

By: Representative Carpenter

To: Banking and Financial Services

HOUSE BILL NO. 1178

1 AN ACT TO REQUIRE AN INDIVIDUAL WHO COMPLETES A TRANSACTION  
 2 OR TRANSACTIONS WITH A BUSINESS LOCATED IN THE STATE OF  
 3 MISSISSIPPI FOR MORE THAN FIVE COMMERCIAL FINANCIAL PRODUCTS IN  
 4 ANY CALENDAR YEAR TO DISCLOSE THE TERMS OF SUCH PRODUCT BEFORE THE  
 5 COMPLETION OF THE TRANSACTION; TO DEFINE CERTAIN TERMS RELATING TO  
 6 THE COMMERCIAL FINANCIAL DISCLOSURE LAW; TO REQUIRE SUCH  
 7 INDIVIDUAL TO DISCLOSE CERTAIN INFORMATION IN CONNECTION WITH EACH  
 8 COMMERCIAL FINANCING PRODUCT; TO PROVIDE CERTAIN EXEMPTIONS FROM  
 9 THE COMMERCIAL FINANCIAL DISCLOSURE LAW; TO PROVIDE CERTAIN  
 10 PENALTIES FOR VIOLATIONS OF THE COMMERCIAL FINANCIAL DISCLOSURE  
 11 LAW; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** This act shall be known and may be cited as the  
 14 "Commercial Financial Disclosure Law."

15 **SECTION 2.** For purposes of this act, the following words and  
 16 phrases have the following meanings unless context clearly  
 17 indicates otherwise:

18 (a) "Account" means a right to payment of a monetary  
 19 obligation, whether or not earned by performance:

20 (i) For property that has been or is to be sold,  
 21 leased, licensed, assigned, or otherwise disposed of;

22 (ii) For services rendered or to be rendered;



- 23 (iii) For a policy of insurance issued or to be  
24 issued;
- 25 (iv) For a secondary obligation incurred or to be  
26 incurred;
- 27 (v) For energy provided or to be provided;
- 28 (vi) For the use or hire of a vessel under a  
29 charter or other contract;
- 30 (vii) Arising out of the use of a credit or charge  
31 card or information contained on or for use with the card; or
- 32 (viii) As winnings in a lottery or other game of  
33 chance operated or sponsored by a state, governmental unit of a  
34 state, or person licensed or authorized to operate the game by a  
35 state or governmental unit of a state.

36 The term "account" includes health-care-insurance  
37 receivables. "Account" does not include: rights to payment  
38 evidenced by chattel paper or an instrument, commercial tort  
39 claims, deposit accounts, investment property, letter-of-credit  
40 rights or letters of credit, or rights to payment for money or  
41 funds advanced or sold, other than rights arising out of the use  
42 of a credit or charge card or information contained on or for use  
43 with the card.

44 (b) "Accounts receivable purchase transaction" means  
45 any transaction in which the business forwards or otherwise sells  
46 to the provider all or a portion of the business's accounts or  
47 payment intangibles at a discount to their expected value.



48 (c) "Business" means an individual or group of  
49 individuals, sole proprietorship, corporation, limited liability  
50 company, trust, estate, cooperative, association, or limited or  
51 general partnership engaged in a business activity.

52 (d) "Business purpose transaction" means any  
53 transaction where the proceeds are provided to a business or are  
54 intended to be used to carry on a business and not for personal,  
55 family or household purposes. For purposes of determining whether  
56 a transaction is a "business purpose transaction," the provider  
57 may rely on any written statement of intended purpose signed by  
58 the business. The statement may be a separate statement or may be  
59 contained in an application, agreement or other document signed by  
60 the business or the business owner or owners.

61 (e) "Broker" means any person who, for compensation or  
62 the expectation of compensation, obtains a commercial financing  
63 product or an offer for a commercial financing product from a  
64 third party for a business located in the State of Mississippi.

65 (f) "Commercial financing product" means any commercial  
66 loan, accounts receivable purchase transaction, commercial  
67 open-end credit plan, or each to the extent the transaction is a  
68 business purpose transaction.

69 (g) "Commercial Loan" means a loan to a business,  
70 whether secured or unsecured.

71 (h) "Commercial open-end credit plan" means commercial  
72 financing extended by any provider under a plan in which:



73 (i) The provider reasonably contemplates repeat  
74 transactions; and

75 (ii) The amount of financing that may be extended  
76 to the business during the term of the plan, up to any limit set  
77 by the provider, is generally made available to the extent that  
78 any outstanding balance is repaid.

79 (i) "Depository institution" means:

80 (i) A bank, trust company, or industrial loan  
81 company doing business under the authority of, or in accordance  
82 with, a license, certificate, or charter issued by the United  
83 States, the State of Mississippi, or any other state, district,  
84 territory, or commonwealth of the United States that is authorized  
85 to transact business in this state.

86 (ii) A federally chartered savings and loan  
87 association, federal savings bank, or federal credit union that is  
88 authorized to transact business in the State of Mississippi.

89 (iii) A savings and loan association, savings  
90 bank, or credit union organized under the laws of the State of  
91 Mississippi or any other state that is authorized to transact  
92 business in this state.

