

By: Senator(s) Turner-Ford

To: Judiciary, Division A

SENATE BILL NO. 2612

1 AN ACT TO CREATE THE "MISSISSIPPI CONSUMER DATA PRIVACY ACT";
 2 TO AUTHORIZE CONSUMERS TO REQUEST THAT BUSINESSES DISCLOSE CERTAIN
 3 INFORMATION; TO AUTHORIZE CONSUMERS TO REQUEST THAT BUSINESSES
 4 DELETE PERSONAL INFORMATION COLLECTED BY BUSINESSES; TO REQUIRE
 5 BUSINESSES TO DISCLOSE CERTAIN INFORMATION TO CONSUMERS, TO INFORM
 6 CONSUMERS OF THEIR RIGHT TO REQUEST THAT PERSONAL INFORMATION BE
 7 DELETED, AND TO DELETE PERSONAL INFORMATION COLLECTED ABOUT
 8 CONSUMERS UPON REQUEST; TO AUTHORIZE CONSUMERS TO INSTRUCT
 9 BUSINESSES TO NOT SELL THE CONSUMERS' PERSONAL INFORMATION; TO
 10 AUTHORIZE CONSUMERS TO BRING CIVIL ACTIONS AGAINST BUSINESSES THAT
 11 VIOLATE THIS ACT; TO AUTHORIZE THE ATTORNEY GENERAL TO BRING CIVIL
 12 ACTIONS AGAINST BUSINESSES THAT VIOLATE THIS ACT; TO REQUIRE THE
 13 ATTORNEY GENERAL TO ADOPT REGULATIONS TO FURTHER THE PURPOSES OF
 14 THIS ACT; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** This act shall be known as the "Mississippi
 17 Consumer Data Privacy Act."

18 **SECTION 2.** (1) The Legislature finds:

19 (a) That it is an important and substantial state
 20 interest to protect the private, personal data in Mississippi;

21 (b) That with the increasing use of technology and data
 22 in everyday life, there is an increasing amount of private,
 23 personal data being shared by consumers with businesses as a part
 24 of everyday transactions and online and other activities;



25 (c) That the increasing collection, storage, use and
26 sale of personal data creates increased risks of identity theft,
27 financial loss, and other misuse of private personal data; and

28 (d) That many consumers do not know, understand, or
29 have appropriate authority over the distribution, use, sale or
30 disclosure of their personal data.

31 (2) Therefore, it is the intent of the Legislature to
32 further Mississippians' right to privacy by recognizing that
33 Mississippi consumers have the following rights:

34 (a) To know what personal information is being
35 collected about them;

36 (b) To know whether their personal information is sold
37 or disclosed and to whom;

38 (c) To decline or opt-out of the sale of their personal
39 information;

40 (d) To access their personal information that has been
41 collected; and

42 (e) To receive equal service and price, even if they
43 exercise their above rights.

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

45 (a) "Business" means:

46 (i) A sole proprietorship, partnership, limited
47 liability company, corporation, association, or other legal entity
48 that is organized or operated for the profit or financial benefit
49 of its shareholders or other owners, that collects consumers'



50 personal information, or on the behalf of which such information
51 is collected and that alone, or jointly with others, determines
52 the purposes and means of the processing of consumers' personal
53 information, that does business in Mississippi, and that satisfies
54 one or more of the following thresholds:

55 1. Has annual gross revenues in excess of Ten
56 Million Dollars (\$10,000,000.00);

57 2. Alone or in combination, annually buys,
58 receives for the business' commercial purposes, sells, or shares
59 for commercial purposes, alone or in combination, the personal
60 information of fifty thousand (50,000) or more consumers,
61 households, or devices; and

62 3. Derives fifty percent (50%) or more of its
63 annual revenues from selling consumers' personal information;

64 (ii) Any entity that controls or is controlled by
65 a business, as defined in subparagraph (i) of this section, and
66 that shares common branding with the business;

67 1. For this subparagraph (ii), "control" or
68 "controlled" means ownership of, or the power to vote, more than
69 fifty percent (50%) of the outstanding shares of any class of
70 voting security of a business; control in any manner over the
71 election of a majority of the directors, or of individuals
72 exercising similar functions; or the power to exercise a
73 controlling influence over the management of a company; and



74 2. "Common branding" means a shared name or
75 trademark.

