

By: Senator(s) King, Mettetal, Frazier

To: Business and Financial Institutions

SENATE BILL NO. 2439

1 AN ACT TO REENACT SECTIONS 81-22-1 THROUGH 81-22-27,  
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI DEBT  
3 MANAGEMENT SERVICES ACT; TO AMEND SECTION 81-22-1, MISSISSIPPI  
4 CODE OF 1972, TO REVISE THE SHORT TITLE OF THE ACT; TO AMEND  
5 SECTION 81-22-3, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN  
6 TERMS; TO AMEND SECTION 81-22-5, MISSISSIPPI CODE OF 1972, TO  
7 ALLOW FOR-PROFIT ORGANIZATIONS TO APPLY FOR AND RECEIVE A LICENSE  
8 UNDER THE ACT; TO AMEND SECTION 81-22-7, MISSISSIPPI CODE OF 1972,  
9 TO MAKE A TECHNICAL CORRECTION; TO AMEND SECTION 81-22-9,  
10 MISSISSIPPI CODE OF 1972, TO CHANGE THE WORD "TRUST" TO "ESCROW";  
11 TO AMEND SECTION 81-22-11, MISSISSIPPI CODE OF 1972, TO DELETE THE  
12 REQUIREMENT THAT THE STATE LICENSE NUMBER OF THE DEBT MANAGEMENT  
13 SERVICE PROVIDER MUST BE INCLUDED IN THE WRITTEN AGREEMENT; TO  
14 AMEND SECTION 81-22-13, MISSISSIPPI CODE OF 1972, TO REVISE THE  
15 FEES WHICH MAY BE CHARGED TO THE CONSUMER; TO AMEND SECTION  
16 81-22-15, MISSISSIPPI CODE OF 1972, TO REQUIRE VERIFICATION OF  
17 PAYMENTS TO CREDITORS BY LICENSEE THAT PARTICIPATE IN FAIR SHARE  
18 CONTRIBUTIONS; TO AMEND SECTIONS 81-22-17 AND 81-22-23,  
19 MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL CORRECTIONS; TO CREATE  
20 NEW SECTION 81-22-28, MISSISSIPPI CODE OF 1972, TO REGULATE THE  
21 USE OF A THIRD-PARTY PAYMENT PROCESSOR; TO CREATE NEW SECTION  
22 81-22-31, MISSISSIPPI CODE OF 1972, TO CODIFY AND EXTEND THE  
23 REPEALER ON THIS ACT; TO REPEAL SECTION 16, CHAPTER 465, LAWS OF  
24 2003, WHICH PROVIDES FOR THE REPEAL OF THIS ACT BY GENERAL LAW; TO  
25 REPEAL SECTION 81-22-29, MISSISSIPPI CODE OF 1972, WHICH PROVIDES  
26 AN APPLICATION DEADLINE FOR EXISTING NONPROFIT CORPORATIONS  
27 ENGAGED IN THE BUSINESS OF DEBT ADJUSTING; AND FOR RELATED  
28 PURPOSES.

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

30 **SECTION 1.** Section 81-22-1, Mississippi Code of 1972, is  
31 reenacted and amended as follows:

32 81-22-1. This chapter may be known and cited as the  
33 "Mississippi \* \* \* Debt Management Services Act."

34 **SECTION 2.** Section 81-22-3, Mississippi Code of 1972, is  
35 reenacted and amended as follows:

36 81-22-3. As used in this chapter, unless the context  
37 otherwise indicates, the following terms have the following  
38 meanings:

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

41 (b) "Debt management service" means:

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

46 (ii) Arranging or assisting a consumer to arrange  
47 for the distribution of one or more payments to or among one or  
48 more creditors of the consumer in full or partial payment of the  
49 consumer's obligation;

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

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

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

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

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

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

71 (iii) Judicial officers or others acting under  
72 court orders;

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

76 (v) Bona fide trade or mercantile associations in  
77 the course of arranging adjustment of debts with business  
78 establishments;

79 (vi) Employers who adjust debts for their  
80 employees;

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

86 (viii) Any institution that is regulated,  
87 supervised or licensed by the department or any out of state  
88 institution that is insured by the Federal Deposit Insurance  
89 Corporation or the National Credit Union Administration.

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

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

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

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

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

104 (i) "Third-party payment processor" means any entity  
105 that holds, or has access to, or can effectuate possession of, by

106 any means, the monies of a licensee's debtors, or distributes, or  
107 is in the chain or distribution of such monies, to the creditors  
108 of such debtors, pursuant to an agreement or contract with the  
109 licensee. This term shall not include entities that solely  
110 provide the electronic routing and settlement of financial  
111 transactions and their sponsoring banks.

112       **SECTION 3.** Section 81-22-5, Mississippi Code of 1972, is  
113 reenacted and amended as follows:

114       81-22-5. \* \* \*

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

139 amount of the license fee, plus a penalty in an amount not to  
140 exceed Twenty-five Dollars (\$25.00) for each day that the person  
141 has engaged in such business without a license or after the  
142 expiration of a license. All licensing fees and penalties shall  
143 be paid into the Consumer Finance Fund of the department.

