

By: Barnett (116th), Janus, Simpson

To: Public Utilities

## HOUSE BILL NO. 1024

1 AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL  
2 SUBSCRIBERS WHO HAVE GIVEN NOTICE OF THEIR OBJECTION TO SUCH CALLS  
3 TO THE PUBLIC SERVICE COMMISSION; TO REQUIRE THE PUBLIC SERVICE  
4 COMMISSION TO ESTABLISH A "NO-CALLS" DATABASE TO COLLECT SUCH  
5 OBJECTIONS; TO RESTRICT THE USE OF INFORMATION CONTAINED IN THE  
6 DATABASE; TO REQUIRE ALL TELEPHONE SOLICITORS TO REGISTER WITH THE  
7 PUBLIC SERVICE COMMISSION BEFORE CONDUCTING TELEPHONIC  
8 SOLICITATIONS AND TO PURCHASE THE "NO-CALLS" DATABASE FROM THE  
9 COMMISSION; TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO  
10 PROMULGATE RULES NECESSARY TO EFFECTUATE THIS ACT; TO PROHIBIT  
11 TELEPHONE SOLICITORS FROM BLOCKING RESIDENTIAL SUBSCRIBERS' USE OF  
12 CALLER IDENTIFICATION SERVICES; TO PROVIDE CIVIL PENALTIES FOR  
13 VIOLATIONS OF THIS ACT; TO BRING FORWARD SECTION 77-3-603,  
14 MISSISSIPPI CODE 1972, WHICH REGULATES THE GENERAL CONDUCT OF  
15 TELEPHONE SOLICITORS; TO BRING FORWARD SECTION 77-3-605,  
16 MISSISSIPPI CODE OF 1972, WHICH REQUIRES TELEPHONE SOLICITORS TO  
17 REGISTER WITH THE ATTORNEY GENERAL'S OFFICE AND TO OBTAIN A SURETY  
18 BOND; AND FOR RELATED PURPOSES.

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

20 SECTION 1. This article shall be known and may be cited as  
21 the "Mississippi Telephonic Solicitation Act."

22 SECTION 2. The Legislature finds and declares that the use  
23 of the telephone to make all types of solicitations to consumers  
24 is pervasive. The Legislature further finds that these  
25 communications can amount to a nuisance, an invasion of privacy,  
26 and can create a health and safety risk for certain consumers who  
27 maintain their phone service primarily for emergency medical  
28 situations. The purpose of this act is to give consumers a tool  
29 by which to object to these telemarketing calls.

30 SECTION 3. For the purposes of this article, the following  
31 words and phrases shall have the meanings ascribed in this section  
32 unless the context clearly indicates otherwise:

33 (a) "Consumer" means any person to whom has been  
34 assigned in the State of Mississippi any residential telephone

35 line and corresponding telephone number.

36 (b) "Caller Identification Service" means a type of  
37 telephone service which permits telephone subscribers to see the  
38 telephone number and name of the person or entity to whom that  
39 telephone number is assigned of incoming telephone calls.

40 (c) "Telephone solicitor" means any person, firm,  
41 entity, organization, partnership, association, corporation,  
42 charitable entity, or a subsidiary or affiliate thereof, who  
43 engages in any type of telephone solicitation on his or her own  
44 behalf or through representatives, independent contractors,  
45 salespersons, agents, automated dialing machines or others.

46 (d) "Telephone solicitation" means any telephonic  
47 communication to a consumer for the purpose of persuading,  
48 enticing, requesting, petitioning or otherwise seeking to induce a  
49 consumer to take some action. Telephone solicitation includes,  
50 but is not limited to, communications with a person where:

51 (i) A gift, award or prize is offered to a  
52 consumer;

53 (ii) A telephone call response is invited from the  
54 consumer;

55 (iii) The salesperson intends to complete a sale  
56 or a consumer is invited to enter into an agreement to purchase  
57 during the course of the telephone call; or

58 (iv) The communication involves the representation  
59 of a price, quality or availability of consumer goods and  
60 services, and such communication invites a response by telephone  
61 or is followed by a call to the consumer by a salesperson.

62 (e) "Commission" means the Mississippi Public Service  
63 Commission.

64 (f) "Doing business in this state" refers to businesses  
65 that conduct telephonic sales calls from a location in the State  
66 of Mississippi or from other states or nations to consumers  
67 located in this state.

68       SECTION 4. (1) No telephone solicitor may make or cause to  
69 be made any telephone solicitation to any consumer in this state  
70 unless the telephone solicitor has purchased the most current  
71 "no-calls" database from the commission or the entity under  
72 contract with the commission.

73       (2) No telephone solicitor may make or cause to be made any  
74 telephone solicitation to any consumer in this state who has given  
75 notice to the commission or the entity under contract with the  
76 commission of his or her objection to receiving telephone  
77 solicitations.

