

By: Representative Aguirre

To: Banking and Financial Services

HOUSE BILL NO. 1123

1 AN ACT TO REGULATE THE DELIVERY OF PAYMENT SERVICES; TO
 2 DEFINE CERTAIN TERMS; TO REQUIRE A PROVIDER WHO IS IN THE BUSINESS
 3 OF OFFERING AND PROVIDING EARNED WAGE ACCESS SERVICES TO CONSUMERS
 4 TO COMPLY WITH CERTAIN REQUIREMENTS; TO PROVIDE CERTAIN
 5 PROHIBITIONS FOR SUCH PROVIDER OPERATING IN THE STATE; TO
 6 AUTHORIZE THE ATTORNEY GENERAL TO CONDUCT CIVIL INVESTIGATIONS AND
 7 BRING CIVIL ACTIONS UNDER THE PROVISIONS OF THIS ACT; TO AUTHORIZE
 8 MUNICIPALITIES TO ENACT ORDINANCES THAT ARE IN COMPLIANCE WITH,
 9 BUT NOT MORE RESTRICTIVE THAN, THE PROVISIONS OF THIS ACT; TO
 10 BRING FORWARD SECTIONS 75-24-1, 75-24-3, 75-24-5, 75-24-7,
 11 75-24-9, 75-24-11, 75-24-13, 75-24-15, 75-24-17, 75-24-19,
 12 75-24-21, 75-24-23, 75-24-25, 75-24-27, 75-24-29 AND 75-24-91,
 13 MISSISSIPPI CODE OF 1972, WHICH RELATE TO GENERAL PROVISIONS OF
 14 THE REGULATION OF BUSINESS FOR CONSUMER PROTECTION, FOR PURPOSES
 15 OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** As used in this act, the following words shall
 18 have the meanings as defined in this section, unless the context
 19 clearly indicates otherwise:

20 (a) "Attorney General" means the Attorney General of
 21 the State of Mississippi.

22 (b) "Consumer" means a natural person residing in the
 23 State of Mississippi.



24 (c) "Earned but unpaid income" means wages,
25 compensation, or income that a consumer has represented, and that
26 a provider has reasonably determined, have been earned or have
27 accrued to the benefit of the consumer but have not, at the time
28 of the payment of proceeds, been paid to the consumer by an
29 obligor.

30 (d) "Earned wage access services" means the business of
31 delivering proceeds to consumers prior to the next date on which
32 an obligor is obligated to pay salary, wages, compensation, or
33 other income to a consumer.

34 (e) "Mandatory payment" means an amount determined by a
35 provider, which must be paid by a consumer to that provider as a
36 condition of receiving or repaying proceeds.

37 (f) "Nonmandatory payment" means an amount paid by a
38 consumer or an obligor to a provider, which does not meet the
39 definition of a mandatory payment. For purposes of this section,
40 examples of permitted nonmandatory payments include, but are not
41 limited to, the following:

42 (i) A fee imposed by a provider for delivery or
43 expedited delivery of proceeds to a consumer, as long as the
44 provider offers the consumer at least one option to receive
45 proceeds at no cost to the consumer.

46 (ii) An amount paid by an obligor to a provider on
47 a consumer's behalf, which entitles the consumer to receive
48 proceeds at no cost to the consumer.



49 (iii) A subscription or membership fee imposed by
50 a provider for a group of services that include earned wage access
51 services, as long as the provider offers the consumer at least one
52 option to receive proceeds at no cost to the consumer.

53 (iv) A tip or gratuity paid by a consumer to a
54 provider, as long as the provider offers the consumer at least one
55 option to receive proceeds at no cost to the consumer.

56 (g) "Nonrecourse" means that a provider cannot compel
57 or attempt to compel repayment by a consumer of outstanding
58 proceeds or nonmandatory payments owed by that consumer to that
59 provider through any of the following means:

60 (i) A civil suit against the consumer in a court
61 of competent jurisdiction.

62 (ii) Use of a third-party to pursue collection of
63 outstanding proceeds or nonmandatory payments on the provider's
64 behalf.

65 (iii) Sale of outstanding amounts to a third-party
66 collector or debt buyer.

67 The term nonrecourse does not preclude the use by a provider
68 of any of the foregoing methods to compel or attempt to compel
69 repayment of outstanding amounts incurred by a consumer through
70 fraudulent means.

