

By: Senator(s) Fillingane, Dearing

To: Judiciary, Division A

SENATE BILL NO. 3121  
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 75-24-25, MISSISSIPPI CODE OF 1972,  
2 TO DEFINE CERTAIN TERMS RELATING TO PRICE GOUGING DURING A STATE  
3 OF EMERGENCY; TO REVISE THE PENALTIES FOR PRICE GOUGING WHILE A  
4 DECLARATION OF A STATE OF EMERGENCY IS IN FORCE; TO ELIMINATE  
5 AGGREGATION OF THE VALUE OF VIOLATIONS FROM THE CALCULATION AS TO  
6 WHETHER AN OFFENSE HAS OCCURRED; TO AMEND SECTION 33-15-11,  
7 MISSISSIPPI CODE OF 1972, TO CONFORM AND TO PROVIDE FOR PROVIDING  
8 ACTUAL NOTICE TO REGISTERED AGENTS OF THE PROCLAMATION OF A STATE  
9 OF EMERGENCY BY THE SECRETARY OF STATE; TO CREATE NEW CODE SECTION  
10 75-73-19, MISSISSIPPI CODE OF 1972, TO PROVIDE CIVIL IMMUNITY FOR  
11 THE CANCELLATION OF LODGING RESERVATIONS DURING A DECLARED STATE  
12 OF EMERGENCY; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 75-24-25, Mississippi Code of 1972, is  
15 amended as follows:

16 75-24-25. (1) For the purposes of this section, the  
17 following terms shall have the meanings herein ascribed:

18 (a) "Person" means a natural person, corporation,  
19 trust, partnership, incorporated or unincorporated association, or  
20 any other legal entity.

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

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

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

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

29 (f) "Declaration of emergency" or "declaration" means a  
30 proclamation by the Governor of a state of emergency under the  
31 authority of Section 33-15-11.



32           (g) "Commodity" means goods, services, materials,  
33 merchandise, supplies, equipment, resources or other articles of  
34 commerce and includes, but is not limited to, food, water, ice,  
35 chemicals, petroleum products and lumber essential for consumption  
36 or use as a direct result of a state of emergency.

37           (h) "Dwelling" means a dwelling unit, including, but  
38 not limited to, a motel or hotel unit, other temporary lodging or  
39 self-storage facility.

40           (i) "Allowable average price" means the average price  
41 at which a commodity or dwelling was rented or sold or offered for  
42 sale or rent in the usual course of business by a particular  
43 person at the same individual business or facility during the  
44 thirty (30) days immediately before the date of proclamation of  
45 the emergency impact area.

46           (j) "Unconscionable price" means a price in excess of  
47 one hundred twenty percent (120%) of the allowable average price  
48 plus one hundred percent (100%) of the average allowable increased  
49 cost as to a particular commodity or dwelling sold or rented or  
50 offered for sale or rent by a particular business or facility.

51           (k) "Average allowable increased cost" means the  
52 average increase in the total of the costs and expenses incurred  
53 by a person at an individual business or facility with regard to  
54 the acquisition, production, distribution, sale or rent of a  
55 commodity or dwelling, including, but not limited to, increased  
56 costs and expenses of goods, labor, maintenance, taxes, financing,  
57 transportation, attendant business risks, and allowance for  
58 expected replacement costs of inventory or goods plus a reasonable  
59 markup, that are incurred during the duration of a valid  
60 declaration of emergency impact area and any renewal thereof as  
61 opposed to those same costs and expenses incurred during the  
62 thirty (30) days immediately before the date the declaration was  
63 promulgated.



64           (2) (a) Whenever, under the Mississippi Emergency  
65 Management Law, Sections 33-15-1 through 33-15-49, an emergency  
66 impact area is declared to exist in this state, it is unlawful for  
67 a person or the person's agent or employee to rent or sell or  
68 offer to rent or sell a commodity or dwelling at an unconscionable  
69 price within the emergency impact area as set forth in a valid  
70 declaration. \* \* \*

71                   (b) The determination of unconscionable price shall be  
72 made on a case-by-case basis concerning an individual business or  
73 facility and shall not be controlled by the consideration of the  
74 practices and prices of multiple businesses or facilities or by  
75 determining prices or practices within an entire market area. It  
76 is prima facie evidence that a price is an unconscionable price if  
77 it falls within the definition of unconscionable price.

