

By: Senator(s) Tollison

To: Judiciary, Division B

SENATE BILL NO. 2089

1 AN ACT TO CREATE THE "MISSISSIPPI CLEAN CREDIT AND IDENTITY
2 THEFT PROTECTION ACT"; TO DEFINE CERTAIN TERMS; TO AUTHORIZE
3 CONSUMERS TO PLACE A SECURITY FREEZE ON THEIR CREDIT FILES; TO
4 LIMIT THE RELEASE OR SHARING OF CREDIT HEADER INFORMATION; TO
5 PROVIDE A CONSUMER WITH THE RIGHT TO FILE A POLICE REPORT
6 REGARDING IDENTITY THEFT WITH THE LOCAL LAW ENFORCEMENT AGENCY
7 HAVING JURISDICTION OVER HIS ACTUAL RESIDENCE; TO PROVIDE IDENTITY
8 THEFT VICTIMS WITH THE RIGHT TO OBTAIN A COURT ORDERED FACTUAL
9 DECLARATION OF INNOCENCE AND TO CREATE A STATEWIDE CRIMINAL
10 IDENTITY THEFT REGISTRY; TO REQUIRE CREDIT REPORTING AGENCIES TO
11 PROVIDE CONSUMERS WITH REGULAR, AFFORDABLE ACCESS TO THEIR
12 REPORTS; TO REQUIRE NOTICE TO CONSUMERS IN THE EVENT THAT SECURITY
13 OF DATA HAS BEEN BREACHED; TO LIMIT THE USE OF SOCIAL SECURITY
14 NUMBERS; TO PROHIBIT INSURERS FROM USING INFORMATION REGARDING A
15 CONSUMER'S CREDITWORTHINESS FOR THE PURPOSE OF DETERMINING RATES
16 FOR INSURANCE OR ELIGIBILITY FOR COVERAGE; TO REGULATE THE
17 DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION; AND FOR
18 RELATED PURPOSES.

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

20 **SECTION 1.** The provisions of this act shall be known and may
21 be cited as the "Mississippi Clean Credit and Identity Theft
22 Protection Act."

23 **SECTION 2.** For the purposes of this act, the following terms
24 shall have the following meanings:

25 (a) The term "person" means any individual,
26 partnership, corporation, trust, estate, cooperative, association,
27 government or governmental subdivision or agency, or other entity.

28 (b) "Consumer" means an individual.

29 (c) "Consumer reporting agency" means any person which,
30 for monetary fees, dues, or on a cooperative nonprofit basis,
31 regularly engages in whole or in part in the practice of
32 assembling or evaluating consumer credit information or other
33 information on consumers for the purpose of furnishing consumer
34 reports to third parties.

35 (d) "Consumer report" or "credit report" means any
36 written, oral, or other communication of any information by a
37 consumer reporting agency bearing on a consumer's credit
38 worthiness, credit standing, credit capacity, character, general
39 reputation, personal characteristics, or mode of living which is
40 used or expected to be used or collected in whole or in part for
41 the purpose of serving as a factor in establishing the consumer's
42 eligibility for:

43 (i) Credit or insurance to be used primarily for
44 personal, family, or household purposes, except that nothing in
45 this act authorizes the use of credit evaluations, credit scoring
46 or insurance scoring in the underwriting of personal lines of
47 property or casualty insurance;

48 (ii) Employment purposes; or

49 (iii) Any other purpose authorized under 15 USC,
50 Section 1681b.

51 (e) "Credit card" has the same meaning as in Section
52 103 of the Truth in Lending Act.

53 (f) "Credit header information" means written, oral or
54 other communication of any information by a consumer reporting
55 agency regarding the social security number of the consumer, or
56 any derivative thereof, and any other personally identifiable
57 information of the consumer that is derived using any nonpublic
58 personal information, except the name, address and telephone
59 number of the consumer if all are listed in a residential
60 telephone directory available in the locality of the consumer.