76 (b) (i) "Personal information" means information that
77 identifies, relates to, describes, is capable of being associated
78 with, or could reasonably be linked, directly or indirectly, with
79 a particular consumer or household, including, but not limited to:

80 1. Identifiers such as a real name, alias,
81 postal address, unique personal identifier, online identifier
82 internet protocol address, email address, account name, social
83 security number, driver's license number, passport number, or
84 other similar identifiers;

85 2. Characteristics of protected
86 classifications under Mississippi or federal law;

87 3. Commercial information, including records
88 of personal property, products or services purchased, obtained, or
89 considered, or other purchasing or consuming histories or
90 tendencies;

91 4. Biometric information;

92 5. Internet or other electronic network
93 activity information, including, but not limited to, browsing
94 history, search history, and information regarding a consumer's
95 interaction with an internet website, application, or
96 advertisement;

97 6. Geolocation data;



98 7. Audio, electronic, visual, thermal,
99 olfactory, or similar information;

100 8. Professional or employment-related
101 information;

102 9. Education information, defined as
103 information that is not publicly available personally identifiable
104 information as defined in the Family Educational Rights and
105 Privacy Act (20 U.S.C. Section 1232g, 34 C.F.R. Part 99); and

106 10. Inferences drawn from any of the
107 information identified in this section to create a profile about a
108 consumer reflecting the consumer's preferences, characteristics,
109 psychological trends, preferences, predispositions, behavior,
110 attitudes, intelligence, abilities, and aptitudes.

111 (ii) "Personal information" does not include
112 publicly available information. For the purposes of this
113 subparagraph (ii), "publicly available" means information that is
114 lawfully made available from federal, state, or local government
115 records, as restricted by any conditions associated with such
116 information. "Publicly available" does not mean biometric
117 information collected by a business about a consumer without the
118 consumer's knowledge. Information is not "publicly available" if
119 that data is used for a purpose that is not compatible with the
120 purpose for which the data is maintained and made available in the
121 government records or for which it is publicly maintained.



122 "Publicly available" does not include consumer information that is
123 deidentified or aggregate consumer information.

124 **SECTION 4.** A consumer shall have the right:

125 (a) To request that a business that collects personal
126 information about the consumer disclose to the consumer the
127 following:

128 (i) The categories and specific pieces of personal
129 information that the business has collected about that consumer;

130 (ii) The categories of sources from which the
131 personal information is collected;

132 (iii) The business or commercial purpose for
133 collecting or selling personal information; and

134 (iv) The categories of third parties with whom the
135 business shares personal information;

136 (b) To request that a business that sells the
137 consumer's personal information, or that discloses it for a
138 business purpose, disclose to that consumer:

139 (i) The categories of personal information that
140 the business collected about the consumer;

141 (ii) The categories of personal information that
142 the business sold about the consumer and the categories of third
143 parties to whom the personal information was sold, by category or
144 categories of personal information for each third party to whom
145 the personal information was sold; and



146 (iii) The categories of personal information that
147 the business disclosed about the consumer for a business purpose;
148 and

149 (c) To request that a business delete any personal
150 information about the consumer which the business has collected
151 from the consumer.

152 **SECTION 5.** Upon receipt of a verifiable request from a
153 consumer, a business shall:

154 (a) Disclose the information specified in Section 4(a)
155 of this act to the consumer if the business collects personal
156 information about that consumer. This subparagraph (a) does not
157 require a business to:

158 (i) Retain any personal information about a
159 consumer collected for a single one-time transaction if, in the
160 ordinary course of business, that information about the consumer
161 is not retained; or

162 (ii) Reidentify or otherwise link any data that,
163 in the ordinary course of business, is not maintained in a manner
164 that would be considered personal information.

165 (b) Disclose the information specified in Section 4(b)
166 of this act to the consumer if the business sells personal
167 information about that consumer, or discloses that consumer's
168 personal information for a business purpose.

169 (c) Delete a consumer's personal information from its
170 records and direct any service providers to delete a consumer's



171 personal information from their records. A business or a service
172 provider shall not be required to comply with a consumer's request
173 to delete the consumer's personal information if it is necessary
174 for the business or service provider to maintain the consumer's
175 personal information in order to:

176 (i) Complete the transaction for which the
177 personal information was collected, provide a good or service
178 requested by the consumer, or reasonably anticipated within the
179 context of a business's ongoing business relationship with the
180 consumer, or otherwise perform a contract between the business and
181 the consumer;

182 (ii) Detect security incidents, protect against
183 malicious, deceptive, fraudulent, or illegal activity; or
184 prosecute those responsible for that activity;

185 (iii) Debug to identify and repair errors that
186 impair existing intended functionality;

187 (iv) Exercise free speech, ensure the right of
188 another consumer to exercise his or her right of free speech, or
189 exercise another right provided for by law;

190 (v) Engage in public or peer-reviewed scientific,
191 historical, or statistical research in the public interest that
192 adheres to all other applicable ethics and privacy laws, when the
193 businesses' deletion of the information is likely to render
194 impossible or seriously impair the achievement of such research,
195 if the consumer has provided informed consent;



196 (vi) To enable solely internal uses that are
197 reasonably aligned with the expectations of the consumer based on
198 the consumer's relationship with the business; or

199 (vii) Comply with a legal obligation.