78           \* \* \*

79           (3) Any person who knowingly and willfully violates  
80 subsection (2) of this section, when the total value received  
81 during a twenty-four-hour period is \* \* \* Five Hundred Dollars  
82 (\$500.00) or more, shall be guilty of a misdemeanor and upon  
83 conviction shall be fined not more than One Thousand Dollars  
84 (\$1,000.00) or by imprisonment in the county jail for a term not  
85 to exceed six (6) months, or both.

86           \* \* \*

87           (4) In addition to the criminal penalties prescribed in  
88 subsection (3) \* \* \*, any knowing and willful violation of  
89 subsection (2) of this section shall be considered an unfair or  
90 deceptive trade practice subject to and governed by all the  
91 procedures and remedies available under the provisions of this  
92 chapter for enforcement of prohibited acts and practices contained  
93 therein.

94           (5) A person who is charged with violation of this section  
95 may present evidence relating, but not limited to, the person's



96 knowledge or intent to rebut a presumption of guilt or evidence of  
97 violation of this section.

98 (6) Notwithstanding any other provision of this section:

99 (a) No person shall be required to sell or rent or  
100 offer for sale or rent a commodity or dwelling at a loss during  
101 the time a declaration of emergency impact area or renewal thereof  
102 is in force and effect in order to avoid a violation of or to  
103 comply with any of the provisions of this section;

104 (b) No person shall be required to sell or rent or  
105 offer for sale or rent a dwelling that is subject to a  
106 contractually set price for less than the contracted price during  
107 the time a declaration of emergency impact area or renewal thereof  
108 is in force and effect if the contract was negotiated before the  
109 declaration.

110 **SECTION 2.** Section 33-15-11, Mississippi Code of 1972, is  
111 amended as follows:

112 33-15-11. (a) The Governor shall have general direction and  
113 control of the activities of the Emergency Management Agency and  
114 Council and shall be responsible for the carrying out of the  
115 provisions of this article, and in the event of a man-made,  
116 technological or natural disaster or emergency beyond local  
117 control, may assume direct operational control over all or any  
118 part of the emergency management functions within this state.

119 (b) In performing his duties under this article, the  
120 Governor is further authorized and empowered:

121 (1) To make, amend and rescind the necessary orders,  
122 rules and regulations to carry out the provisions of this article  
123 with due consideration of the plans of the federal government, and  
124 to enter into disaster assistance grants and agreements with the  
125 federal government under the terms as may be required by federal  
126 law.

127 (2) To work with the Mississippi Emergency Management  
128 Agency in preparing a comprehensive plan and program for the



129 emergency management of this state, such plan and program to be  
130 integrated into and coordinated with the emergency management  
131 plans of the federal government and of other states to the fullest  
132 possible extent, and to coordinate the preparation of plans and  
133 programs for emergency management by the political subdivisions of  
134 this state, such local plans to be integrated into and coordinated  
135 with the emergency management plan and program of this state to  
136 the fullest possible extent.

137           (3) In accordance with such plan and program for  
138 emergency management of this state, to ascertain the requirements  
139 of the state or the political subdivisions thereof for food or  
140 clothing or other necessities of life in the event of attack or  
141 natural or man-made or technological disasters and to plan for and  
142 procure supplies, medicines, materials and equipment, and to use  
143 and employ from time to time any of the property, services and  
144 resources within the state, for the purposes set forth in this  
145 article; to make surveys of the industries, resources and  
146 facilities within the state as are necessary to carry out the  
147 purposes of this article; to institute training programs and  
148 public information programs, and to take all other preparatory  
149 steps, including the partial or full mobilization of emergency  
150 management organizations in advance of actual disaster, to insure  
151 the furnishing of adequately trained and equipped forces of  
152 emergency management personnel in time of need.

153           (4) To cooperate with the President and the heads of  
154 the Armed Forces, and the Emergency Management Agency of the  
155 United States, and with the officers and agencies of other states  
156 in matters pertaining to the emergency management of the state and  
157 nation and the incidents thereof; and in connection therewith, to  
158 take any measures which he may deem proper to carry into effect  
159 any request of the President and the appropriate federal officers  
160 and agencies, for any action looking to emergency management,  
161 including the direction or control of (a) blackouts and practice



162 blackouts, air raid drills, mobilization of emergency management  
163 forces, and other tests and exercises, (b) warnings and signals  
164 for drills or attacks and the mechanical devices to be used in  
165 connection therewith, (c) the effective screening or extinguishing  
166 of all lights and lighting devices and appliances, (d) shutting  
167 off water mains, gas mains, electric power connections and the  
168 suspension of all other utility services, (e) the conduct of  
169 civilians and the movement and cessation of movement of  
170 pedestrians and vehicular traffic during, prior and subsequent to  
171 drills or attack, (f) public meetings or gatherings under  
172 emergency conditions, and (g) the evacuation and reception of the  
173 civilian population.