61 (g) "Credit history" means any written, oral or other
62 communication of any information by a consumer reporting agency
63 bearing on a consumer's creditworthiness, credit standing or
64 credit capacity that is used or expected to be used, or collected
65 in whole or in part, for the purpose of determining personal lines
66 insurance premiums or eligibility for coverage.

67 (h) "Debit card" means any card or device issued by a
68 financial institution to a consumer for use in initiating an
69 electronic fund transfer from the account holding assets of the
70 consumer at such financial institution, for the purpose of
71 transferring money between accounts or obtaining money, property,
72 labor or services.

73 **SECTION 3.** (1) **Definitions.** For the purposes of this
74 section, the following terms shall have the following meanings:

75 (a) "Security freeze" means a notice, at the request of
76 the consumer and subject to certain exceptions, that prohibits the
77 consumer reporting agency from releasing all or any part of the
78 consumer's credit report or any information derived from it
79 without the express authorization of the consumer. If a security
80 freeze is in place, such a report or information may not be
81 released to a third party without prior express authorization from
82 the consumer. This paragraph does not prevent a consumer
83 reporting agency from advising a third party that a security
84 freeze is in effect with respect to the consumer's credit report.

85 (b) "Reviewing the account" or "account review"
86 includes activities related to account maintenance, monitoring,
87 credit line increases, and account upgrades and enhancements.

88 (2) **Security freeze: Timing, covered entities, cost.**

89 (a) A consumer may elect to place a "security freeze"
90 on his or her credit report by:

91 (i) Making a request by mail;

92 (ii) Making a request by telephone by providing
93 certain personal identification; or

94 (iii) Making a request directly to the consumer
95 reporting agency through a secure electronic mail connection if
96 such connection is made available by the agency. Credit reporting
97 agencies shall make a secure electronic mail method of requesting
98 a security freeze available within one hundred eighty (180) days
99 of the effective date of this act.

100 (b) A consumer reporting agency shall place a security
101 freeze on a consumer's credit report no later than five (5)
102 business days after receiving a written or telephone request from
103 the consumer or three (3) business days after receiving a secure
104 electronic mail request. Within one (1) year of the effective
105 date of this act, a consumer reporting agency shall place a
106 security freeze on a consumer's credit report no later than three
107 (3) business days after receiving a written or telephone request
108 from the consumer or one (1) business day after receiving a secure
109 electronic mail request. Within two (2) years of the effective
110 date of this act, a consumer reporting agency shall place a
111 security freeze on a consumer's credit reporting agency no later
112 than one (1) business day after receiving a written or telephone
113 request.

114 (c) The consumer reporting agency shall send a written
115 confirmation of the security freeze to the consumer within five
116 (5) business days of placing the freeze and at the same time shall
117 provide the consumer with a unique personal identification number
118 or password to be used by the consumer when providing
119 authorization for the release of his or her credit for a specific
120 party or period of time, or when permanently lifting the freeze.
121 Within one (1) year of the effective date of this act, the
122 consumer reporting agency shall send such a written confirmation
123 and unique personal identification number or password to the
124 consumer no later than one (1) business day after placing the
125 freeze.

126 (d) If the consumer wishes to allow his or her credit
127 report to be accessed for a specific party or period of time while
128 a freeze is in place, he or she shall contact the consumer
129 reporting agency via telephone, mail, or secure electronic mail,
130 with a request that the freeze be temporarily lifted, and provide
131 the following:

132 (i) Proper identification;

(ii) The unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (c) of subsection (2); and

(iii) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to paragraph (d) of subsection (2) shall comply with the request no later than three (3) business days after receiving the request. Within one (1) year of the effective date of this act, a consumer reporting agency shall honor such a request no later than one business day after receiving the request. Within two (2) years of the effective date of this act, a consumer reporting agency shall honor such a request made by electronic mail or by telephone within fifteen (15) minutes of receiving the request.