200 **SECTION 6.** A business that collects personal information
201 about consumers shall disclose, pursuant to Section 9, the
202 consumer's rights to request the deletion of the consumer's
203 personal information.

204 **SECTION 7.** (1) A consumer shall have the right, at any
205 time, to direct a business that sells personal information about
206 the consumer to third parties not to sell the consumer's personal
207 information. This right may be referred to as the right to opt
208 out.

209 (a) A business shall respect the consumer's decision to
210 opt out under this subsection (1) for at least twelve (12) months
211 before requesting that the consumer authorize the sale of the
212 consumer's personal information.

213 (b) A business shall use any personal information
214 collected from the consumer in connection with the submission of
215 the consumer's opt-out request solely for the purposes of
216 complying with the opt-out request.

217 (2) A business that sells consumers' personal information to
218 third parties shall provide notice to consumers that this
219 information may be sold and that consumers have the right to opt
220 out of the sale of their personal information.



221 (3) A business that has received direction from a consumer
222 not to sell the consumer's personal information or has not
223 received consent to sell a minor consumer's personal information
224 shall be prohibited from selling the consumer's personal
225 information after its receipt of the consumer's direction, unless
226 the consumer subsequently provides express authorization for the
227 sale of the consumer's personal information.

228 (4) Notwithstanding subsections (1) and (3) of this section,
229 a business shall not sell the personal information of consumers if
230 the business has actual knowledge that the consumer is less than
231 sixteen (16) years of age, unless the consumer, in the case of
232 consumers between thirteen (13) and sixteen (16) years of age, or
233 the consumer's parent or guardian, in the case of consumers who
234 are less than thirteen (13) years of age, has affirmatively
235 authorized the sale of the consumer's personal information. A
236 business that willfully disregards the consumer's age shall be
237 deemed to have had actual knowledge of the consumer's age. This
238 right may be referred to as the right to opt in.

239 **SECTION 8.** A third party shall not sell personal information
240 about a consumer that has been sold to the third party by a
241 business unless the consumer has received explicit notice and is
242 provided an opportunity to exercise the right to opt out as
243 provided in Section 7(1) of this act.



244 **SECTION 9.** (1) A business shall not discriminate against a
245 consumer when a consumer exercises any of the consumer's rights
246 under this act, including, but not limited to, by:

247 (a) Denying goods or services to the consumer;

248 (b) Charging different prices or rates for goods or
249 services, including through the use of discounts or other benefits
250 or imposing penalties;

251 (c) Providing a different level or quality of goods or
252 services to the consumer, if the consumer exercises the consumer's
253 rights under this act; or

254 (d) Suggesting that the consumer will receive a
255 different price or rate for goods or services or a different level
256 or quality of goods or services.

257 (2) Nothing in subsection (1) of this section prohibits a
258 business from charging a consumer a different price or rate, or
259 from providing a different level or quality of goods or services
260 to the consumer, if that difference is reasonably related to the
261 value provided to the consumer by the consumer's data.

262 **SECTION 10.** (1) In order to comply with the notice
263 requirements of the above sections, a business shall, in a form
264 that is reasonably accessible to consumers:

265 (a) Make available two (2) or more designated methods
266 for submitting requests for information required to be disclosed,
267 including, at a minimum, a toll-free telephone number, and if the
268 business maintains an internet website, a website address;



269 (b) Disclose and deliver the required information free
270 of charge within forty-five (45) days of receiving a verifiable
271 request from the consumer. The time period to provide the
272 required information may be extended once by an additional
273 forty-five (45) days when reasonably necessary, provided the
274 consumer is provided notice of the extension within the first
275 forty-five-day period;

276 (c) Provide a clear and conspicuous link on the
277 business's internet homepage, titled "Do Not Sell My Personal
278 Information," to an internet web page that enables a consumer, or
279 a person authorized by the consumer, to opt out of the sale of the
280 consumer's personal information. A business shall not require a
281 consumer to create an account in order to direct the business not
282 to sell the consumer's personal information;

283 (d) Include a description of a consumer's rights along
284 with a separate link to the "Do Not Sell My Personal Information"
285 internet web page in its online privacy policy or policies if the
286 business has an online privacy policy or policies or any
287 Mississippi-specific description of consumers' privacy rights;

288 (e) Ensure that all individuals responsible for
289 handling consumer inquiries about the business's privacy practices
290 are informed of all requirements in this act and how to direct
291 consumers to exercise their rights.

