

By: Representatives Hale, Keen, Hall

To: Energy

HOUSE BILL NO. 1583

1 AN ACT TO CREATE THE CONSUMER FREEDOM OF CHOICE IN APPLIANCES
 2 ACT; TO DEFINE THE TERMS "GOVERNMENTAL ENTITY", "UTILITY SERVICE"
 3 AND "APPLIANCE"; TO PROHIBIT A GOVERNMENTAL ENTITY FROM ENACTING
 4 OR ENFORCING ANY RESOLUTION, ORDINANCE, REGULATION, RULE, CODE, OR
 5 POLICY TO TAKE ANY ACTION THAT RESTRICTS OR PROHIBITS, OR HAS THE
 6 EFFECT OF RESTRICTING OR PROHIBITING, ANY PERSON OR ENTITY FROM
 7 USING ANY APPLIANCE BASED ON THE TYPE OF UTILITY SERVICE REQUIRED
 8 TO OPERATE THE APPLIANCE; TO BRING FORWARD SECTIONS 77-3-3 AND
 9 77-3-201, MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE REGULATION
 10 OF PUBLIC UTILITIES, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR
 11 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 Consumer Freedom of Choice in Appliances Act.

15 **SECTION 2.** For purposes of this section, the following terms
 16 shall be defined as follows, unless the context clearly indicates
 17 otherwise:

18 (a) "Governmental entity" means any agency, department,
 19 institution, instrumentality, or political subdivision of the
 20 State of Mississippi, or any agency, department, institution of a
 21 political subdivision.



22 (b) "Utility service" means electrical, natural gas, or
23 liquified petroleum (L.P.) gas service provided to an end user.

24 (c) "Appliance" means a device or apparatus which uses
25 a utility service for its energy operating requirements and has
26 been manufactured and designed to perform a specific task in a
27 domestic or household setting or manufactured and designed to
28 perform similar functions in a commercial or industrial setting.
29 The term "appliance" includes a device used for cooking, space
30 heating, water heating, or another end use.

31 **SECTION 3.** A governmental entity shall not enact or enforce
32 any resolution, ordinance, regulation, rule, code, or policy to
33 take any action that restricts or prohibits, or has the effect of
34 restricting or prohibiting, any person or entity from using any
35 appliance based on the type of utility service required to operate
36 the appliance.

37 **SECTION 4.** Nothing in this act shall be construed as
38 affecting a governmental entity's authority to do the following:

39 (a) Require that utility services necessary to operate
40 an appliance be obtained from a provider that is authorized to do
41 business in the location.

42 (b) Prohibit the usage of any appliance for an illegal
43 purpose.

44 (c) Exercise existing police powers to review and
45 approve an application before building permits, or to otherwise
46 enforce building, fire, and other public safety codes or



47 subdivision regulations. However, no governmental entity may deny
48 a building permit or subdivision regulation application based
49 solely on the type of appliance and/or utility service proposed
50 for the project.

51 (d) Taking actions to ensure the safe use of appliances
52 in accordance with the manufacturer's recommendations for usage.

53 **SECTION 5.** Section 77-3-3, Mississippi Code of 1972, is
54 brought forward as follows:

55 77-3-3. As used in this chapter:

56 (a) The term "corporation" includes a private or public
57 corporation, a municipality, an association, a joint-stock
58 association or a business trust.

59 (b) The term "person" includes a natural person, a
60 partnership of two (2) or more persons having a joint or common
61 interest, a cooperative, nonprofit, limited dividend or mutual
62 association, a corporation, or any other legal entity.

63 (c) The term "municipality" includes any incorporated
64 city, town or village.

65 (d) The term "public utility" includes persons and
66 corporations, or their lessees, trustees and receivers now or
67 hereafter owning or operating in this state equipment or
68 facilities for:

69 (i) The generation, manufacture, transmission,
70 distribution, provision, or furnishing of electricity to or for



71 the public, whether an individual person or an entity or a
72 collection of persons or entities, for compensation;

73 (ii) The transmission, sale, sale for resale, or
74 distribution of natural, artificial, or mixed natural and
75 artificial gas to the public for compensation by means of
76 transportation, transmission, or distribution facilities and
77 equipment located within this state; however, the term shall not
78 include the production and gathering of natural gas, the sale of
79 natural gas in or within the vicinity of the field where produced,
80 or the distribution or sale of liquefied petroleum gas or the sale
81 to the ultimate consumer of natural gas for use as a motor vehicle
82 fuel;