(f) A consumer reporting agency shall develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act [E-Sign] for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to paragraph (d) of subsection (2) in an expedited manner.

(g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(i) Upon consumer request, pursuant to paragraph (d) or paragraph (j) of subsection (2);

(ii) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph (g), the

consumer reporting agency shall notify the consumer in writing five (5) business days prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit report agency must notify the consumer that an attempt has been made to access the credit report.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three (3) business days of receiving a request for removal from the consumer, who provides both of the following:

- (i) Proper identification; and
- (ii) The unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (c) of subsection (2).

Not later than one (1) year after the effective date of this act, a consumer reporting agency shall remove a security freeze within one (1) business day after receiving such a request.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's

198 security freeze reflects a negative credit score, history, report
199 or rating.

200 (m) The provisions of this section do not apply to the
201 use of a consumer credit report by any of the following:

202 (i) A person, or the person's subsidiary,
203 affiliate, agent or assignee with which the consumer has or, prior
204 to assignment, had an account, contract or debtor-creditor
205 relationship for the purposes of reviewing the account or
206 collecting the financial obligation owing for the account,
207 contract or debt.

208 (ii) A subsidiary, affiliate, agent, assignee or
209 prospective assignee of a person to whom access has been granted
210 under paragraph (d) of subsection (2) for purposes of facilitating
211 the extension of credit or other permissible use.

212 (iii) Any person acting pursuant to a court order,
213 warrant, or subpoena.

214 (iv) A state or local agency which administers a
215 program for establishing and enforcing child support obligations.

216 (v) The State Health Department or its agents or
217 assigns acting to investigate fraud.

218 (vi) The State Tax Commission or its agents or
219 assigns acting to investigate or collect delinquent taxes or
220 unpaid court orders or to fulfill any of its other statutory
221 responsibilities.

222 (vii) A person for the purposes of prescreening as
223 defined by the federal Fair Credit Reporting Act.

224 (viii) Any person or entity administering a credit
225 file monitoring subscription service to which the consumer has
226 subscribed.

227 (vix) Any person or entity for the purpose of
228 providing a consumer with a copy of his or her credit report upon
229 the consumer's request.

230 (n) A consumer may not be charged for any security
231 freeze services, including, but not limited to, the placement or
232 lifting of a security freeze. A consumer, however, can be charged
233 no more than Five Dollars (\$5.00) only in the following discreet
234 circumstance: If the consumer fails to retain the original
235 personal identification number provided by the agency, the
236 consumer may not be charged for a one-time reissue of the same or
237 a new personal identification number; however, the consumer may be
238 charged no more than Five Dollars (\$5.00) for subsequent instances
239 of loss of the personal identification number.

240 (3) **Notice of rights.** At any time that a consumer is
241 required to receive a summary of rights required under Section 609
242 of the federal Fair Credit Reporting Act, the following notice
243 shall be included:

244 **Consumers Have the Right to Obtain a Security Freeze**

245 You may obtain a security freeze on your credit report at no
246 charge to protect your privacy and ensure that credit is not
247 granted in your name without your knowledge. You have a right to
248 place a "security freeze" on your credit report pursuant to state
249 law.

250 The security freeze will prohibit a consumer reporting agency
251 from releasing any information in your credit report without your
252 express authorization or approval.

253 The security freeze is designed to prevent credit, loans, and
254 services from being approved in your name without your consent.
255 When you place a security freeze on your credit report, within
256 five (5) business days (and by July 1, 2008, no later than one (1)
257 business day) you will be provided a personal identification
258 number or password to use if you choose to remove the freeze on
259 your credit report or to temporarily authorize the release of your
260 credit report for a specific party, parties or period of time
261 after the freeze is in place. To provide that authorization, you

262 must contact the consumer reporting agency and provide all of the
263 following:

264 (a) The unique personal identification number or
265 password provided by the consumer reporting agency.