144 (2) **Action on registration application.** The commissioner  
145 shall take action on an application within thirty (30) days after  
146 the commissioner has accepted the application as complete. Upon  
147 written request, the applicant is entitled to a hearing on the  
148 question of the applicant's qualifications for license if the  
149 commissioner has notified the applicant in writing that the  
150 application has been denied or the commissioner has not issued a  
151 license within thirty (30) days after the application for the  
152 license was accepted as complete by the commissioner. A request  
153 for a hearing may not be made more than sixty (60) days after the  
154 application was accepted as complete or the commissioner has  
155 mailed a written notice to the applicant stating that the  
156 application has been denied and stating the reasons for the denial  
157 of the application.

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

160 81-22-7. To be eligible for a license, an applicant shall  
161 file with the commissioner a bond with good security in the penal  
162 sum of Fifty Thousand Dollars (\$50,000.00), payable to the State  
163 of Mississippi for the faithful performance by the licensee of the  
164 duties and obligations pertaining to the business so licensed and  
165 the prompt payment of any judgment that may be recovered against  
166 the licensee on account of charges or other claims arising  
167 directly or collectively from any violation of the provisions of  
168 this chapter. The applicant may file, in lieu of the bond, cash,  
169 a certificate of deposit or government bonds in the amount of  
170 Fifty Thousand Dollars (\$50,000.00). Those deposits shall be  
171 filed with the commissioner and are subject to the same terms and

172 conditions as are provided for in the surety bond required in this  
173 paragraph. Any interest or earnings on those deposits are payable  
174 to the depositor.

175 **SECTION 5.** Section 81-22-9, Mississippi Code of 1972, is  
176 reenacted and amended as follows:

177 81-22-9. (1) **Funds deposited in escrow account.** The debt  
178 management service provider shall deposit, within two (2) business  
179 days of receipt, all funds received from or on behalf of a  
180 consumer for payment to a creditor or creditors in a federally  
181 insured escrow account for the benefit of the consumer in a  
182 supervised financial organization. Any escrow account established  
183 to receive consumer funds is free from trustee process and  
184 unavailable to creditors of the debt management service provider.

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

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

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

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

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

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

202 81-22-11. (1) **Written agreement.** A debt management service  
203 provider may not perform debt management services for a consumer  
204 unless the consumer and the debt management service provider first

205 have executed a written agreement with regard to the debt  
206 management services to be provided. A copy of the completed  
207 agreement must be given to the consumer.

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

211 (a) The name and address of the consumer and the debt  
212 management service provider \* \* \*;

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

217 (c) Disclosure of the existence of the surety bond on  
218 file with the commissioner under Section 81-22-7 \* \* \* and a  
219 notice that the consumer may contact the Department of Banking and  
220 Consumer Finance at P.O. Box 23729, Jackson, MS 39225-3729 or  
221 1-800-844-2499 with any questions or complaints regarding the debt  
222 management service provider;

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

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

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

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

235 (h) A notice to the consumer that by executing the  
236 agreement the consumer authorizes the federally insured  
237 institution to disclose financial records relating to the escrow

238 account in which the consumer's funds are held under Section  
239 81-22-9 \* \* \* to the commissioner during the course of any  
240 examination of the debt management service provider by the  
241 commissioner; and

242 (i) The following notice:

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

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

247 81-22-13. A debt service management provider may only charge  
248 a consumer the following fees for providing debt management  
249 services:

250 (a) A maintenance fee not to exceed Thirty Dollars  
251 (\$30.00) per month after a consumer has received a free initial  
252 counseling session;

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

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

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

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

270           **SECTION 8.** Section 81-22-15, Mississippi Code of 1972, is  
271 reenacted and amended as follows:

272           81-22-15. (1) **Written reports to consumers.** A debt  
273 management service provider shall provide to each consumer  
274 receiving debt management services periodic written reports  
275 accounting for funds received from the consumer for payment to the  
276 consumer's creditor or creditors whose obligations are listed in  
277 the consumer's agreement with the debt management service provider  
278 and disbursements made to each such creditor on the consumer's  
279 behalf since the last report. The debt management service  
280 provider shall provide those reports to the consumer not less than  
281 once each calendar quarter.

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

294           (3) **Verification of Payments to Creditors.** Licensees that  
295 participate in fair share contributions with creditors shall  
296 maintain records that reflect client accounts were credited for  
297 the full amount of any payments due and not the net amount as a  
298 result of a fair share contribution. Such records may consist of  
299 either a copy of the client's statement from the creditor or the  
300 licensee may send a monthly or quarterly statement to clients that  
301 reflect payments remitted to creditors.

