

By: Senator(s) Carter

To: Judiciary, Division A

SENATE BILL NO. 2134

1 AN ACT TO ENACT THE MISSISSIPPI CONSUMERS' FREEDOM OF CHOICE  
 2 IN APPLIANCES ACT; TO PREVENT GOVERNMENTAL ENTITIES FROM  
 3 RESTRICTING OR PROHIBITING USE OF APPLIANCES BASED ON THE TYPE OF  
 4 UTILITY SERVICE REQUIRED FOR OPERATION; TO CLARIFY THE SCOPE OF  
 5 RELEVANT GOVERNMENTAL ENTITIES' AUTHORITY; TO AMEND SECTION  
 6 77-3-3, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED  
 7 PURPOSES.

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

9 **SECTION 1.** (1) This section shall be known and may be cited  
 10 as the "Mississippi Consumers' Freedom of Choice in Appliances  
 11 Act."

12 (2) For the purposes of this section, these terms have the  
 13 meanings ascribed herein:

14 (a) "Governmental entity" means the state or any  
 15 political subdivision thereof, or any executive or legislative  
 16 department, unit, agency, board, commission, or authority of the  
 17 state, or any political subdivision, or any public corporation,  
 18 authority, agency, board, commission, or other governmental entity  
 19 controlled by the state or by any political subdivision of the  
 20 state.



21 (b) "Utility service" means electrical, natural gas, or  
22 liquefied petroleum gas service provided to an end user.

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

31 (3) A governmental entity may not enact or enforce any  
32 resolution, ordinance, regulation, rule, code or policy or take  
33 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 (4) Nothing in this act shall be construed as affecting a  
38 governmental entity's authority to do the following:

39 (a) Require that a utility service 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 issuing building permits or to



46 otherwise enforce building, fire, and other public safety codes or  
47 subdivision regulations. Provided, however, no governmental  
48 entity may deny a building permit or subdivision regulation  
49 application based solely on the type of appliance or utility  
50 service proposed for the project; and

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

53 **SECTION 2.** Section 77-3-3, Mississippi Code of 1972, is  
54 amended as follows:

55 77-3-3. As used in this chapter, the following terms have  
56 the meanings ascribed herein unless the context clearly indicates  
57 otherwise:

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

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

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

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



71 (i) The generation, manufacture, transmission,  
72 distribution, provision, or furnishing of electricity to or for  
73 the public, whether an individual person or an entity or a  
74 collection of persons or entities, for compensation;

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

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



96 television stations, radio stations, community television antenna  
97 services, video services, Voice over Internet Protocol services  
98 ("VoIP"), any wireless services, including commercial mobile  
99 services, Internet Protocol ("IP") - enabled services or broadband  
100 services; and

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

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

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



121 vehicles. Any such person described in this paragraph is an  
122 end-use customer, whether or not such person receives compensation  
123 for battery or vehicle charging.

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

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

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

141 (g) The term "affiliated interest" or "affiliate"  
142 includes:

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



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

149 (iii) Any corporation of which fifteen percent  
150 (15%) or more of the voting securities is owned or controlled,  
151 directly or indirectly, by a public utility;

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

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

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



171 established through ownership of voting securities or by any other  
172 direct or indirect means.

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

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

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

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





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

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

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

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

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



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

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

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

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

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

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



246 subject of litigation by the United States Environmental  
247 Protection Agency for violations of the Safe Drinking Water Act,  
248 42 USC Section 300(f) et seq.

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

252 (i) Was constructed prior to 1970 outside of  
253 municipal boundaries;

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

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

261 **SECTION 3.** Section 1 of this act shall be codified in Title  
262 77, Chapter 3, Mississippi Code of 1972.

263 **SECTION 4.** This act shall take effect and be in force from  
264 and after July 1, 2024.