266 (b) Proper identification to verify your identity.

267 (c) The proper information regarding the third party or
268 parties who are to receive the credit report or the period of time
269 for which the report shall be available to users of the credit
270 report.

271 A consumer reporting agency that receives a request from a
272 consumer to lift temporarily a freeze on a credit report shall
273 comply with the request no later than three (3) business days
274 after receiving the request. (By July 1, 2009, the consumer
275 reporting agency must temporarily lift the freeze within fifteen
276 (15) minutes of receiving the request.)

277 A security freeze does not apply to circumstances where you
278 have an existing account relationship and a copy of your report is
279 requested by your existing creditor or its agents or affiliates
280 for certain types of account review, collection, fraud control or
281 similar activities.

282 If you are actively seeking a new credit, loan, utility,
283 telephone, or insurance account, you should understand that the
284 procedures involved in lifting a security freeze may slow your own
285 applications for credit. You should plan ahead and lift a freeze,
286 either completely if you are shopping around, or specifically for
287 a certain creditor, with enough advance notice before you apply
288 for new credit for the lifting to take effect. Until July 1,
289 2008, you should lift the freeze at least three (3) business days
290 before applying; between July 1, 2008, and July 1, 2009, you
291 should lift the freeze at least one (1) business day before
292 applying; and after July 1, 2009, you should lift the freeze at
293 least fifteen (15) minutes before applying for a new account.

294 You have a right to bring a civil action against someone who
295 violates your rights under the credit reporting laws. The action
296 can be brought against a consumer reporting agency or a user of
297 your credit report.

298 (4) **Violations; penalties.** If a consumer reporting agency
299 erroneously, whether by accident or design, violates the security
300 freeze by releasing credit information that has been placed under
301 a security freeze, the affected consumer is entitled to:

302 (a) Notification within five (5) business days of the
303 release of the information, including specificity as to the
304 information released and the third party recipient of the
305 information.

306 (b) File a complaint with the Federal Trade Commission
307 and the State Attorney General.

308 (c) In a civil action against the consumer reporting
309 agency recover:

310 (i) Injunctive relief to prevent or restrain
311 further violation of the security freeze;

312 (ii) A civil penalty in an amount not to exceed
313 Ten Thousand Dollars (\$10,000.00) for each violation plus any
314 damages available under other civil laws; and

315 (iii) Reasonable expenses, court costs,
316 investigative costs, and attorney's fees.

317 (d) Each violation of the security freeze shall be
318 counted as a separate incident for purposes of imposing penalties
319 under this section.

320 **SECTION 4.** A consumer reporting agency may furnish
321 information from a consumer's credit header only to those who have
322 a permissible purpose to obtain the consumer's consumer report,
323 under Section 604 of the federal Fair Credit Reporting Act, as
324 codified at 15 USC, Section 1681(b), and that permissible purpose
325 applies to the request for the credit header information.

SECTION 5.

(1) A person who has learned or reasonably suspects that he or she has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, and provide the complainant with a copy of that report. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and may refer the complaint to a law enforcement agency in that different jurisdiction.

(2) Nothing in this section interferes with the discretion of a local police department to allocate resources for investigations of crimes. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

SECTION 6.

(1) A person who reasonably believes that he or she is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity

theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(2) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(3) Upon making a determination of factual innocence, the court must provide the consumer written documentation of such order.

(4) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(5) The Supreme Court shall develop a form for use in issuing an order pursuant to this section.

(6) The Department of Public Safety shall establish and maintain a database of individuals who have been victims of identity theft and that have received determinations of factual innocence. The Department of Public Safety shall provide a victim of identity theft or his or her authorized representative access to the database in order to establish that the individual has been a victim of identity theft. Access to the database shall be limited to criminal justice agencies, victims of identity theft, and individuals and agencies authorized by the victims.

(7) The Department of Public Safety shall establish and maintain a toll-free number to provide access to information under subsection (6).