71 (h) "Obligor" means an employer or another person, who
72 is contractually or legally obligated to pay a consumer earned but
73 unpaid income on an hourly, project-based, piecework, or other



74 basis, including where the consumer is acting as an independent
75 contractor. Obligor does not include a service provider of an
76 obligor or another third party that has an obligation to make any
77 payment to a consumer based solely on the consumer's agency
78 relationship with the obligor.

79 (i) "Outstanding proceeds" means a payment of proceeds
80 to a consumer by a provider, which has not yet been repaid to that
81 provider.

82 (j) "Person" means a partnership, corporation, joint
83 venture, trust, association or any legal entity other than an
84 individual, however organized.

85 (k) "Proceeds" means a payment of funds to a consumer
86 by a provider, which is based on earned but unpaid income.

87 (l) "Provider" means a person who is in the business of
88 offering and providing earned wage access services to consumers."

89 (m) "Written" and "writing" includes communication of
90 information in an electronic record consistent with the federal
91 Electronic Signatures in Global and National Commerce (E-SIGN)
92 Act, 15 USC Section 7001 et seq.

93 **SECTION 2.** The provisions of this act shall not apply to any
94 bank, trust company, savings association, savings and loan
95 association, savings bank or credit union that is chartered under
96 the laws of this state or under federal law and domiciled in this
97 state.



SECTION 3.

A provider operating in the State of Mississippi shall comply with all of the following requirements:

(a) The provider shall provide all proceeds on a nonrecourse basis and shall treat nonmandatory payments as nonrecourse payment obligations.

(b) Before providing a consumer with earned wage access services, the provider shall provide a consumer with a written document, which can be included as part of the contract to provide earned wage access services, and which meets all of the following requirements:

(i) Informs the consumer of the terms and conditions of the earned wage access services.

(ii) Includes a statement that the Attorney General has jurisdiction over the earned wage access services performed by the provider and provides both a phone number and a website through which consumers can submit complaints about the provider's earned wage access services to the Division of Consumer Protection within the Attorney General's office.

(iii) Is written in a font and using language intended to be easily understood by a layperson.

(iv) Discloses any nonmandatory payments that may be directly imposed by the provider in connection with the provision of earned wage access services.



121 (c) The provider shall provide proceeds to a consumer
122 via any means mutually agreed upon by the consumer and the
123 provider.

124 (d) In any case in which a provider will seek repayment
125 of proceeds from a consumer, the provider shall inform the
126 consumer when the provider will make its first attempt to see
127 repayment of those proceeds from the consumer.

128 (e) A provider that seeks repayment of proceeds from a
129 consumer's depository institution account shall comply with
130 applicable NACHA rules.

131 (f) The provider shall permit a consumer to cancel
132 participation in an earned wage access services contract at any
133 time without incurring a charge for doing so.

134 **SECTION 4.** A provider operating in the State of Mississippi
135 shall not do any of the following:

136 (a) Impose a mandatory payment on a consumer that
137 directly relates to the provision of earned wage access services.

138 (b) Charge a late fee, interest, or any other penalty
139 or charge for failure to repay outstanding proceeds.

140 (c) Make the offering of earned wage access services,
141 either in the amount of proceeds a consumer is eligible to
142 request, or the frequency with which proceeds are provided to a
143 consumer, contingent on whether the consumer makes any
144 nonmandatory payments or on the size of any nonmandatory payments
145 that consumer may make to that provider in connection with the



146 provision of earned wage access services, provided, however, that
147 this prohibition shall not be construed to prohibit a nonmandatory
148 payment equal to a percentage of proceeds provided.

149 (d) Charge a deferral fee or any other charge in
150 connection with deferring the collection of outstanding proceeds
151 beyond the original scheduled repayment date.

152 (e) Solicit a consumer to delay repayment of
153 outstanding proceeds for the purpose of increasing the total
154 nonmandatory payments that provider may collect.

155 (f) Report a consumer's payment or failed repayment of
156 outstanding proceeds to a consumer credit reporting agency or a
157 debt collector.

158 (g) Require a credit score to determine a consumer's
159 eligibility for earned wage access services.

160 (h) Provide, sell, or otherwise disclose to any third
161 party, including an obligor, any nonpublic personal information
162 collected from or about a consumer, except as necessary to provide
163 earned wage access services to that consumer or in accordance with
164 a consumer's written consent.