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

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

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

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

313       **SECTION 9.** Section 81-22-17, Mississippi Code of 1972, is  
314 reenacted and amended as follows:

315       81-22-17. The commissioner may exercise the following powers  
316 and functions:

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

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

325           (c) **Examination of licensees.** To assure compliance  
326 with the provisions of this chapter, the department may examine  
327 the books and records of any licensee without notice during normal  
328 business hours. The commissioner shall charge the licensee an  
329 examination fee in an amount not less than Three Hundred Dollars  
330 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each  
331 office or location within the State of Mississippi, plus any  
332 actual expenses incurred while examining the licensee's records or  
333 books that are located outside the State of Mississippi. However,  
334 in no event shall a licensee be examined more than once in a

335 two-year period unless for cause shown based upon consumer  
336 complaint and/or other exigent reasons as determined by the  
337 commissioner.

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

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

354 81-22-19. A debt management service provider may not:

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

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

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

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

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

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

370           81-22-21. (1) **False advertising.** A debt management service  
371 provider may not engage in this state in false or misleading  
372 advertising concerning the terms and conditions of any services or  
373 assistance offered.

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

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

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

384           81-22-23. (1) **Violations; unfair, unconscionable or**  
385 **deceptive practices.** A debt management service provider that  
386 violates any provision of this chapter or any rule adopted by the  
387 commissioner, or that through any unfair, unconscionable or  
388 deceptive practice causes actual damage to a consumer is subject  
389 to enforcement action under subsection (2) of this section.

390           (2) **Enforcement actions.** The following enforcement actions  
391 may be taken by the commissioner or an aggrieved consumer against  
392 a debt management service provider for violations of any provision  
393 of this chapter or any rule adopted under this chapter, or for  
394 unfair, unconscionable or deceptive practices that cause actual  
395 damage to a consumer:

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

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

406 (b) The commissioner may, after notice and hearing,  
407 impose a civil penalty against any licensee if the licensee,  
408 individual required to be registered, or employee is adjudged by  
409 the commissioner to be in violation of the provisions of this  
410 chapter. The civil penalty shall not exceed Five Hundred Dollars  
411 (\$500.00) per violation and shall be deposited into the Consumer  
412 Finance Fund of the department;

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

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

422 (e) Revocation, suspension or nonrenewal of the debt  
423 management service provider's license under Section  
424 81-22-25 \* \* \*.

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

427 81-22-25. (1) **Suspension or revocation.** After notice and  
428 hearing, the commissioner may suspend or revoke a debt management  
429 service provider's license if the commissioner finds that one of  
430 the conditions of subsection (2) of this section is met.

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

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

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

440 (c) The licensee is insolvent;

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

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

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

448 81-22-27. The commissioner may employ the necessary  
449 full-time employees above the number of permanent full-time  
450 employees authorized for the department for the fiscal year 2003,  
451 to carry out and enforce the provisions of this chapter. The  
452 commissioner also may expend the necessary funds and equip and  
453 provide necessary travel expenses for those employees.

454 **SECTION 15.** The following shall be codified as Section  
455 81-22-28, Mississippi Code of 1972:

456 81-22-28. (1) If a licensee seeks to utilize a third-party  
457 payment processor, to hold, have access to, effectuate possession  
458 of, by any means, or to distribute or be in the chain of  
459 distribution of the monies of another licensee's consumers, the  
460 licensee shall give the Department of Banking and Consumer Finance  
461 ten (10) days' written notice.

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

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

470 (3) Each third-party payment processor shall file with the  
471 commissioner a surety bond, issued by a bonding company or  
472 insurance company authorized to do business in the State of  
473 Mississippi, in the principal sum of Fifty Thousand Dollars  
474 (\$50,000.00) and in an additional principal sum of Fifty Thousand  
475 Dollars (\$50,000.00) for each additional licensee it contracts  
476 with, but in no event shall the bond be required to be in excess  
477 of One Hundred Fifty Thousand Dollars (\$150,000.00). In lieu of  
478 the surety bond, a third-party payment processor may file other  
479 assets such as cash, a certificate of deposit or government bonds.

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

484 (5) Prior to performing any of its services, the third-party  
485 payment processor shall provide written authorization for the  
486 department to examine all books, records, documents and materials,  
487 including those maintained in electronic form, as they relate to  
488 the consumers' monies held by, or distributed by the third-party  
489 payment processor to the creditors of the consumers and shall have  
490 received written confirmation from the department that the written  
491 authorization is sufficient. The cost of the examination shall be  
492 paid by the licensee.

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

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

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

504       **SECTION 16.** The following shall be codified as Section  
505 81-22-31, Mississippi Code of 1972:

506       81-22-31. Sections 81-22-1 through 81-22-28, Mississippi  
507 Code of 1972, shall stand repealed on July 1, 2010.

508       **SECTION 17.** Section 16, Chapter 465, Laws of 2003, which  
509 provides for the repeal of the Mississippi Nonprofit Debt  
510 Management Services Act, is hereby repealed.

511       **SECTION 18.** Section 81-22-29, Mississippi Code of 1972,  
512 which provides an application deadline for existing nonprofit  
513 corporations engaged in the business of debt adjusting, is hereby  
514 repealed.

515       **SECTION 19.** This act shall take effect and be in force from  
516 and after July 1, 2006.