392 (8) In order for a victim of identity theft to be included in the
393 database established pursuant to subsection (6), he or she shall submit
394 to the Department of Public Safety a court order obtained pursuant to
395 any provision of law, a full set of fingerprints, and any other
396 information prescribed by the department.

397 (9) Upon receiving information pursuant to subsection (8), the
398 Department of Public Safety shall verify the identity of the victim
399 against any driver's license or other identification record maintained
400 by the Department of Motor Vehicles.

401 (10) This section shall be operative within One hundred
402 eighty (180) days of the passage of this act.

403 **SECTION 7.** (1) **Disclosures.** Every consumer credit
404 reporting agency shall, upon request from a consumer that is not
405 covered by the free disclosures provided in 15 USC, Section 1681j
406 subsections (a) through (d), clearly and accurately disclose to
407 the consumer:

408 (a) All information in the consumer's file at the time
409 of the request, except that nothing in this paragraph shall be
410 construed to require a consumer reporting agency to disclose to a
411 consumer any information concerning credit scores or other risk
412 scores or predictors that are governed by 15 USC, Section
413 1681g(f).

414 (b) The sources of the information.

415 (c) Identification of each person (including each
416 end-user identified under 15 USC, Section 1681e) that procured a
417 consumer report:

418 (i) For employment purposes, during the two-year
419 period preceding the date on which the request is made; or

420 (ii) For any other purpose, during the one-year
421 period preceding the date on which the request is made.

422 (d) An identification of a person under paragraph (c)
423 of this subsection shall include:

(i) The name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) Upon request of the consumer, the address and telephone number of the person.

(e) Paragraph (c) of this subsection does not apply if:

(i) The end-user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in 15 USC, Section 1681b(b)(4)(E)(i)); and

(ii) The head of the agency or department makes a written finding as prescribed under 15 USC, Section 1681b(b)(4)(A).

(f) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure or which can be inferred from the file.

(g) A record of all inquiries received by the agency during the one-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(h) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

(2) **Cost of disclosure.** In the case of a request under subsection (1), a consumer reporting agency may impose a reasonable charge on a consumer for making a report pursuant to this section, which charge:

(a) Shall not exceed Two Dollars (\$2.00) for each of the first twelve (12) requests from the consumer in a calendar year; and

457 (b) Shall not exceed Eight Dollars (\$8.00) for any
458 additional request beyond the initial twelve (12) requests from
459 the consumer in a calendar year; and

460 (c) Shall be indicated to the consumer before making
461 the disclosure.

462 (3) **Format of disclosure.** In the case of a request under
463 subsection (1), a consumer reporting agency must provide the
464 consumer with an opportunity to access his or her report through
465 all of the following means:

466 (a) In writing;

467 (b) In person, upon the appearance of the consumer at
468 the place of business of the consumer reporting agency where
469 disclosures are regularly provided, during normal business hours,
470 and on reasonable notice;

471 (c) By telephone, if the consumer has made a written
472 request for disclosure;

473 (d) By electronic means, if the agency offers
474 electronic access for any other purpose; and

475 (e) By any other reasonable means that is available
476 from the agency.

477 (4) **Timing of disclosure.** A consumer reporting agency shall
478 provide a report under subsection (1) no later than:

479 (a) Twenty-four (24) hours after the date on which the
480 request is made, if the disclosure is made by electronic means, as
481 requested under subsection (3), paragraph (d); and

482 (b) Five (5) days after the date on which the request
483 is made, if the disclosure is made in writing, in person, by
484 telephone or by any other reasonable means that is available from
485 the agency.

486 **SECTION 8.** (1) **Definitions.** For the purposes of this
487 section, the following terms shall have the following meanings:

488 (a) "Data collector" may include, but is not limited
489 to, government agencies, public and private universities,

490 privately and publicly held corporations, financial institutions,
491 retail operators, and any other entity which, for any purpose,
492 whether by automated collection or otherwise, handles, collects,
493 disseminates, or otherwise deals with personal information.

