

By: Senator(s) Gollott, Jackson (11th)

To: Judiciary, Division B

SENATE BILL NO. 2828
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 75-24-25, MISSISSIPPI CODE OF 1972,
2 TO REVISE PENALTY PROVISIONS REGARDING PRICE GOUGING; TO AMEND
3 SECTIONS 33-15-5 AND 33-15-11, MISSISSIPPI CODE OF 1972, TO
4 CONFORM; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 75-24-25, Mississippi Code of 1972, is
7 amended as follows:

8 75-24-25. (1) For the purposes of this section, the
9 following terms shall have the meanings herein ascribed:

10 (a) "Person" means a natural person, corporation,
11 trust, partnership, incorporated or unincorporated association, or
12 any other legal entity.

13 (b) "State of emergency" has the meaning ascribed in
14 Section 33-15-5.

15 (c) "Local emergency" has the meaning ascribed in
16 Section 33-15-5.

17 (d) "Emergency impact area" has the meaning ascribed in
18 Section 33-15-5.

19 (e) "Value received" means the consideration or payment
20 given for the purchase of goods and services.

21 (2) Whenever, under the Mississippi Emergency Management
22 Law, Sections 33-15-1 through 33-15-49, a state of emergency or a
23 local emergency is declared to exist in this state, then the value
24 received for all goods and services sold within the designated
25 emergency impact area shall not exceed the prices ordinarily
26 charged for comparable goods or services in the same market area
27 at or immediately before the declaration of a state of emergency
28 or local emergency. However, the value received may include: any

29 expenses, the cost of the goods and services which are necessarily
30 incurred in procuring such goods and services during a state of
31 emergency or local emergency. The prices ordinarily charged for
32 comparable goods or services in the same market area do not
33 include temporarily discounted goods or services. The same market
34 area does not necessarily mean a single provider of goods or
35 services.

36 (3) Any person who knowingly and willfully violates
37 subsection (2) of this section, when the total value * * *
38 received during a twenty-four-hour period is Five Hundred Dollars
39 (\$500.00) or more, shall be guilty of a felony and upon conviction
40 shall be punished by confinement for a term of not less than one
41 (1) year nor more than five (5) years or a fine of not more than
42 Five Thousand Dollars (\$5,000.00), or both.

43 (4) Any person who knowingly and willfully violates
44 subsection (2) of this section, when the total value * * *
45 received during a twenty-four-hour period is less than Five
46 Hundred Dollars (\$500.00), shall be guilty of a misdemeanor and
47 upon conviction shall be fined not more than One Thousand Dollars
48 (\$1,000.00) or by imprisonment in the county jail for a term not
49 to exceed six (6) months, or both.

50 (5) For the purpose of determining the punishment to be
51 imposed under subsections (3) and (4) of this section, the value
52 received during a twenty-four-hour period shall be aggregated.

53 (6) In addition to the criminal penalties prescribed in
54 subsections (3) and (4), any knowing and willful violation of
55 subsection (2) of this section shall be considered an unfair or
56 deceptive trade practice subject to and governed by all the
57 procedures and remedies available under the provisions of this
58 chapter for enforcement of prohibited acts and practices contained
59 therein.

60 **SECTION 2.** Section 33-15-5, Mississippi Code of 1972, is
61 amended as follows:

62 33-15-5. The following words, whenever used in this article
63 shall, unless a different meaning clearly appears from the
64 context, have the following meanings:

65 (a) "Agency" means the Mississippi Emergency Management
66 Agency, created by Section 33-15-7.

67 (b) "Director" means the Director of Emergency
68 Management, appointed pursuant to Section 33-15-7.

69 (c) "Emergency management" means the preparation for,
70 the mitigation of, the response to, and the recovery from
71 emergencies and disasters. Specific emergency management
72 responsibilities include, but are not limited to:

73 (i) Reduction of vulnerability of people and
74 communities of this state to damage, injury and loss of life and
75 property resulting from natural, technological or man-made
76 emergencies or hostile military paramilitary action.

77 (ii) Preparation for prompt and efficient response
78 and recovery to protect lives and property affected by
79 emergencies.

80 (iii) Response to emergencies using all systems,
81 plans and resources necessary to preserve adequately the health,
82 safety and welfare of persons or property affected by the
83 emergency.

84 (iv) Recovery from emergencies by providing for
85 the rapid and orderly start of restoration and rehabilitation of
86 persons and property affected by emergencies.