165 (i) Advertise, display or publish, or permit to be
166 advertised, displayed or published, in any manner whatsoever, any
167 statement or representation that is false, misleading or
168 deceptive.

169 **SECTION 5.** (1) Proceeds provided to a consumer by a
170 provider in accordance with the provisions of this act shall not



171 be considered credit or a loan and the provider of those proceeds
172 shall not be considered a creditor or a lender for purposes of
173 Mississippi law.

174 (2) Nonmandatory payments paid by a consumer to a provider
175 that is operating in accordance with the provisions of this act
176 shall not be considered finance charges for purposes of applying
177 the federal Truth in Lending Act to an earned wage access
178 transaction.

179 **SECTION 6.** (1) The Attorney General shall have the
180 authority under this act to conduct civil investigations and bring
181 civil actions.

182 (2) In an action brought by the Attorney General under this
183 act, the court may award or impose any relief available under
184 state law.

185 (3) Upon a motion by the Attorney General and a finding by
186 the court that there is a reasonable likelihood that a person
187 violated the provisions of this act, the court may require the
188 person to post a bond in an amount equal to a good faith estimate
189 of the costs to litigate a claim. A hearing shall be held if
190 either party requests a hearing.

191 **SECTION 7.** Municipalities of this state may enact ordinances
192 that are in compliance with, but not more restrictive than, the
193 provisions of this act. Any existing or future order, ordinance or
194 regulation that conflicts with this provision shall be null and
195 void.



196 **SECTION 8.** Section 75-24-1, Mississippi Code of 1972, is
197 brought forward as follows:

198 75-24-1. There is hereby created and established within the
199 Office of the Attorney General an "Office of Consumer Protection,"
200 which shall be charged with the administration of this chapter.
201 The Attorney General is hereby authorized and empowered to employ
202 the necessary personnel to carry out the provisions of this
203 chapter.

204 **SECTION 9.** Section 75-24-3, Mississippi Code of 1972, is
205 brought forward as follows:

206 75-24-3. As used in this chapter:

207 (a) "Person" means natural persons, corporations,
208 trusts, partnerships, incorporated and unincorporated
209 associations, and any other legal entity.

210 (b) "Trade" and "commerce" mean the advertising,
211 offering for sale, or distribution of any services and any
212 property, tangible or intangible, real, personal or mixed, and any
213 other article, commodity, or thing of value wherever situated, and
214 shall include without limitation, both domestic and foreign
215 persons, irrespective of their having qualified to do business
216 within the state and any trade or commerce directly or indirectly
217 affecting the people of this state.

218 (c) It is the intent of the Legislature that in
219 construing what constitutes unfair or deceptive trade practices
220 that the courts will be guided by the interpretations given by the



221 Federal Trade Commission and the federal courts to Section 5(a)(1)
222 of the Federal Trade Commission Act (15 USCS 45(a)(1)) as from
223 time to time amended.

224 **SECTION 10.** Section 75-24-5, Mississippi Code of 1972, is
225 brought forward as follows:

226 75-24-5. (1) Unfair methods of competition affecting
227 commerce and unfair or deceptive trade practices in or affecting
228 commerce are prohibited. Action may be brought under Section
229 75-24-5(1) only under the provisions of Section 75-24-9.

230 (2) Without limiting the scope of subsection (1) of this
231 section, the following unfair methods of competition and unfair or
232 deceptive trade practices or acts in the conduct of any trade or
233 commerce are hereby prohibited:

234 (a) Passing off goods or services as those of another;

235 (b) Misrepresentation of the source, sponsorship,
236 approval, or certification of goods or services;

237 (c) Misrepresentation of affiliation, connection, or
238 association with, or certification by another;

239 (d) Misrepresentation of designations of geographic
240 origin in connection with goods or services;

241 (e) Representing that goods or services have
242 sponsorship, approval, characteristics, ingredients, uses,
243 benefits, or quantities that they do not have or that a person has
244 a sponsorship, approval, status, affiliation, or connection that
245 he does not have;



246 (f) Representing that goods are original or new if they
247 are reconditioned, reclaimed, used, or secondhand;

248 (g) Representing that goods or services are of a
249 particular standard, quality, or grade, or that goods are of a
250 particular style or model, if they are of another;

251 (h) Disparaging the goods, services, or business of
252 another by false or misleading representation of fact;

253 (i) Advertising goods or services with intent not to
254 sell them as advertised;