494 (b) "Breach of the security of the data" means
495 unauthorized acquisition of computerized or noncomputerized data
496 that compromises the security, confidentiality, or integrity of
497 personal information maintained by the data collector. Good-faith
498 acquisition of personal information by an employee or agent of the
499 data collector for a legitimate purpose of the data collector is
500 not a breach of the security of the data, provided that the
501 personal information is not used for a purpose unrelated to the
502 data collector or subject to further unauthorized disclosure.
503 Breach of the security of noncomputerized data may include, but is
504 not limited to, unauthorized photocopying, facsimiles, or other
505 paper-based transmittal of documents.

506 (c) "Personal information" means an individual's last
507 name, address or phone number in combination with any one or more
508 of the following data elements, when either the name or the data
509 elements are not encrypted or redacted, or encrypted with an
510 encryption key that was also acquired:

- 511 (i) Social security number;
- 512 (ii) Driver's license number or state
513 identification card number;
- 514 (iii) Account number, credit or debit card number,
515 if circumstances exist wherein such a number could be used without
516 additional identifying information, access codes or passwords;
- 517 (iv) Account passwords or personal identification
518 numbers (PINs) or other access codes;
- 519 (v) Biometric data;
- 520 (vi) Any of subparagraphs (i) through (v) when not
521 in connection with the individual's last name, address or phone
522 number if the information compromised would be sufficient to

perform or attempt to perform identity theft against the person whose information was compromised.

"Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state or local government records, provided that such publicly available information has not been aggregated or consolidated into an electronic database or similar system by the governmental agency or by another person.

(2) **Notice of breach.**

(a) Except as provided in paragraph (b) of subsection (2), any data collector that owns or uses personal information in any form (whether computerized, paper or otherwise) that includes personal information concerning a Mississippi resident shall notify the resident that there has been a breach of the security of the data following discovery or notification of the breach. The disclosure notification shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in paragraph (b) of subsection (2), or with any measures necessary to determine the scope of the breach and restore the reasonable integrity, security and confidentiality of the data system.

(b) The notification required by this section may be delayed if a law enforcement agency determines in writing that the notification may seriously impede a criminal investigation.

(c) For purposes of this section, "notice" to consumers may be provided by one (1) of the following methods:

(i) Written notice.

(ii) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures, for notices legally required to be in writing, set forth in Section 7001 of Title 15 of the United States Code.

(iii) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed Two

556 Hundred Fifty Thousand Dollars (\$250,000.00) or that the affected
557 class of subject persons to be notified exceeds five hundred
558 thousand (500,000), or the agency does not have sufficient contact
559 information. Substitute notice shall consist of all of the
560 following:

561 1. Conspicuous posting of the notice on the
562 Internet site of the agency or person, if the agency or person
563 maintains a public Internet site; and

564 2. Notification to major statewide media.
565 The notice to media shall include a toll-free phone number where
566 an individual can learn whether or not that individual's personal
567 data is included in the security breach.

568 (d) **Content of notice.** Such notice shall include:

569 (i) To the extent possible, a description of the
570 categories of information that was, or is reasonably believed to
571 have been, acquired by an unauthorized person, including social
572 security numbers, driver's license or state identification numbers
573 and financial data;

574 (ii) A toll-free number:

575 1. That the individual may use to contact the
576 agency or person, or the agent of the agency or person; and

577 2. From which the individual may learn:

578 a. What types of information the agency
579 or person maintained about that individual or about individuals in
580 general; and

581 b. Whether or not the agency or person
582 maintained information about that individual; and

583 c. The toll-free contact telephone
584 numbers and addresses for the major credit reporting agencies.

585 (e) The notification required by this section may be
586 delayed if a law enforcement agency determines, in writing, that
587 the notification may impede a criminal investigation.