93 (j) "General intangible" means any personal property,  
94 including things in action, other than accounts, chattel paper,  
95 commercial tort claims, deposit accounts, documents, goods,  
96 instruments, investment property, letter-of-credit rights, letters  
97 of credit, money, and oil, gas, or other minerals before



98 extraction. "General intangible" includes payment intangibles and  
99 software.

100 (k) "Payment intangible" means a general intangible  
101 under which the account debtor's principal obligation is a  
102 monetary obligation.

103 (l) "Provider" means an individual who completes a  
104 transaction or transactions with a business located in the State  
105 of Mississippi for more than five (5) commercial financing  
106 products in any calendar year. "Provider" includes a person that  
107 enters into a written agreement with a depository institution to  
108 arrange for the extension of a commercial financing product by the  
109 depository institution to a business via an online lending  
110 platform administered by the person.

111 The fact that a provider extends a specific offer for a  
112 commercial financing product on behalf of a depository institution  
113 shall not be construed to mean that the provider engaged in  
114 lending or financing or originated that loan or financing.

115 **SECTION 3.** (1) A provider that completes a transaction for  
116 a commercial financing product shall disclose the terms of such  
117 product as required by this chapter. The disclosures must be  
118 provided at or before completion of the transaction and, in the  
119 case of a commercial open-end credit plan, the disclosures must  
120 also be provided for any disbursement of funds after completion  
121 within fifteen (15) days following the last day of the month in



122 which the disbursement of funds occurred under the commercial  
123 open-end credit plan.

124 (2) A provider must disclose the following in connection  
125 with each commercial financing product:

126 (a) The total amount of funds provided to the business  
127 under the terms of the commercial financing product. Such  
128 disclosure shall be labeled "total amount of funds provided."

129 (b) The total amount of funds disbursed to the business  
130 under the terms of the commercial financing product, if less than  
131 the total amount of funds provided, as a result of any fees  
132 deducted or withheld at disbursement and any amount paid to a  
133 third party on behalf of the business. This disclosure shall be  
134 labeled "total amount of funds disbursed."

135 (c) The total amount to be paid to the provider  
136 pursuant to the commercial financing product agreement. This  
137 disclosure shall be labeled "total of payments."

138 (d) The total dollar cost of the commercial financing  
139 product under the terms of the agreement, derived by subtracting  
140 the total amount of funds provided from the total of payments.  
141 This calculation shall include any fees or charges deducted by the  
142 provider from the total amount of funds provided. This disclosure  
143 shall be labeled "total dollar cost of financing."

144 (e) The manner, frequency and amount of each payment,  
145 which shall be labeled "payments." If the payments may vary, the  
146 provider shall instead disclose the manner, frequency and the



147 estimated amount of the initial payment labeled "estimated  
148 payments" and the commercial financing product agreement must  
149 include a description of the methodology for calculating any  
150 variable payment and the circumstances when payments may vary.

151 (f) A statement of whether there are any costs or  
152 discounts associated with prepayment of the commercial financing  
153 product including a reference to the paragraph in the agreement  
154 that creates the contractual rights of the parties related to  
155 prepayment. This disclosure shall be labeled "prepayment."

156 (g) A statement of whether the provider will pay  
157 compensation directly to a broker in connection with the  
158 commercial financing product and the amount of compensation.

159 **SECTION 4.** This chapter does not apply to any of the  
160 following:

161 (a) A provider that is a depository institution.

162 (b) A provider that is a lender regulated under the  
163 federal Farm Credit Act (12 USC Section 2001 et seq.).

164 (c) A commercial financing product secured by real  
165 property.

166 (d) A commercial financing product in which the  
167 recipient is a motor vehicle dealer or an affiliate of such a  
168 dealer, or a vehicle rental company, or an affiliate of such a  
169 company, pursuant to a commercial loan or commercial open-end  
170 credit plan of at least Fifty Thousand Dollars (\$50,000.00).



171 (e) A provider that is licensed as a money transmitter  
172 in accordance with a license, certificate, or charter issued by  
173 the State of Mississippi, or any other state, district, territory,  
174 or commonwealth of the United States.

175 (f) A provider that completes no more than five (5)  
176 commercial financing products in the State of Mississippi in a  
177 twelve-month period.

178 **SECTION 5.** (1) A person who violates any provision of this  
179 chapter shall be punishable by a fine of Five Hundred Dollars  
180 (\$500.00) for each violation, not to exceed Twenty Thousand  
181 Dollars (\$20,000.00) for all aggregated violations arising from  
182 the use of the transaction documentation or materials found to be  
183 in violation of this chapter.

184 A person who violates any provision of this chapter after  
185 receiving written notice of a prior violation from the Attorney  
186 General shall be punishable by a fine of One Thousand Dollars  
187 (\$1,000.00) for each violation, not to exceed Fifty Thousand  
188 Dollars (\$50,000.00) for all aggregated violations arising from  
189 the use of the transaction documentation or materials found to be  
190 in violation of this chapter.

191 (2) Violation of any provision of this chapter will not  
192 affect the enforceability or validity of the underlying agreement.

193 (3) Nothing in this chapter is intended to, or does, create  
194 a private right of action against any person or other entity based  
195 upon compliance or noncompliance with its provisions.





196           (4) Authority to enforce compliance with this chapter is  
197 vested exclusively in the Attorney General.

198           **SECTION 6.** This act shall take effect and be in force from  
199 and after July 1, 2022.