78       (3) The commission or an entity under contract with the  
79 commission shall establish and operate a "no-calls" database  
80 composed of a list of telephone numbers of consumers who have  
81 given notice of their objection to receiving telephone  
82 solicitations. The "no-calls" database may be operated by the  
83 commission or by another entity under contract with the  
84 commission.

85       (4) Each local exchange company and each competing local  
86 exchange carrier shall provide written notification on a  
87 semiannual basis to each of its consumers, beginning on July 1,  
88 2000, of the opportunity to provide notification to the commission  
89 or the entity under contract with the commission that the consumer  
90 objects to receiving telephone solicitations. The notification  
91 must be disseminated, at the option of the carrier, by television,  
92 radio or newspaper advertisements, written correspondence, bill  
93 inserts or messages, telephone book subscription forms or any  
94 other method approved by the commission.

95       SECTION 5. All telephone solicitors shall register with the  
96 commission before conducting any telephonic solicitations in the  
97 State of Mississippi.

98       SECTION 6. The commission may promulgate rules necessary to  
99 effectuate this article, including, but not limited to, the  
100 following:

101           (a) Methods by which consumers may give notice to the  
102 commission or its contractor of their objection to receiving  
103 solicitations or revocation of the notice;

104           (b) Methods by which a notice of objection becomes  
105 effective and the effect of a change of telephone number on the  
106 notice;

107           (c) Methods by which objections and revocations are  
108 collected and added to the database;

109           (d) Methods by which a person or entity desiring to  
110 make telephone solicitations may obtain access to the database as  
111 required to avoid calling the telephone number of consumers  
112 included in the database;

113           (e) The process by which the database is updated, and  
114 the frequency of updates;

115           (f) The process by which telephone solicitors must  
116 register with the commission for the purpose of conducting  
117 telephonic solicitations in the state;

118           (g) Establishment of fees to be charged by the  
119 commission or its contractor to telephone solicitors for access to  
120 or for paper or electronic copies of the database on an annual  
121 basis; and

122           (h) All other matters relating to the database that the  
123 commission deems necessary.

124           SECTION 7. If the Federal Communications Commission  
125 establishes a single national database of telephone numbers of  
126 consumers who object to receiving telephone solicitations, the  
127 commission shall include the portion of the single national  
128 database that relates to the State of Mississippi in the database  
129 established under this article.

130           SECTION 8. Information contained in the database established  
131 pursuant to this article may be used and accessed only for the  
132 purpose of compliance with this article and shall not be otherwise  
133 subject to public inspection or disclosure. Such information

134 shall be exempt from the Mississippi Public Records Act of 1983.

135       SECTION 9. A special fund is created in the State Treasury  
136 into which all fees collected under this article shall be  
137 deposited to be expended by the commission for the implementation  
138 and administration of this article. At the end of each fiscal  
139 year, unexpended monies remaining in the fund shall not revert to  
140 any other fund of the state, but shall remain available for  
141 appropriations to administer this article. The Legislature shall  
142 appropriate annually from the fund the amount necessary for the  
143 administration of this article to the commission.

144       SECTION 10. Any person or entity who makes a telephone  
145 solicitation to a consumer in this state who is not listed on the  
146 most current "no-calls" database shall, at the beginning of each  
147 call, announce clearly his or her name, the company he or she  
148 represents and the purpose of the call. Such calls may only be  
149 made between the hours of 9:00 a.m. and 8:00 p.m. No telephone  
150 solicitation shall be made on a Sunday.

151       No person or entity who makes a telephone solicitation to a  
152 consumer in this state may utilize any method which blocks or  
153 otherwise circumvents the use of Caller Identification Service by  
154 the consumer.

155       SECTION 11. The commission may investigate alleged  
156 violations and initiate proceedings relative to a violation of  
157 this article or any rules and regulations promulgated pursuant to  
158 this article. Such proceedings include, without limitation,  
159 proceedings to issue a cease and desist order, and to issue an  
160 order imposing a civil penalty not to exceed Five Thousand Dollars  
161 (\$5,000.00) for each violation. The commission shall afford an  
162 opportunity for a fair hearing to the alleged violator or  
163 violators after giving written notice of the time and place for  
164 the hearing. Failure to appear at any such hearing may result in  
165 the commission finding the alleged violator or violators liable by  
166 default. Any telephone solicitor found to have violated this

167 article, pursuant to a hearing or by default, may be subject to a  
168 civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for  
169 each violation to be assessed and collected by the commission.  
170 Each telephonic communication shall constitute a separate  
171 violation.

172 All penalties collected by the commission shall be deposited  
173 in the special fund created under Section 9 for the administration  
174 of this article.

175 The commission may issue subpoenas, require the production of  
176 relevant documents, administer oaths, conduct hearings and do all  
177 things necessary in the course of investigating, determining and  
178 adjudicating an alleged violation.

179 The remedies, duties, prohibitions and penalties set forth  
180 under this article shall not be exclusive and shall be in addition  
181 to all other causes of action, remedies and penalties provided by  
182 law, including, but not limited to, the penalties provided by  
183 Section 77-1-53.