588 (f) **Additional obligation following breach.** A person
589 required to provide notification under subsection (2) shall
590 provide or arrange for the provision of, to each individual to
591 whom notification is provided on request and at no cost to such
592 individual, consumer credit reports from at least one (1) of the
593 major credit reporting agencies beginning not later than two (2)
594 months following a breach of security and continuing on a
595 quarterly basis for a period of two (2) years thereafter.

596 (3) **Waiver.** Any waiver of the provisions of this section is
597 contrary to public policy, and is void and unenforceable.

598 (4) **Remedies.**

599 (a) Any individual injured by a violation of this
600 section may institute a civil action to recover damages.

601 (b) Any business that violates, proposes to violate, or
602 has violated this section may be enjoined.

603 (c) The rights and remedies available under this
604 section are cumulative to each other and to any other rights and
605 remedies available under law.

606 **SECTION 9.** (1) Except as provided in subsection (3), a
607 person or entity, including a state or local agency, may not do
608 any of the following:

609 (a) Intentionally communicate or otherwise make
610 available to the general public an individual's social security
611 number.

612 (b) Print an individual's social security number on any
613 card required for the individual to access products or services
614 provided by the person or entity.

615 (c) Require an individual to transmit his or her social
616 security number over the Internet, unless the connection is secure
617 or the social security number is encrypted, the number is
618 essential to the transaction, and there is no other identifier
619 that could reasonably be used.

620 (d) Require an individual to use his or her social
621 security number to access an Internet Web site.

622 (e) Print an individual's social security number on any
623 materials that are mailed to the individual, unless state or
624 federal law requires the social security number to be on the
625 document to be mailed.

626 (f) Sell, lease, loan, trade, rent or otherwise
627 disclose an individual's social security number to a third party
628 for any purpose without written consent to the disclosure from the
629 individual.

630 (g) Refuse to do business with an individual because
631 the individual will not consent to the receipt by such person of
632 the social security account number of such individual, unless such
633 person is expressly required under federal law, in connection with
634 doing business with an individual, to submit to the federal
635 government such individual's social security account number.

636 (2) This section does not apply to documents that are
637 recorded or required to be open to the public pursuant to
638 Mississippi Public Records Act.

639 (3) Any entity covered by this section shall make reasonable
640 efforts to cooperate, through systems testing and other means, to
641 ensure that the requirements of this act are implemented on or
642 before the dates specified in this section.

643 (4) Penalties for violations of this section:

644 (a) A person who violates this section is responsible
645 for the payment of a civil fine of not more than Three Thousand
646 Dollars (\$3,000.00).

647 (b) A person who knowingly violates this section is
648 guilty of a misdemeanor punishable by imprisonment for not more
649 than thirty (30) days or a fine of not more than Five Thousand
650 Dollars (\$5,000.00), or both.

651 (c) An individual may bring a civil action against a
652 person who violates this section and may recover actual damages or

653 Five Thousand Dollars (\$5,000.00), whichever is greater, plus
654 reasonable court costs and attorney's fees.

655 **SECTION 10.** With respect to private passenger automobile,
656 residential property and other personal lines insurance, an
657 insurer may not:

658 (a) Refuse to underwrite, cancel, refuse to renew a
659 risk, or increase a renewal premium, based, in whole or in part,
660 on the credit history of an applicant or insured;

661 (b) Rate a risk based, in whole or in part, on the
662 credit history of an applicant or insured in any manner,
663 including:

664 (i) The provision or removal of a discount;

665 (ii) Assigning the insured or applicant to a
666 rating tier; or

667 (iii) Placing an insured or applicant with an
668 affiliated company; or

669 (c) Require a particular payment plan based, in whole
670 or in part, on the credit history of the insured or applicant.