255 (j) Advertising goods or services with intent not to
256 supply reasonably expectable public demand, unless the
257 advertisement discloses a limitation of quantity;

258 (k) Misrepresentations of fact concerning the reasons
259 for, existence of, or amounts of price reductions;

260 (l) Advertising by or on behalf of any licensed or
261 regulated health care professional which does not specifically
262 describe the license or qualifications of the licensed or
263 regulated health care professional;

264 (m) Charging an increased premium for reinstating a
265 motor vehicle insurance policy that was cancelled or suspended by
266 the insured solely for the reason that he was transferred out of
267 this state while serving in the United States Armed Forces or on
268 active duty in the National Guard or United States Armed Forces
269 Reserve. It is also an unfair practice for an insurer to charge
270 an increased premium for a new motor vehicle insurance policy if



271 the applicant for coverage or his covered dependents were
272 previously insured with a different insurer and canceled that
273 policy solely for the reason that he was transferred out of this
274 state while serving in the United States Armed Forces or on active
275 duty in the National Guard or United States Armed Forces Reserve.
276 For purposes of determining premiums, an insurer shall consider
277 such persons as having maintained continuous coverage. The
278 provisions of this paragraph (m) shall apply only to such
279 instances when the insured does not drive the vehicle during the
280 period of cancellation or suspension of his policy.

281 **SECTION 11.** Section 75-24-7, Mississippi Code of 1972, is
282 brought forward as follows:

283 75-24-7. Nothing in this chapter shall apply to acts done
284 by:

285 (a) The publisher, owner, agent or employee of a
286 newspaper, periodical, printing shop, directory or radio or
287 television station in the publication or dissemination of an
288 advertisement, when the owner, agent or employee did not have
289 knowledge of the false, misleading or deceptive character of the
290 advertisement and did not have a direct financial interest in the
291 sale or distribution of the advertised product or service.

292 (b) Any officer acting under the orders of any court.

293 **SECTION 12.** Section 75-24-9, Mississippi Code of 1972, is
294 brought forward as follows:



295 75-24-9. Whenever the Attorney General has reason to believe
296 that any person is using, has used, or is about to use any method,
297 act or practice prohibited by Section 75-24-5, and that
298 proceedings would be in the public interest, he may bring an
299 action in the name of the state against such person to restrain by
300 temporary or permanent injunction the use of such method, act or
301 practice. The action shall be brought in the chancery or county
302 court of the county in which such person resides or has his
303 principal place of business, or, with consent of the parties, may
304 be brought in the chancery or county court of the county in which
305 the State Capitol is located. The said courts are authorized to
306 issue temporary or permanent injunctions to restrain and prevent
307 violations of this chapter, and such injunctions shall be issued
308 without bond.

309 **SECTION 13.** Section 75-24-11, Mississippi Code of 1972, is
310 brought forward as follows:

311 75-24-11. The court may make such additional orders or
312 judgments, including restitution, as may be necessary to restore
313 to any person in interest any monies or property, real or
314 personal, which may have been acquired by means of any practice
315 prohibited by this chapter, including the appointment of a
316 receiver or the revocation of a license or certificate authorizing
317 that person to engage in business in this state, or both.

318 **SECTION 14.** Section 75-24-13, Mississippi Code of 1972, is
319 brought forward as follows:



320 75-24-13. When a receiver is appointed by the court pursuant
321 to this chapter, he shall have the power to sue for, collect,
322 receive and take into his possession all the goods and chattels,
323 rights and credits, * * * monies and effects, lands and tenements,
324 books, records, documents, papers, choses in action, bills, notes
325 and property of every description, derived by means of any
326 practice prohibited by this chapter, including property with which
327 such property has been mingled if it cannot be identified in kind
328 because of such commingling, and collect or to bring suit to
329 collect in the name of the state for and on behalf of the owner of
330 any chose in action, and to sell, convey, and assign the same and
331 hold and dispose of the proceeds thereof under the direction of
332 the court. Any person who has suffered damages as a result of the
333 use of employment of any practices prohibited by this chapter, and
334 submits proof to the satisfaction of the court that he has in fact
335 been damaged, may participate with general creditors in the
336 distribution of the assets to the extent he has sustained
337 out-of-pocket losses. The receiver shall settle the estate and
338 distribute the assets under the direction of the court. The court
339 shall have jurisdiction of all questions arising in such
340 proceedings and may make such orders and judgments therein as may
341 be required.