87 (v) Provision of an emergency management system
88 embodying all aspects of preemergency preparedness and
89 postemergency response, recovery and mitigation.

90 (vi) Assistance in anticipation, recognition,
91 appraisal, prevention and mitigation of emergencies which may be
92 caused or aggravated by inadequate planning for, and regulation of
93 public and private facilities and land use.

94 (d) "Civil defense," whenever it appears in the laws of
95 the State of Mississippi, shall mean "emergency management" unless
96 the context clearly indicates otherwise.

97 (e) "State of war emergency" means the condition which
98 exists immediately, with or without a proclamation thereof by the
99 Governor, whenever this state or nation is attacked by an enemy of
100 the United States or upon receipt by the state of a warning from
101 the federal government indicating that such an attack is probable
102 or imminent.

103 (f) "State of emergency" means the duly proclaimed
104 existence of conditions of disaster or extreme peril to the safety
105 of persons or property within the state caused by air or water
106 pollution, fire, flood, storm, epidemic, earthquake, hurricane,
107 resource shortages, or other natural or man-made conditions other
108 than conditions causing a "state of war emergency," which
109 conditions by reasons of their magnitude are or are likely to be
110 beyond the control of the services, personnel, equipment and
111 facilities of any single county and/or municipality and requires
112 combined forces of the state to combat.

113 (g) "Local emergency" means the duly proclaimed
114 existence of conditions of disaster or extreme peril to the safety
115 of persons and property within the territorial limits of a county
116 and/or municipality caused by such conditions as air or water
117 pollution, fire, flood, storm, epidemic, earthquake, hurricane,
118 resource shortages or other natural or man-made conditions, which
119 conditions are or are likely to be beyond the control of the
120 services, personnel, equipment and facilities of the political
121 subdivision and require the combined forces of other subdivisions
122 or of the state to combat.

123 (h) "Emergency" means any occurrence, or threat
124 thereof, whether natural, technological, or man-made, in war or in
125 peace, which results or may result in substantial injury or harm
126 to the population or substantial damage to or loss of property.

127 (i) "Man-made emergency" means an emergency caused by
128 an action against persons or society, including, but not limited
129 to, emergency attack, sabotage, terrorism, civil unrest or other
130 action impairing the orderly administration of government.

131 (j) "Natural emergency" means an emergency caused by a
132 natural event, including, but not limited to, a hurricane, a
133 storm, a flood, severe wave action, a drought or an earthquake.

134 (k) "Technological emergency" means an emergency caused
135 by a technological failure or accident, including, but not limited
136 to, an explosion, transportation accident, radiological accident,
137 or chemical or other hazardous material incident.

138 (l) "Local emergency management agency" means an
139 organization created to discharge the emergency management
140 responsibilities and functions of a political subdivision.

141 (m) "Disaster" means any natural, technological or
142 civil emergency as defined in this section that causes damage of
143 sufficient severity and magnitude to result in a declaration of an
144 emergency by a county or municipality, the Governor or the
145 President of the United States. Disasters shall be identified by
146 the severity of resulting damage, as follows:

147 (i) "Catastrophic disaster" means a disaster that
148 will require massive state and federal assistance, including
149 immediate military involvement.

150 (ii) "Major disaster" means a disaster that will
151 likely exceed local capabilities and require a broad range of
152 state and federal assistance.

153 (iii) "Minor disaster" means a disaster that is
154 likely to be within the response capabilities of local government
155 and to result in only a minimal need for state or federal
156 assistance.

157 (n) "Disaster Reservist" means any person hired on a
158 temporary basis pursuant to State Personnel Board policies and
159 procedures regulating personal service contracts, that is hired to

160 perform specific tasks related to a Governor's State of Emergency,
161 or by an emergency or disaster declaration of the President of the
162 United States, by the agency, and is assigned to perform such
163 duties as may be required under the direction of the appropriate
164 agency supervisor.

165 (o) "Emergency impact area" means the area of the state
166 in which market conditions exist due to a state of emergency
167 creating a likelihood that prices ordinarily charged for goods and
168 services could be raised unfairly due to the underlying emergency.

169 **SECTION 3.** Section 33-15-11, Mississippi Code of 1972, is
170 amended as follows:

171 33-15-11. (a) The Governor shall have general direction and
172 control of the activities of the Emergency Management Agency and
173 Council and shall be responsible for the carrying out of the
174 provisions of this article, and in the event of a man-made,
175 technological or natural disaster or emergency beyond local
176 control, may assume direct operational control over all or any
177 part of the emergency management functions within this state.

