

By: Senator(s) Hewes, Brown, Kirby, Moffatt,
Clarke, Gollott

To: Fees, Salaries and
Administration;
Appropriations

SENATE BILL NO. 2134

1 AN ACT TO CREATE THE ELECTRONIC GOVERNMENT SERVICES ACT; TO
2 PROVIDE A STATEMENT OF PURPOSE; TO PROHIBIT STATE GOVERNMENT FROM
3 PROVIDING ELECTRONIC COMMERCE SERVICES IF THE PRIVATE SECTOR
4 PROVIDES SUCH SERVICES; TO PROVIDE EXCEPTIONS TO THE PROHIBITION;
5 TO REQUIRE ANNUAL REPORTING TO THE LEGISLATURE IF AN AGENCY ELECTS
6 TO PROVIDE ELECTRONIC SERVICES IN A JURISDICTION WHERE A PRIVATE
7 ENTERPRISE DELIVERS THE SAME ELECTRONIC SERVICE; AND FOR RELATED
8 PURPOSES.

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

10 **SECTION 1.** This act may be cited as the Electronic
11 Government Services Act.

12 **SECTION 2.** The Legislature finds and declares that the
13 growth of private enterprise is essential to the health, welfare
14 and prosperity of this state and that government competes with the
15 private sector when it provides goods and services to the public.
16 It is the intent of the Legislature and the purpose of this act to
17 protect economic opportunities for private industry against unfair
18 competition by government agencies and enhance the efficient
19 provision of public goods and services.

20 **SECTION 3.** As used in this act:

21 (a) "Electronic commerce services" means services that
22 are the same, similar to or overlapping those information
23 technology-based services provided by the private sector to the
24 general public, for example, any transaction completed over a
25 computer network such as the buying of goods and services on the
26 Internet.

27 (b) "Commercial activity" means performing services or
28 providing goods which can normally be obtained from private
29 enterprise.

30 (c) "Direct costs" means all costs, whether capital
31 costs, operating costs, or otherwise, that would be eliminated if
32 the service or function to which they relate were discontinued.

33 (d) "Full cost accounting" means, in accordance with
34 applicable generally accepted accounting principles, accounting
35 for all direct and indirect costs, including capital costs, that
36 are incurred in the ownership, management or operation of an
37 electronic service.

38 (e) "Government agency" means the state, any unit of
39 state government and any local government or other subdivision or
40 district of the state, and shall not be construed to exclude any
41 entity which is not majority owned as private property and which
42 established under the Constitution, statutes, ordinances or any
43 other order or action by any such entity or its officers.

44 (f) "Indirect costs accounting" means, all costs,
45 whether capital costs, operating costs, or otherwise, that are not
46 direct costs. Indirect costs that support multiple services or
47 functions shall be allocated among those services and functions in
48 proportion to the relative burden each service or function places
49 on the cost category and by any reasonable method consistent with
50 applicable generally accepted accounting principles.

51 (g) "Private enterprise" means an individual, firm,
52 partnership, joint venture, corporation, association or any other
53 legal entity engaging in the manufacturing, processing, sale,
54 offering for sale, rental, leasing, delivery, dispensing,
55 distributing or advertising of goods or services for profit.

56 (h) "Private sector" means two (2) or more competing
57 privately-owned companies.

58 **SECTION 4.** If the private sector (defined as two (2) or more
59 competing privately-owned companies) provides electronic commerce
60 services to the public, government shall not start or carry on any
61 activity to provide or offer such services, or expand similar
62 services at government expense or provision. Nothing in this act

63 prohibits government from providing electronic commerce services
64 to the public in the absence of the private sector provision of
65 such services.

66 **SECTION 5.** A government agency can provide duplicative or
67 competing electronic commerce services; provided, the head of the
68 agency that proposes to provide duplicative or competing
69 electronic commerce services to the general public shall provide
70 public notice and the opportunity of the public to comment on the
71 agency's proposed services. Such notice shall include:

72 (a) The agency's proposed findings of fact and
73 conclusions of law describing the reasons why it believes it is
74 necessary and in the public interest to provide duplicative or
75 competing electronic commerce services. The agency must specify:

76 (i) The initial and total lifecycle costs of the
77 proposed government services, which include, but are not limited
78 to, all technology, infrastructure, services, contracts and direct
79 and indirect personnel costs;

80 (ii) The individual per taxpayer cost of such
81 services on an annualized basis, and the cost of such services per
82 user on an annualized basis;

83 (iii) A description of the agency's reasons for
84 believing that the cost benefits of providing such services
85 require the expenditure of public funds;

86 (iv) Identification of unmet needs in the consumer
87 marketplace which the government service offer would fulfill;

88 (v) A description of how the proposed government
89 service offers would differ from those provided by the private
90 sector; and

91 (vi) An economic impact analysis demonstrating
92 that the offering of proposed electronic commerce services by
93 government will not be anti-competitive in its effect on the
94 existing industry, and will not adversely impact or distort the

95 private sector marketplace for the same or similar electronic
96 commerce services.

97 (b) Subsequent to receiving the comments of the public,
98 if the head of the agency wishes to proceed with duplicative or
99 competing services, the head of the agency must sign factual and
100 legal conclusions enumerating all of the factors described in
101 paragraph (a).

102 (c) Any provider of electronic commerce services who
103 resides within or does business in the state has standing to
104 judicially challenge the factual and legal sufficiency of the
105 findings in paragraph (b) pursuant to the state's procedures for
106 hearing and resolving complaints filed under this act.

107 (d) Any provider of electronic commerce services, who
108 resides within or does business in the state, has standing to
109 judicially challenge the provision of electronic commerce services
110 by the government agency not made in conformance with this act
111 pursuant to the state's procedures for hearing and resolving
112 complaints filed under this act.

113 **SECTION 6.** Nothing contained in this act may be construed to
114 prohibit a government agency from offering electronic government
115 services to the general public services prior to the enactment of
116 the act.

117 **SECTION 7.** If an agency elects to provide electronic
118 services in a jurisdiction where a private enterprise delivers the
119 same electronic service, the agency shall prepare and publish, on
120 or before January 1 an annual report on its electronic services.
121 The report shall be substantially in accordance with full cost
122 accounting and shall include disclosure of the amount, source and
123 cost of working capital utilized for its electronic services.

124 **SECTION 8.** This act shall take effect and be in force from
125 and after July 1, 2004.