342 **SECTION 15.** Section 75-24-15, Mississippi Code of 1972, is
343 brought forward as follows:



344 75-24-15. (1) In addition to all other statutory and common
345 law rights, remedies and defenses, any person who purchases or
346 leases goods or services primarily for personal, family or
347 household purposes and thereby suffers any ascertainable loss of
348 money or property, real or personal, as a result of the use or
349 employment by the seller, lessor, manufacturer or producer of a
350 method, act or practice prohibited by Section 75-24-5 may bring an
351 action at law in the court having jurisdiction in the county in
352 which the seller, lessor, manufacturer or producer resides, or has
353 his principal place of business or, where the act or practice
354 prohibited by Section 75-24-5 allegedly occurred, to recover such
355 loss of money or damages for the loss of such property, or may
356 assert, by way of setoff or counterclaim, the fact of such loss in
357 a proceeding against him for the recovery of the purchase price or
358 rental, or any portion thereof, of the goods or services.

359 (2) In any private action brought under this chapter, the
360 plaintiff must have first made a reasonable attempt to resolve any
361 claim through an informal dispute settlement program approved by
362 the Attorney General.

363 (3) In any action or counterclaim under this section of this
364 chapter, a prevailing defendant may recover in addition to any
365 other relief that may be provided in this section costs and a
366 reasonable attorney's fee, if in the opinion of the court, said
367 action or counterclaim was frivolous or filed for the purpose of
368 harassment or delay.



369 (4) Nothing in this chapter shall be construed to permit any
370 class action or suit, but every private action must be maintained
371 in the name of and for the sole use and benefit of the individual
372 person.

373 (5) In any claim under this section filed on behalf of a
374 veteran that charges the veteran a fee for the service shall
375 include a form signed by the veteran acknowledging that "**THE STATE**
376 **OF MISSISSIPPI THROUGH THE MISSISSIPPI STATE VETERANS AFFAIRS**
377 **BOARD OFFERS THE SAME OR SIMILAR SERVICE FREE OF CHARGE.**" The
378 veteran must sign this form stating that he/she has read and
379 understands it. The statement signed by the veteran shall be of a
380 **BOLD font** at least one hundred twenty percent (120%) larger than
381 the font of the claim document filed on behalf of the veteran.

382 **SECTION 16.** Section 75-24-17, Mississippi Code of 1972, is
383 brought forward as follows:

384 75-24-17. If any person knowingly and willfully fails or
385 refuses to file any statement or report, or fails or refuses to
386 obey any subpoena or investigative demand issued by the Attorney
387 General, the Attorney General may, after notice, apply to the
388 chancery or county court of the county in which such person
389 resides or has his principal place of business, or if the person
390 be absent or a nonresident of the State of Mississippi, of such
391 court of the county in which the state capitol is located, and,
392 after hearing thereon, request an order:



393 (a) Granting injunctive relief to restrain the person
394 from engaging in any unfair or deceptive trade practice in the
395 advertising or sale of any merchandise or the conduct of any trade
396 or commerce that is involved in the alleged or suspected
397 violation;

398 (b) Vacating, annulling, or suspending the corporate
399 charter of a corporation created by or under the laws of this
400 state or revoking or suspending the certificate of authority to do
401 business in this state of a foreign corporation or revoking or
402 suspending any other licenses, permits or certificates issued
403 pursuant to law to such person which are used to further the
404 allegedly prohibited practice;

405 (c) Granting such other relief as may be required,
406 until the person files the statement or report, or obeys the
407 subpoena or investigative demand;

408 (d) The Attorney General may request that an individual
409 who refuses to comply with a subpoena on the ground that testimony
410 or matter may incriminate him be ordered by the court to provide
411 the testimony or matter. Except in a prosecution for perjury, an
412 individual who complies with a court order to provide testimony or
413 matter directly related to a violation of the Mississippi Consumer
414 Protection Act after asserting a privilege against
415 self-incrimination to which he is entitled by law shall not have
416 the testimony or matter so provided, or evidence derived



417 therefrom, received against him in any criminal investigation or
418 proceeding.

419 Any disobedience of any final order entered under this
420 section by any said court shall be punished as a contempt thereof.

421 **SECTION 17.** Section 75-24-19, Mississippi Code of 1972, is
422 brought forward as follows:

423 75-24-19. (1) Civil remedies.