174           (5) To take such action and give such directions to  
175 state and local law enforcement officers and agencies as may be  
176 reasonable and necessary for the purpose of securing compliance  
177 with the provisions of this article and with the orders, rules and  
178 regulations made pursuant thereto.

179           (6) To employ such measures and give such directions to  
180 the state or local boards of health as may be reasonably necessary  
181 for the purpose of securing compliance with the provisions of this  
182 article or with the findings or recommendations of such boards of  
183 health by reason of conditions arising from enemy attack or the  
184 threat of enemy attack or natural, man-made or technological  
185 disaster.

186           (7) To utilize the services and facilities of existing  
187 officers and agencies of the state and of the political  
188 subdivisions thereof; and all such officers and agencies shall  
189 cooperate with and extend their services and facilities to the  
190 Governor as he may request.

191           (8) To establish agencies and offices and to appoint  
192 executive, technical, clerical and other personnel as may be  
193 necessary to carry out the provisions of this article including,  
194 with due consideration to the recommendation of the local



195 authorities, part-time or full-time state and regional area  
196 directors.

197 (9) To delegate any authority vested in him under this  
198 article, and to provide for the subdelegation of any such  
199 authority.

200 (10) On behalf of this state to enter into reciprocal  
201 aid agreements or compacts with other states and the federal  
202 government, either on a statewide basis or local political  
203 subdivision basis or with a neighboring state or province of a  
204 foreign country. Such mutual aid arrangements shall be limited to  
205 the furnishings or exchange of food, clothing, medicine and other  
206 supplies; engineering services; emergency housing; police  
207 services; national or state guards while under the control of the  
208 state; health, medical and related services; fire fighting,  
209 rescue, transportation and construction services and equipment;  
210 personnel necessary to provide or conduct these services; and such  
211 other supplies, equipment, facilities, personnel and services as  
212 may be needed; the reimbursement of costs and expenses for  
213 equipment, supplies, personnel and similar items for mobile  
214 support units, fire fighting and police units and health units;  
215 and on such terms and conditions as are deemed necessary.

216 (11) To sponsor and develop mutual aid plans and  
217 agreements between the political subdivisions of the state,  
218 similar to the mutual aid arrangements with other states referred  
219 to above.

220 (12) To collect information and data for assessment of  
221 vulnerabilities and capabilities within the borders of Mississippi  
222 as it pertains to the nation and state's security and homeland  
223 defense. This information shall be exempt from the Mississippi  
224 Public Records Act, Section 25-61-1 et seq.

225 (13) Authorize any agency or arm of the state to create  
226 a special emergency management revolving fund, accept donations,  
227 contributions, fees, grants, including federal funds, as may be



228 necessary for such agency or arm of the state to administer its  
229 functions of this article as set forth in the Executive Order of  
230 the Governor.

231 (14) To authorize the Commissioner of Public Safety to  
232 select, train, organize and equip a ready reserve of auxiliary  
233 highway patrolmen.

234 (15) To suspend or limit the sale, dispensing or  
235 transportation of alcoholic beverages, firearms, explosives and  
236 combustibles.

237 (16) To control, restrict and regulate by rationing,  
238 freezing, use of quotas, prohibitions on shipments, price fixing,  
239 allocation or other means, the use, sale or distribution of food,  
240 feed, fuel, clothing and other commodities, materials, goods or  
241 services.

242 (17) To proclaim a state of emergency in an area  
243 affected or likely to be affected thereby when he finds that the  
244 conditions described in Section 33-15-5(g) exist, or when he is  
245 requested to do so by the mayor of a municipality or by the  
246 president of the board of supervisors of a county, or when he  
247 finds that a local authority is unable to cope with the emergency.  
248 Such proclamation shall be in writing and shall take effect  
249 immediately upon its execution by the Governor. As soon  
250 thereafter as possible, such proclamation shall be filed with the  
251 Secretary of State and be given widespread notice and publicity.  
252 The Governor, upon advice of the director, shall review the need  
253 for continuing the state of emergency at least every thirty (30)  
254 days until the emergency is terminated and shall proclaim a  
255 reduction of area or the termination of the state of emergency at  
256 the earliest possible date that conditions warrant.