83 (iii) The transmission, conveyance or reception of
84 any message over wire, of writing, signs, signals, pictures and
85 sounds of all kinds by or for the public, where such service is
86 offered to the public for compensation, and the furnishing, or the
87 furnishing and maintenance, of equipment or facilities to the
88 public, for compensation, for use as a private communications
89 system or part thereof; however, no person or corporation not
90 otherwise a public utility within the meaning of this chapter
91 shall be deemed such solely because of engaging in this state in
92 the furnishing, for private use as last aforementioned, and
93 moreover, nothing in this chapter shall be construed to apply to
94 television stations, radio stations, community television antenna
95 services, video services, Voice over Internet Protocol services



96 ("VoIP"), any wireless services, including commercial mobile
97 services, Internet Protocol ("IP") - enabled services or broadband
98 services; and

99 (iv) The transmission, distribution, sale or
100 resale of water to the public for compensation, or the collection,
101 transmission, treatment or disposal of sewage, or otherwise
102 operating a sewage disposal service, to or for the public for
103 compensation.

104 The term "public utility" shall not include any person not
105 otherwise a public utility, who provides or furnishes the services
106 or commodity described in this paragraph only to himself, his
107 employees or tenants as an incident of such employee service or
108 tenancy, if such services are not sold or resold to such tenants
109 or employees on a metered or consumption basis other than the
110 submetering authorized under Section 77-3-97.

111 The term "public utility" shall not include any person not
112 otherwise a public utility, who purchases electricity on a metered
113 retail basis from the electric public utility that holds a
114 certificate of public convenience and necessity for the area in
115 which the person is located, and provides or furnishes a portion
116 of that electricity, but not electricity from any other source, to
117 the public for compensation directly and exclusively to charge
118 battery-powered electric vehicles and plug-in hybrid electric
119 vehicles. Any such person described in this paragraph is an



120 end-use customer, whether or not such person receives compensation
121 for battery or vehicle charging.

122 A public utility's business other than of the character
123 defined in subparagraphs (i) through (iv) of this paragraph is not
124 subject to the provisions of this chapter.

125 (e) The term "rate" means and includes every
126 compensation, charge, fare, toll, customer deposit, rental and
127 classification, or the formula or method by which such may be
128 determined, or any of them, demanded, observed, charged or
129 collected by any public utility for any service, product or
130 commodity described in this section, offered by it to the public,
131 and any rules, regulations, practices or contracts relating to any
132 such compensation, charge, fare, toll, rental or classification;
133 however, the term "rate" shall not include charges for electrical
134 current furnished, delivered or sold by one (1) public utility to
135 another for resale.

136 (f) The word "commission" shall refer to the Public
137 Service Commission of the State of Mississippi, as now existing,
138 unless otherwise indicated.

139 (g) The term "affiliated interest" or "affiliate"
140 includes:

141 (i) Any person or corporation owning or holding,
142 directly or indirectly, twenty-five percent (25%) or more of the
143 voting securities of a public utility;



144 (ii) Any person or corporation in any chain of
145 successive ownership of twenty-five percent (25%) or more of the
146 voting securities of a public utility;

147 (iii) Any corporation of which fifteen percent
148 (15%) or more of the voting securities is owned or controlled,
149 directly or indirectly, by a public utility;

150 (iv) Any corporation of which twenty-five percent
151 (25%) or more of the voting securities is owned or controlled,
152 directly or indirectly, by any person or corporation that owns or
153 controls, directly or indirectly, twenty-five percent (25%) or
154 more of the voting securities of any public utility or by any
155 person or corporation in any chain of successive ownership of
156 twenty-five percent (25%) of such securities;

157 (v) Any person who is an officer or director of a
158 public utility or of any corporation in any chain of successive
159 ownership of fifteen percent (15%) or more of voting securities of
160 a public utility; or

161 (vi) Any person or corporation that the
162 commission, after notice and hearing, determines actually
163 exercises any substantial influence or control over the policies
164 and actions of a public utility, or over which a public utility
165 exercises such control, or that is under a common control with a
166 public utility, such control being the possession, directly or
167 indirectly, of the power to direct or cause the discretion of the
168 management and policies of another, whether such power is



169 established through ownership of voting securities or by any other
170 direct or indirect means.

171 However, the term "affiliated interest" or "affiliate" shall
172 not include a joint agency organized pursuant to Section 77-5-701
173 et seq., nor a member municipality thereof.

174 (h) The term "facilities" includes all the plant and
175 equipment of a public utility, used or useful in furnishing public
176 utility service, including all real and personal property without
177 limitation, and any and all means and instrumentalities in any
178 manner owned, operated, leased, licensed, used, controlled,
179 furnished or supplied for, by or in connection with its public
180 utility business.

181 (i) The term "cost of service" includes operating
182 expenses, taxes, depreciation, net revenue and operating revenue
183 requirement at a claimed rate of return from public utility
184 operations.