184 SECTION 12. Any person who has received a telephone  
185 solicitation in violation of this article or any rules and  
186 regulations promulgated pursuant to this article may file a  
187 complaint with the commission. The complaint will be processed  
188 pursuant to complaint procedures established by the commission.

189 SECTION 13. The commission is granted personal jurisdiction  
190 over any telephone solicitor, whether a resident or a nonresident,  
191 notwithstanding that telephone solicitors are not deemed to be a  
192 public utility, for the purpose of administering this article.  
193 The commission is granted personal jurisdiction over any  
194 nonresident telephone solicitor, its executor, administrator,  
195 receiver, trustee or any other appointed representative of such  
196 nonresident as to an action or proceeding authorized by this  
197 article or any rules and regulations promulgated pursuant to this  
198 article as authorized by Section 13-3-57, and also upon any  
199 nonresident, his or her executor, administrator, receiver, trustee

200 or any other appointed representative of such nonresident who has  
201 qualified under the laws of this state to do business in  
202 Mississippi. Service of summons and process upon the alleged  
203 violator of this article shall be had or made in the manner  
204 provided by the Mississippi Rules of Civil Procedure.

205 SECTION 14. Any party aggrieved by any final order of the  
206 commission pursuant to this article, or any rules and regulations  
207 promulgated pursuant to this article, shall have the right of  
208 appeal to the Chancery Court of the First Judicial District of  
209 Hinds County, Mississippi.

210 SECTION 15. A provider of telephonic Caller Identification  
211 Service, local exchange telephone company or long distance company  
212 certificated by the commission may not be held liable for  
213 violations of this article committed by other persons or entities.

214 SECTION 16. If any section, paragraph, sentence, phrase or  
215 any part of this article shall be held invalid or  
216 unconstitutional, such holding shall not affect any other section,  
217 paragraph, sentence, clause, phrase or part of this article which  
218 is not in and of itself invalid or unconstitutional. Moreover, if  
219 the application of this article, or any portion of it, to any  
220 person or circumstance is held invalid, the invalidity shall not  
221 affect the application of this article to other persons or  
222 circumstances which can be given effect without the invalid  
223 provision or application.

224 SECTION 17. This act shall be codified as a new article  
225 within Chapter 3, Title 77, Mississippi Code of 1972.

226 SECTION 18. Section 77-3-603, Mississippi Code of 1972, is  
227 brought forward as follows:

228 77-3-603. Any telephone solicitor who makes an unsolicited  
229 telephonic sales call to a residential telephone number shall:

230 (a) Make calls between the hours of 8:00 a.m. and 9:00  
231 p.m., Central Standard Time, Monday through Friday, and between  
232 the hours of 8:00 a.m. and 9:00 p.m. on Saturdays (no calls shall

233 be made on Sundays);

234 (b) Identify himself or herself by his or her true  
235 first and last names and the business on whose behalf he or she is  
236 soliciting immediately upon making contact by telephone with the  
237 person who is the object of the telephone solicitation; and

238 (c) Discontinue the call immediately if at any time  
239 during the conversation the person being solicited expresses  
240 disinterest in continuing the call or sales presentation.

241 SECTION 19. Section 77-3-605, Mississippi Code of 1972, is  
242 brought forward as follows:

243 77-3-605. Any telephone solicitor shall apply for a  
244 certificate of registration from the Office of the Attorney  
245 General as a condition for doing business in this state. The  
246 certificate of registration shall be in a form as prescribed by  
247 the Attorney General.

248 The application for a certificate of registration shall be  
249 accompanied by a surety bond in the penal sum of Seventy-five  
250 Thousand Dollars (\$75,000.00) with conditions and in a form  
251 prescribed by the Attorney General. The bond shall provide for  
252 the indemnification of any person suffering loss as the result of  
253 any fraud, misrepresentation or violation of Sections 77-3-601  
254 through 77-3-619 by the principal. The term of the bond shall be  
255 continuous, but it shall be subject to cancellation by the surety  
256 in the manner described in this section. The surety may terminate  
257 the bond upon giving a sixty-day written notice to the principal  
258 and to the Attorney General, but the liability of the surety for  
259 acts of the principal and its agents shall continue during the  
260 sixty (60) days of cancellation notice. The notice does not  
261 absolve the surety from liability which accrues before the  
262 cancellation becomes final but which is discovered after that date  
263 and which may have arisen at any time during the term of the bond.

264 Unless the bond is replaced by that of another surety before the  
265 expiration of the sixty (60) days' notice of cancellation, the

266 certificate of registration shall be suspended. Any person  
267 required pursuant to this section to file a bond with an  
268 application for a certificate of registration may file, in lieu  
269 thereof, cash, a certificate of deposit, or government bonds in  
270 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such  
271 deposit is subject to the same terms and conditions as are  
272 provided for in the surety bond required herein. Any interest or  
273 earnings on such deposits are payable to the depositor.

274 SECTION 20. This act shall take effect and be in force from  
275 and after July 1, 2000.