178 (b) In performing his duties under this article, the
179 Governor is further authorized and empowered:

180 (1) To make, amend and rescind the necessary orders,
181 rules and regulations to carry out the provisions of this article
182 with due consideration of the plans of the federal government, and
183 to enter into disaster assistance grants and agreements with the
184 federal government under the terms as may be required by federal
185 law.

186 (2) To work with the Mississippi Emergency Management
187 Agency in preparing a comprehensive plan and program for the
188 emergency management of this state, such plan and program to be
189 integrated into and coordinated with the emergency management
190 plans of the federal government and of other states to the fullest
191 possible extent, and to coordinate the preparation of plans and
192 programs for emergency management by the political subdivisions of

193 this state, such local plans to be integrated into and coordinated
194 with the emergency management plan and program of this state to
195 the fullest possible extent.

196 (3) In accordance with such plan and program for
197 emergency management of this state, to ascertain the requirements
198 of the state or the political subdivisions thereof for food or
199 clothing or other necessities of life in the event of attack or
200 natural or man-made or technological disasters and to plan for and
201 procure supplies, medicines, materials and equipment, and to use
202 and employ from time to time any of the property, services and
203 resources within the state, for the purposes set forth in this
204 article; to make surveys of the industries, resources and
205 facilities within the state as are necessary to carry out the
206 purposes of this article; to institute training programs and
207 public information programs, and to take all other preparatory
208 steps, including the partial or full mobilization of emergency
209 management organizations in advance of actual disaster, to insure
210 the furnishing of adequately trained and equipped forces of
211 emergency management personnel in time of need.

212 (4) To cooperate with the President and the heads of
213 the Armed Forces, and the Emergency Management Agency of the
214 United States, and with the officers and agencies of other states
215 in matters pertaining to the emergency management of the state and
216 nation and the incidents thereof; and in connection therewith, to
217 take any measures which he may deem proper to carry into effect
218 any request of the President and the appropriate federal officers
219 and agencies, for any action looking to emergency management,
220 including the direction or control of (a) blackouts and practice
221 blackouts, air raid drills, mobilization of emergency management
222 forces, and other tests and exercises, (b) warnings and signals
223 for drills or attacks and the mechanical devices to be used in
224 connection therewith, (c) the effective screening or extinguishing
225 of all lights and lighting devices and appliances, (d) shutting

226 off water mains, gas mains, electric power connections and the
227 suspension of all other utility services, (e) the conduct of
228 civilians and the movement and cessation of movement of
229 pedestrians and vehicular traffic during, prior and subsequent to
230 drills or attack, (f) public meetings or gatherings under
231 emergency conditions, and (g) the evacuation and reception of the
232 civilian population.

233 (5) To take such action and give such directions to
234 state and local law enforcement officers and agencies as may be
235 reasonable and necessary for the purpose of securing compliance
236 with the provisions of this article and with the orders, rules and
237 regulations made pursuant thereto.

238 (6) To employ such measures and give such directions to
239 the state or local boards of health as may be reasonably necessary
240 for the purpose of securing compliance with the provisions of this
241 article or with the findings or recommendations of such boards of
242 health by reason of conditions arising from enemy attack or the
243 threat of enemy attack or natural, man-made or technological
244 disaster.

245 (7) To utilize the services and facilities of existing
246 officers and agencies of the state and of the political
247 subdivisions thereof; and all such officers and agencies shall
248 cooperate with and extend their services and facilities to the
249 Governor as he may request.

250 (8) To establish agencies and offices and to appoint
251 executive, technical, clerical and other personnel as may be
252 necessary to carry out the provisions of this article including,
253 with due consideration to the recommendation of the local
254 authorities, part-time or full-time state and regional area
255 directors.

256 (9) To delegate any authority vested in him under this
257 article, and to provide for the subdelegation of any such
258 authority.

259 (10) On behalf of this state to enter into reciprocal
260 aid agreements or compacts with other states and the federal
261 government, either on a statewide basis or local political
262 subdivision basis or with a neighboring state or province of a
263 foreign country. Such mutual aid arrangements shall be limited to
264 the furnishings or exchange of food, clothing, medicine and other
265 supplies; engineering services; emergency housing; police
266 services; national or state guards while under the control of the
267 state; health, medical and related services; fire fighting,
268 rescue, transportation and construction services and equipment;
269 personnel necessary to provide or conduct these services; and such
270 other supplies, equipment, facilities, personnel and services as
271 may be needed; the reimbursement of costs and expenses for
272 equipment, supplies, personnel and similar items for mobile
273 support units, fire fighting and police units and health units;
274 and on such terms and conditions as are deemed necessary.