424 (a) Any person who violated the terms of an injunction
425 issued under Section 75-24-9 shall forfeit and pay to the state a
426 civil penalty in a sum not to exceed Ten Thousand Dollars
427 (\$10,000.00) per violation which shall be payable to the General
428 Fund of the State of Mississippi. For the purposes of this
429 section, the chancery or county court issuing an injunction shall
430 retain jurisdiction, and the cause shall be continued, and in such
431 cases the Attorney General acting in the name of the state may
432 petition for recovery of civil penalties.

433 (b) In any action brought under Section 75-24-9, if the
434 court finds from clear and convincing evidence, that a person
435 knowingly and willfully used any unfair or deceptive trade
436 practice, method or act prohibited by Section 75-24-5, the
437 Attorney General, upon petition to the court, may recover on
438 behalf of the state a civil penalty in a sum not to exceed Ten
439 Thousand Dollars (\$10,000.00) per violation. One-half (1/2) of
440 said penalty shall be payable to the Office of Consumer Protection
441 to be deposited into the Attorney General's special fund. All



442 monies collected under this section shall be used by the Attorney
443 General for consumer fraud education and investigative and
444 enforcement operations of the Office of Consumer Protection. The
445 other one-half (1/2) shall be payable to the General Fund of the
446 State of Mississippi. The Attorney General may also recover, in
447 addition to any other relief that may be provided in this section,
448 investigative costs and a reasonable attorney's fee.

449 (2) No penalty authorized by this section shall be deemed to
450 limit the court's powers to insure compliance with its orders,
451 decrees and judgments, or punish for the violations thereof.

452 (3) For purposes of this section, a knowing and willful
453 violation occurs when the court finds from clear and convincing
454 evidence that the party committing the violation knew or should
455 have known that his conduct was a violation of Section 75-24-5.

456 **SECTION 18.** Section 75-24-21, Mississippi Code of 1972, is
457 brought forward as follows:

458 75-24-21. It shall be the duty of the district and county
459 attorneys to lend to the Attorney General such assistance as the
460 Attorney General may request in the commencement and prosecution
461 of actions pursuant to this chapter. The district attorney and
462 county attorney shall, within their respective jurisdictions, have
463 the same duty and responsibility under this chapter as that of the
464 Attorney General statewide in the enforcement thereof, and they
465 shall prosecute actions hereunder in the same manner as provided
466 for the Attorney General. When any action is prosecuted by such



467 district or county attorney alone or in concert, he or they shall
468 make a full report thereon to the Attorney General, including the
469 final disposition of the matter.

470 When any action has been prosecuted by a district or county
471 attorney, at the request of the Attorney General, the Attorney
472 General is authorized to pay the actual cost and expense of such
473 action after same has been submitted to and approved by the court
474 in which the action was taken, subject always to the final
475 approval of the Attorney General.

476 The Attorney General may establish programs for the education
477 of the public with respect to this chapter.

478 **SECTION 19.** Section 75-24-23, Mississippi Code of 1972, is
479 brought forward as follows:

480 75-24-23. The remedies in this chapter are in addition to
481 and not in derogation of remedies otherwise available under
482 federal, state or local law to the Attorney General, the district
483 or county attorneys, or to persons injured by violations of this
484 chapter.

485 **SECTION 20.** Section 75-24-25, Mississippi Code of 1972, is
486 brought forward as follows:

487 75-24-25. (1) For the purposes of this section, the
488 following terms shall have the meanings herein ascribed:

489 (a) "Person" means a natural person, corporation,
490 trust, partnership, incorporated or unincorporated association, or
491 any other legal entity.



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

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

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

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

500 (2) Whenever, under the Mississippi Emergency Management
501 Law, Sections 33-15-1 through 33-15-49, a state of emergency or a
502 local emergency is declared to exist in this state, then the value
503 received for all goods and services sold within the designated
504 emergency impact area shall not exceed the prices ordinarily
505 charged for comparable goods or services in the same market area
506 at or immediately before the declaration of a state of emergency
507 or local emergency. However, the value received may include: any
508 expenses, the cost of the goods and services which are necessarily
509 incurred in procuring such goods and services during a state of
510 emergency or local emergency. The prices ordinarily charged for
511 comparable goods or services in the same market area do not
512 include temporarily discounted goods or services. The same market
513 area does not necessarily mean a single provider of goods or
514 services.

