22-31. Sections 81-22-1 through 81-22-28, Mississippi Code of 1972, shall stand repealed on July 1, 2013.

SECTION 17. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE SENATE
March 4, 2010

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 4, 2010

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3/17/10 1:45pm