292 (2) Nothing in this section shall be construed to require a
293 business to include the required links and text on the homepage



294 that the business makes available to the public generally, if the
295 business maintains a separate and additional homepage that is
296 dedicated to Mississippi consumers and that includes the required
297 links and text, and the business takes reasonable steps to ensure
298 that Mississippi consumers are directed to the homepage for
299 Mississippi consumers and not the homepage made available to the
300 public generally.

301 **SECTION 11.** The obligations imposed on businesses by the
302 above sections shall not restrict a business's ability to:

303 (a) Comply with federal, state, or local laws;

304 (b) Comply with a civil, criminal, or regulatory
305 inquiry, investigation, subpoena, or summons by federal, state, or
306 local authorities;

307 (c) Cooperate with law enforcement agencies concerning
308 conduct or activity that the business, service provider, or third
309 party reasonably and in good faith believes may violate federal,
310 state, or local law;

311 (d) Exercise or defend legal claims;

312 (e) Collect, use, retain, sell, or disclose consumer
313 information that is deidentified or in the aggregate consumer
314 information; and

315 (f) Collect or sell a consumer's personal information
316 if every aspect of that commercial conduct takes place wholly
317 outside of Mississippi. For purposes of this act, commercial
318 conduct takes place wholly outside of Mississippi if the business



319 collected that information while the consumer was outside of
320 Mississippi, no part of the sale of the consumer's personal
321 information occurred in Mississippi, and no personal information
322 collected while the consumer was in Mississippi is sold. This
323 paragraph shall not permit a business from storing, including on a
324 device, personal information about a consumer when the consumer is
325 in Mississippi and then collecting that personal information when
326 the consumer and stored personal information is outside of
327 Mississippi.

328 **SECTION 12.** (1) (a) Any consumer whose nonencrypted or
329 nonredacted personal information is subject to an unauthorized
330 access and exfiltration, theft, or disclosure as a result of the
331 business' violation of the duty to implement and maintain
332 reasonable security procedures and practices appropriate to the
333 nature of the information to protect the personal information may
334 institute a civil action for any of the following:

335 (i) To recover damages in an amount not less than
336 One Hundred Dollars (\$100.00) and not greater than Seven Hundred
337 Fifty Dollars (\$750.00) per consumer per incident or actual
338 damages, whichever is greater;

339 (ii) Injunctive or declaratory relief; or

340 (iii) Any other relief the court deems proper.

341 (b) In assessing the amount of statutory damages, the
342 court shall consider any one or more of the relevant circumstances
343 presented by any of the parties to the case, including, but not



344 limited to, the nature and seriousness of the misconduct, the
345 number of violations, the persistence of the misconduct, the
346 length of time over which the misconduct occurred, the willfulness
347 of the defendant's misconduct, and the defendant's assets,
348 liabilities, and net worth.

349 (2) Actions pursuant to this section may be brought by a
350 consumer if all of the following requirements are met:

351 (a) Prior to initiating any action against a business
352 for statutory damages on an individual or class-wide basis, a
353 consumer shall provide a business thirty (30) days' written notice
354 identifying the specific provisions of this act the consumer
355 alleges have been or are being violated, but no notice shall be
356 required prior to an individual consumer initiating an action
357 solely for actual pecuniary damages suffered as a result of the
358 alleged violations of this act; and

359 (b) If a business continues to violate this act in
360 breach of the express written statement provided to the consumer
361 under this section, the consumer may initiate an action against
362 the business to enforce the written statement and may pursue
363 statutory damages for each breach of the express written
364 statement, as well as any other violation of the title that
365 postdates the written statement.

366 (3) In the event a cure is possible, if within the thirty
367 (30) days the business actually cures the noticed violation and
368 provides the consumer an express written statement that the



369 violations have been cured and that no further violations shall
370 occur, no action for individual statutory damages or class-wide
371 statutory damages may be initiated against the business.

372 (4) A business shall be in violation of this act if it fails
373 to cure any alleged violation within thirty (30) days after being
374 notified of the alleged noncompliance. Any business, service
375 provider, or other person that violates this act shall be liable
376 for a civil penalty in a civil action brought in the name of the
377 people of Mississippi by the Attorney General of up to Seven
378 Thousand Five Hundred Dollars (\$7,500.00) for each violation.

379 **SECTION 13.** Any business or third party may seek the opinion
380 of the Attorney General for guidance on how to comply with the
381 provisions of this act.

382 **SECTION 14.** This is a matter of statewide concern and this
383 act supersedes and preempts all rules, regulations, codes,
384 ordinances, and other laws adopted by a city, county, city and
385 county, municipality, or local agency regarding the collection and
386 sale of consumers' personal information by a business.

387 **SECTION 15.** Before July 1, 2022, the Attorney General shall
388 solicit broad public participation to adopt regulations to further
389 the purposes of this act.

390 **SECTION 16.** This act shall take effect and be in force from
391 and after July 1, 2022.