671 **SECTION 11.** (1) **Definitions.** For the purposes of this
672 section, the following terms shall have the following meanings:

673 (a) "Business" means sole proprietorship, partnership,
674 corporation, association, or other group, however organized and
675 whether or not organized to operate at a profit. The term
676 includes a financial institution organized, chartered, or holding
677 a license or authorization certificate under the laws of this
678 state, any other state, the United States, or any other country,
679 or the parent or the subsidiary of any such financial institution.
680 The term also includes an entity that destroys records.

681 (b) "Dispose" includes:

682 (i) The discarding or abandonment of records
683 containing personal information; and

684 (ii) The sale, donation, discarding or transfer of
685 any medium, including computer equipment, or computer media,

686 containing records of personal information, or other nonpaper
687 media upon which records of personal information is stored, or
688 other equipment for nonpaper storage of information.

689 (c) "Personal Information" means any information that
690 identifies, relates to, describes, or is capable of being
691 associated with a particular individual, including, but not
692 limited to, a name, signature, social security number, fingerprint
693 and other biometric information, photograph or computerized image,
694 physical characteristics or description, address, telephone
695 number, passport number, driver's license or state identification
696 care number, date of birth, medical information, bank account
697 number, credit card number, debit card number or any other
698 financial information.

699 (d) "Records" means any material on which written,
700 drawn, spoken, visual or electromagnetic information is recorded
701 or preserved, regardless of physical form or characteristics.
702 "Records" does not include publicly available directories
703 containing information an individual has voluntarily consented to
704 have publicly disseminated or listed, such as name, address or
705 telephone number.

706 (2) **Disposal of records containing personal information.**

707 Any business that conducts business in Mississippi and any
708 business that maintains or otherwise possesses personal
709 information of residents of Mississippi must take all reasonable
710 measures to protect against unauthorized access to or use of the
711 information in connection with, or after its disposal. Such
712 reasonable measures must include, but may not be limited to:

713 (a) Implementing and monitoring compliance with policies
714 and procedures that require the burning, pulverizing or shredding
715 of papers containing personal information so that the information
716 cannot practicably be read or reconstructed;

717 (b) Implementing and monitoring compliance with
718 policies and procedures that require the destruction or erasure of

719 electronic media and other nonpaper media containing personal
720 information so that the information cannot practicably be read or
721 reconstructed;

722 (c) After due diligence, entering into and monitoring
723 compliance with a written contract with another party engaged in
724 the business of record destruction to dispose of personal
725 information in a manner consistent with this section. Due
726 diligence should ordinarily include, but may not be limited to,
727 one or more of the following: reviewing an independent audit of
728 the disposal company's operations and/or its compliance with this
729 section or its equivalent; obtaining information about the
730 disposal company from several references or other reliable sources
731 and requiring that the disposal company be certified by a
732 recognized trade association or similar third party with a
733 reputation for high standards of quality review; reviewing and
734 evaluating the disposal company's information security policies or
735 procedures, or taking other appropriate measures to determine the
736 competency and integrity of the disposal company;

737 (d) For disposal companies explicitly hired to dispose
738 of records containing personal information: implementing and
739 monitoring compliance with policies and procedures that protect
740 against unauthorized access to or use of personal information
741 during or after the collection and transportation and disposing of
742 such information in accordance with paragraphs (a) and (b) of this
743 subsection (2).

744 (3) **Business policy.** Procedures relating to the adequate
745 destruction or proper disposal of personal records must be
746 comprehensively described and classified as official policy in the
747 writings of the business entity, including corporate and employee
748 handbooks and similar corporate documents.

749 (4) **Penalties and civil liability.**

750 (a) Any person or business that violates this section
751 may be subject to a civil penalty of not more than Three Thousand
752 Dollars (\$3,000.00).

753 (b) Any individual aggrieved by a violation of this
754 section may bring a civil action in Mississippi to enjoin further
755 violations and to recover actual damages, costs and reasonable
756 attorney's fees.

757 **SECTION 12.** This act shall take effect and be in force from
758 and after July 1, 2007.