275 (11) To sponsor and develop mutual aid plans and
276 agreements between the political subdivisions of the state,
277 similar to the mutual aid arrangements with other states referred
278 to above.

279 (12) To collect information and data for assessment of
280 vulnerabilities and capabilities within the borders of Mississippi
281 as it pertains to the nation and state's security and homeland
282 defense. This information shall be exempt from the Mississippi
283 Public Records Act, Section 25-61-1 et seq.

284 (13) Authorize any agency or arm of the state to create
285 a special emergency management revolving fund, accept donations,
286 contributions, fees, grants, including federal funds, as may be
287 necessary for such agency or arm of the state to administer its
288 functions of this article as set forth in the Executive Order of
289 the Governor.

290 (14) To authorize the Commissioner of Public Safety to
291 select, train, organize and equip a ready reserve of auxiliary
292 highway patrolmen.

293 (15) To suspend or limit the sale, dispensing or
294 transportation of alcoholic beverages, firearms, explosives and
295 combustibles.

296 (16) To control, restrict and regulate by rationing,
297 freezing, use of quotas, prohibitions on shipments, price fixing,
298 allocation or other means, the use, sale or distribution of food,
299 feed, fuel, clothing and other commodities, materials, goods or
300 services.

301 (17) To proclaim a state of emergency in an area
302 affected or likely to be affected thereby when he finds that the
303 conditions described in Section 33-15-5(g) exist, or when he is
304 requested to do so by the mayor of a municipality or by the
305 president of the board of supervisors of a county, or when he
306 finds that a local authority is unable to cope with the emergency.
307 Such proclamation shall be in writing and shall take effect
308 immediately upon its execution by the Governor. As soon
309 thereafter as possible, such proclamation shall be filed with the
310 Secretary of State and be given widespread notice and publicity.
311 The Governor, upon advice of the director, shall review the need
312 for continuing the state of emergency at least every thirty (30)
313 days until the emergency is terminated and shall proclaim a
314 reduction of area or the termination of the state of emergency at
315 the earliest possible date that conditions warrant.

316 (18) To declare an emergency impact area when he finds
317 that the conditions described in Section 33-15-5(o) exist. The
318 proclamation shall be in writing and shall take effect immediately
319 upon its execution by the Governor. As soon as possible, the
320 proclamation shall be filed with the Secretary of State and be
321 given widespread notice and publicity. The Governor shall review
322 the need for continuing the declaration of emergency impact area

323 at least every thirty (30) days until the emergency is terminated,
324 and shall proclaim the reduction of the emergency impact area or
325 termination of the declaration of emergency impact area at the
326 earliest date or dates possible.

327 (c) In addition to the powers conferred upon the Governor in
328 this section, the Legislature hereby expressly delegates to the
329 Governor the following powers and duties in the event of an
330 impending enemy attack, an enemy attack, or a man-made,
331 technological or natural disaster where such disaster is beyond
332 local control:

333 (1) To suspend the provisions of any regulatory statute
334 prescribing the procedures for conduct of state business, or the
335 orders, rules or regulations of any state agency, if strict
336 compliance with the provisions of any statute, order, rule or
337 regulation would in any way prevent, hinder or delay necessary
338 action in coping with a disaster or emergency.

339 (2) To transfer the direction, personnel or functions
340 of state agencies, boards, commissions or units thereof for the
341 purpose of performing or facilitating disaster or emergency
342 services.

343 (3) To commandeer or utilize any private property if
344 necessary to cope with a disaster or emergency, provided that such
345 private property so commandeered or utilized shall be paid for
346 under terms and conditions agreed upon by the participating
347 parties. The owner of said property shall immediately be given a
348 receipt for the said private property and said receipt shall serve
349 as a valid claim against the Treasury of the State of Mississippi
350 for the agreed upon market value of said property.

351 (4) To perform and exercise such other functions,
352 powers and duties as may be necessary to promote and secure the
353 safety and protection of the civilian population in coping with a
354 disaster or emergency.

355 **SECTION 4.** This act shall take effect and be in force from
356 and after its passage.