257 (18) To declare an emergency impact area when he finds  
258 that the conditions described in Section 33-15-5(o) exist. The  
259 proclamation shall be in writing and shall take effect immediately  
260 upon its execution by the Governor. As soon as possible, the



261 proclamation shall be filed with the Secretary of State and be  
262 given widespread notice and publicity. The Governor shall review  
263 the need for continuing the declaration of emergency impact area  
264 at least every thirty (30) days until the emergency is terminated,  
265 and shall proclaim the reduction of the emergency impact area or  
266 termination of the declaration of emergency impact area at the  
267 earliest date or dates possible. A declaration of emergency  
268 impact area shall terminate thirty-one (31) days after its  
269 promulgation unless sooner renewed as provided in this paragraph.

270 (c) In addition to the powers conferred upon the Governor in  
271 this section, the Legislature hereby expressly delegates to the  
272 Governor the following powers and duties in the event of an  
273 impending enemy attack, an enemy attack, or a man-made,  
274 technological or natural disaster where such disaster is beyond  
275 local control:

276 (1) To suspend the provisions of any regulatory statute  
277 prescribing the procedures for conduct of state business, or the  
278 orders, rules or regulations of any state agency, if strict  
279 compliance with the provisions of any statute, order, rule or  
280 regulation would in any way prevent, hinder or delay necessary  
281 action in coping with a disaster or emergency.

282 (2) To transfer the direction, personnel or functions  
283 of state agencies, boards, commissions or units thereof for the  
284 purpose of performing or facilitating disaster or emergency  
285 services.

286 (3) To commandeer or utilize any private property if  
287 necessary to cope with a disaster or emergency, provided that such  
288 private property so commandeered or utilized shall be paid for  
289 under terms and conditions agreed upon by the participating  
290 parties. The owner of said property shall immediately be given a  
291 receipt for the said private property and said receipt shall serve  
292 as a valid claim against the Treasury of the State of Mississippi  
293 for the agreed upon market value of said property.



294 (4) To perform and exercise such other functions,  
295 powers and duties as may be necessary to promote and secure the  
296 safety and protection of the civilian population in coping with a  
297 disaster or emergency.

298 (d) Every declaration of emergency or renewal of declaration  
299 of emergency promulgated by the Governor under the provisions of  
300 this article shall describe the emergency impact area to which the  
301 declaration or renewal of declaration is applicable.

302 (e) Any person may register with the Secretary of State's  
303 office an agent for service of declaration for purposes of  
304 notification that the Governor has declared, renewed, or  
305 terminated any state of emergency or emergency impact area. A  
306 person may designate not more than three (3) agents to be  
307 notified. Each person electing to designate an agent or agents  
308 for this purpose is responsible for maintaining current  
309 information on the agent or agents with the Secretary of State's  
310 office. As soon as possible after the filing of any declaration,  
311 renewal of declaration, or termination of declaration with the  
312 Secretary of State, the Secretary of State shall issue actual  
313 notice to the last address provided by each registered agent and  
314 shall otherwise give widespread notice and publicity of the  
315 declaration, renewal of declaration, or termination of  
316 declaration. All notices provided by the Secretary of State under  
317 this subsection shall include the description of the state of  
318 emergency or emergency impact area covered by the declaration,  
319 renewal of declaration, or termination of declaration.

320 **SECTION 3.** The following shall be codified as Section  
321 75-73-19, Mississippi Code of 1972:

322 75-73-19. Any inn, hotel, motel, other temporary lodging  
323 unit, innkeeper, hotelkeeper, motel keeper, keeper of any other  
324 temporary lodging unit, or manager of an inn, hotel, motel or  
325 other temporary lodging unit shall be immune from civil liability  
326 for the operator proves by a preponderance of the evidence that



327 the cancellation of any reservation if the cancellation is made in  
328 order to house displaced victims during the existence of a valid  
329 declaration of emergency or renewal thereof.

330         **SECTION 4.** This act shall take effect and be in force from  
331 and after July 1, 2009.