515 (3) Any person who knowingly and willfully violates
516 subsection (2) of this section, when the total value received



517 during a twenty-four-hour period is Five Hundred Dollars (\$500.00)
518 or more, shall be guilty of a felony and upon conviction shall be
519 punished by confinement for a term of not less than one (1) year
520 nor more than five (5) years or a fine of not more than Five
521 Thousand Dollars (\$5,000.00), or both.

522 (4) Any person who knowingly and willfully violates
523 subsection (2) of this section, when the total value received
524 during a twenty-four-hour period is less than Five Hundred Dollars
525 (\$500.00), shall be guilty of a misdemeanor and upon conviction
526 shall be fined not more than One Thousand Dollars (\$1,000.00) or
527 by imprisonment in the county jail for a term not to exceed six
528 (6) months, or both.

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

532 (6) In addition to the criminal penalties prescribed in
533 subsections (3) and (4), any knowing and willful violation of
534 subsection (2) of this section shall be considered an unfair or
535 deceptive trade practice subject to and governed by all the
536 procedures and remedies available under the provisions of this
537 chapter for enforcement of prohibited acts and practices contained
538 therein.

539 **SECTION 21.** Section 75-24-27, Mississippi Code of 1972, is
540 brought forward as follows:



541 75-24-27. (1) To accomplish the objectives and to carry out
542 the duties prescribed in this chapter, the Attorney General, or
543 his designee, in addition to the powers conferred by this chapter,
544 may:

545 (a) Issue subpoenas and subpoenas duces tecum;

546 (b) Issue cease and desist orders to persons suspected
547 of violating any provisions of this chapter;

548 (c) Administer an oath or affirmation to any person;

549 (d) Conduct hearings in aid of any investigation or
550 inquiry;

551 (e) Compel the production of books, papers, documents,
552 and other evidence, and call upon other state agencies for
553 information;

554 (f) Issue any necessary rules and regulations in order
555 to carry out the provisions of this chapter; and

556 (g) Enter into an assurance of voluntary compliance or
557 an assurance of voluntary discontinuance with any person for
558 settlement purposes.

559 (2) Unless otherwise ordered by a court for good cause
560 shown, no statement or documentary material produced pursuant to
561 subpoena under this section shall be produced for inspection or
562 copying by, nor shall the contents thereof be disclosed to any
563 person other than the authorized employees of the Attorney General
564 without the consent of the person who produced the material.



565 (3) The Attorney General may use the documentary material or
566 copies thereof in the enforcement of this chapter by presentation
567 before any court, provided that any such material which contains
568 trade secrets or proprietary information shall not be presented
569 except with the approval of the court in which the action is
570 pending after adequate notice to the person furnishing such
571 material. However, when material containing trade secrets or
572 proprietary information is presented with court approval, the
573 material and the evidence pertaining thereto shall be held in
574 camera and shall not be part of the court record or trial
575 transcript.

576 **SECTION 22.** Section 75-24-29, Mississippi Code of 1972, is
577 brought forward as follows:

578 75-24-29. (1) This section applies to any person who
579 conducts business in this state and who, in the ordinary course of
580 the person's business functions, owns, licenses or maintains
581 personal information of any resident of this state.

582 (2) For purposes of this section, the following terms shall
583 have the meanings ascribed unless the context clearly requires
584 otherwise:

585 (a) "Breach of security" means unauthorized acquisition
586 of electronic files, media, databases or computerized data
587 containing personal information of any resident of this state when
588 access to the personal information has not been secured by



589 encryption or by any other method or technology that renders the
590 personal information unreadable or unusable;

591 (b) "Personal information" means an individual's first
592 name or first initial and last name in combination with any one or
593 more of the following data elements:

594 (i) Social security number;

595 (ii) Driver's license number, state identification
596 card number or tribal identification card number; or

597 (iii) An account number or credit or debit card
598 number in combination with any required security code, access code
599 or password that would permit access to an individual's financial
600 account; "personal information" does not include publicly
601 available information that is lawfully made available to the
602 general public from federal, state or local government records or
603 widely distributed media;

604 (iv) "Affected individual" means any individual
605 who is a resident of this state whose personal information was, or
606 is reasonably believed to have been, intentionally acquired by an
607 unauthorized person through a breach of security.