185 (j) The term "lead-lag study" includes an analysis to
186 determine the amount of capital which investors in a public
187 utility, the rates of which are subject to regulation under the
188 provisions of this chapter, must provide to meet the day-to-day
189 operating costs of the public utility prior to the time such costs
190 are recovered from customers, and the measurement of (i) the lag
191 in collecting from the customer the cost of providing service, and
192 (ii) the lag in paying the cost of providing service by the public
193 utility.



194 (k) The term "broadband services" means any service
195 that consists of or includes a high-speed access capability to
196 transmit at a rate that is not less than two hundred (200)
197 kilobits per second either in the upstream or downstream direction
198 and either:

199 (i) Is used to provide access to the Internet, or

200 (ii) Provides computer processing, information
201 storage, information content or protocol conversion, including any
202 service applications or information service provided over such
203 high-speed access service.

204 (l) The term "video services" means video programming
205 services without regard to delivery technology, including Internet
206 Protocol technology ("Internet Protocol television or IPTV") and
207 video programming provided as a part of a service that enables
208 users to access content, information, email or other services
209 offered over the public Internet. The term "video programming"
210 means any programming as defined in 47 USCS Section 522(20).

211 (m) The term "Voice over Internet Protocol services" or
212 "VoIP services" means any service that: (i) enables real-time,
213 two-way voice communications that originate from or terminate to
214 the user's location in Internet Protocol or any successor
215 protocol; (ii) uses a broadband connection from the user's
216 location; and (iii) permits users generally to receive calls that
217 originate on the Public Switched Telephone Network and to
218 terminate calls to the Public Switched Telephone Network.



219 (n) The term "commercial mobile services" means any
220 services as defined in 47 USCS Section 332(d).

221 (o) The term "Internet Protocol-enabled services" or
222 "IP-enabled services" means any service, capability,
223 functionality, or application provided using Internet Protocol, or
224 any successor protocol, that enables an end user to send or
225 receive a communication in Internet Protocol format, or any
226 successor format, regardless of whether the communications is
227 voice, data or video. Nothing contained in this paragraph shall
228 apply to retail services that are tariffed by the commission.

229 (p) "Broadband service provider" means an entity that
230 provides broadband services to others on a wholesale basis or to
231 end-use customers on a retail basis.

232 (q) "Broadband operator" means a broadband service
233 provider that uses the electric delivery system of any public
234 utility of the type as defined in paragraph (d)(i) of this section
235 with the public utility's consent to provide broadband services.

236 (r) "Electric delivery system" means the poles, lines,
237 fiber, cables, broadband system, materials, equipment, easements
238 and other facilities or properties used by any public utility of
239 the type as defined in paragraph (d)(i) of this section to deliver
240 or facilitate the delivery, sale or use of electric energy.

241 (s) "Eligible municipality" means any municipality with
242 a population of greater than One Hundred Thousand (100,000)
243 according to the latest decennial census which has been the



244 subject of litigation by the United States Environmental
245 Protection Agency for violations of the Safe Drinking Water Act,
246 42 USC Section 300(f) et seq.

247 (t) "Eligible homeowners association" means any
248 homeowners association created and governed by restrictive
249 covenants, if the subdivision subject to these covenants:

250 (i) Was constructed prior to 1970 outside of
251 municipal boundaries;

252 (ii) Was subsequently annexed by an eligible
253 municipality, irrespective of whether the municipality was an
254 eligible municipality at the time of annexation or subsequently
255 became eligible; and

256 (iii) Is adjacent to which a ground water well
257 system originally designed to supply the subdivision which
258 continues to provide drinking water to a private user is located.

259 **SECTION 6.** Section 77-3-201, Mississippi Code of 1972, is
260 brought forward as follows:

261 77-3-201. As used in this article, the following words and
262 phrases shall include the meanings ascribed by this section unless
263 the context requires a different meaning:

264 (a) "Owner" shall specifically refer to a holder of an
265 interest in real property which is proposed to be served by a
266 public utility as defined in subparagraph (iv) of paragraph (d) of
267 Section 77-3-3. "Owner" shall include both the plural and the



268 singular and any person, firm, corporation, association or
269 combination of such entities.

270 (b) "Public utility" includes any person, firm,
271 corporation or association and any public body, political
272 subdivision, agency or instrumentality thereof owning or owning
273 and operating a public utility service described by subparagraph
274 (iv) of paragraph (d) of Section 77-3-3. However, an incorporated
275 municipality which owns or owns and operates such a described
276 public utility service shall not be subject to the provisions of
277 this article. The term "public utility" also includes the
278 successors and assigns of any such public utility.

279 **SECTION 7.** This act shall take effect and be in force from
280 and after July 1, 2024.