608 (3) A person who conducts business in this state shall
609 disclose any breach of security to all affected individuals. The
610 disclosure shall be made without unreasonable delay, subject to
611 the provisions of subsections (4) and (5) of this section and the
612 completion of an investigation by the person to determine the
613 nature and scope of the incident, to identify the affected



614 individuals, or to restore the reasonable integrity of the data
615 system. Notification shall not be required if, after an
616 appropriate investigation, the person reasonably determines that
617 the breach will not likely result in harm to the affected
618 individuals.

619 (4) Any person who conducts business in this state that
620 maintains computerized data which includes personal information
621 that the person does not own or license shall notify the owner or
622 licensee of the information of any breach of the security of the
623 data as soon as practicable following its discovery, if the
624 personal information was, or is reasonably believed to have been,
625 acquired by an unauthorized person for fraudulent purposes.

626 (5) Any notification required by this section shall be
627 delayed for a reasonable period of time if a law enforcement
628 agency determines that the notification will impede a criminal
629 investigation or national security and the law enforcement agency
630 has made a request that the notification be delayed. Any such
631 delayed notification shall be made after the law enforcement
632 agency determines that notification will not compromise the
633 criminal investigation or national security and so notifies the
634 person of that determination.

635 (6) Any notice required by the provisions of this section
636 may be provided by one (1) of the following methods: (a) written
637 notice; (b) telephone notice; (c) electronic notice, if the
638 person's primary means of communication with the affected



639 individuals is by electronic means or if the notice is consistent
640 with the provisions regarding electronic records and signatures
641 set forth in 15 USCS 7001; or (d) substitute notice, provided the
642 person demonstrates that the cost of providing notice in
643 accordance with paragraph (a), (b) or (c) of this subsection would
644 exceed Five Thousand Dollars (\$5,000.00), that the affected class
645 of subject persons to be notified exceeds five thousand (5,000)
646 individuals or the person does not have sufficient contact
647 information. Substitute notice shall consist of the following:
648 electronic mail notice when the person has an electronic mail
649 address for the affected individuals; conspicuous posting of the
650 notice on the website of the person if the person maintains one;
651 and notification to major statewide media, including newspapers,
652 radio and television.

653 (7) Any person who conducts business in this state that
654 maintains its own security breach procedures as part of an
655 information security policy for the treatment of personal
656 information, and otherwise complies with the timing requirements
657 of this section, shall be deemed to be in compliance with the
658 security breach notification requirements of this section if the
659 person notifies affected individuals in accordance with the
660 person's policies in the event of a breach of security. Any
661 person that maintains such a security breach procedure pursuant to
662 the rules, regulations, procedures or guidelines established by
663 the primary or federal functional regulator, as defined in 15 USCS



664 6809(2), shall be deemed to be in compliance with the security
665 breach notification requirements of this section, provided the
666 person notifies affected individuals in accordance with the
667 policies or the rules, regulations, procedures or guidelines
668 established by the primary or federal functional regulator in the
669 event of a breach of security of the system.

670 (8) Failure to comply with the requirements of this section
671 shall constitute an unfair trade practice and shall be enforced by
672 the Attorney General; however, nothing in this section may be
673 construed to create a private right of action.

674 **SECTION 23.** Section 75-24-91, Mississippi Code of 1972, is
675 brought forward as follows:

676 75-24-91. (1) The term "service contract," "home warranty"
677 or "home service contract," as used in this section, means a
678 contract or agreement for a separately stated consideration for a
679 specific duration to perform the repair, replacement or
680 maintenance of property or to reimburse, in whole or in part, the
681 owner of such property for the repair, replacement or maintenance
682 of property if the operational or structural failure is due to a
683 defect in materials or manufacturing or to normal wear and tear.
684 A service contract may contain a provision for incidental payment
685 under such contract where service, repair or replacement is not
686 feasible or economical.

687 (2) The marketing, sale, offering for sale, issuance,
688 making, proposing to make and administration of a service contract



689 is not a contract of insurance under Mississippi law and is exempt
690 from the provisions of Title 83, Mississippi Code of 1972.

691 (3) Service contracts shall be subject to the provisions of
692 the Mississippi Consumer Protection Act, Section 75-24-1 et seq.

693 (4) Nothing contained herein shall repeal or alter the
694 regulation of vehicle service contracts currently defined and
695 regulated under Section 83-65-101 et seq.

696 **SECTION 24.** This act shall take effect and be in force from
697 and after July 1, 2023.

