AN ACT TO REQUIRE THE ATTORNEY GENERAL TO MAINTAIN A "NO
SALES SOLICITATION CALLS" LIST OF TELEPHONE CUSTOMERS FOR THE
PURPOSE OF RESTRICTING UNSOLICITED TELEPHONIC SALES CALLS TO THOSE
TELEPHONE CUSTOMERS; TO REQUIRE THE ATTORNEY GENERAL TO ADOPT
RULES AND REGULATIONS TO CARRY OUT THIS ACT; TO REQUIRE THAT THOSE
RULES AND REGULATIONS INCLUDE PROVISIONS ABOUT HOW TELEPHONE
CUSTOMERS MAY BE INCLUDED ON THE LIST, AND FEES TO BE CHARGED FOR
INCLUSION ON OR OBTAINING THE LIST; TO CREATE A SPECIAL FUND IN
THE STATE TREASURY FOR DEPOSIT OF THE FEES COLLECTED UNDER THIS
ACT; TO PROHIBIT TELEPHONE SOLICITORS FROM MAKING UNSOLICITED
TELEPHONIC SALES CALLS TO TELEPHONE CUSTOMERS WHO APPEAR ON THE NO
SALES SOLICITATION CALLS LIST; TO MAKE A VIOLATION BY A TELEPHONE
SOLICITOR AN UNFAIR OR DECEPTIVE TRADE PRACTICE; TO PROVIDE FOR A
PRIVATE CAUSE OF ACTION FOR VIOLATION OF THIS ACT; TO AMEND
SECTION 75-24-5, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
PRECEDING PROVISIONS; TO BRING FORWARD SECTION 77-3-603,
MISSISSIPPI CODE OF 1972, WHICH REGULATES THE GENERAL CONDUCT OF
TELEPHONE SOLICITORS; TO BRING FORWARD SECTION 77-3-605,
MISSISSIPPI CODE OF 1972, WHICH REQUIRES TELEPHONE SOLICITORS TO
REGISTER WITH THE ATTORNEY GENERAL'S OFFICE AND TO OBTAIN A SURETY
BOND; AND FOR RELATED PURPOSES.

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

SECTION 1. As used in this act:

(a) "Goods or services" means any real property or any
tangible or intangible personal property, or services of any kind
provided or offered to a person, and includes advertising, labor
performed for the benefit of a person, personal property intended
to be attached to or installed in any real property regardless of
whether it is so attached or installed, timeshare estates or
licenses, and extended service contracts.

(b) "Telephone customer" means a residential, mobile,
or paging device customer of telephonic services.

(c) "Telephone solicitor" means any person that makes
or causes to be made a telephonic sales call either from a
location in this state or from a location outside of this state to
a person in this state. "Telephone solicitor" includes any person
that is an owner, operator, or director of, a partner in, or any
other individual engaged in the management activities of, a
business.

(d) "Telephonic sales call" means a telephone call made
by a telephone solicitor to a telephone customer for purposes of
any of the following:

(i) Soliciting the sale of goods or services;
(ii) Soliciting an extension of credit;
(iii) Obtaining information for the direct
solicitation of a sale of goods or services or an extension of
credit.

(e) "Unsolicited telephonic sales call" means a
telephonic sales call other than a call made in any of the
following situations:

(i) In response to an express request of the
person telephoned;
(ii) In connection with an existing debt payment
or performance of a debt payment that has not been completed at
the time of the telephone call;
(iii) To any person with whom the telephone
solicitor has an existing business relationship;
(iv) To any person solely for religious or
political purposes;
(v) To any person by a charitable organization,
fund-raising counsel, or professional solicitor that is in
compliance with Section 79-11-501 et seq. For purposes of this
paragraph, "charitable organization," "fund-raising counsel," and
"professional solicitor" have the same meanings as in Section
79-11-501.

SECTION 2. (1) The Attorney General shall maintain a "no
sales solicitation calls" list of telephone customers for the
purpose of restricting unsolicited telephonic sales calls to those
telephone customers in accordance with this act.

(2) Not later than January 1, 2002, the Attorney General
shall adopt rules and regulations to ensure that unsolicited
telephonic sales calls are restricted in accordance with this act.
These rules and regulations shall include provisions that specify
all of the following:

(a) The methods by which telephone customers may
request that the Attorney General include those telephone
customers on or delete those telephone customers from the "no
sales solicitation calls" list;

(b) How often a request for inclusion by a telephone
customer on the "no sales solicitation calls" list must be
renewed;

(c) The effect of a telephone customer's change of
telephone number on the "no sales solicitation calls" list;

(d) The methods by which telephone customer requests
will be collected and information added to or deleted from the "no
sales solicitation calls" list;

(e) The methods by which the "no sales solicitation
calls" list may be obtained by telephone solicitors;

(f) A reasonable fee, if any, that a telephone
solicitor must pay to the Attorney General to obtain a copy of the
"no sales solicitation calls" list, which fee, beginning July 1
2002, shall not exceed Five Hundred Dollars ($500.00) annually;

(g) A reasonable fee, if any and not exceeding Ten
Dollars ($10.00), that a telephone customer must pay to the
Attorney General for initial inclusion of the telephone customer's
listing on the "no sales solicitation calls" list;

(h) A reasonable fee, if any and not exceeding Five
Dollars ($5.00), that a telephone customer must pay to the
Attorney General for annual renewal of that telephone customer's
listing on the "no sales solicitation calls" list.
(3) The Attorney General shall update the "no sales solicitation calls" list periodically, but at a minimum quarterly, upon compliance by a telephone customer with the rules and regulations adopted under this section for initial inclusion or renewal of a listing on the "no sales solicitation calls" list.

(4) All fees collected under this section shall be deposited into the State Treasury to the credit of the Regulation of Unsolicited Telephonic Sales Calls Fund established in Section 3 of this act.

SECTION 3. There is created in the State Treasury a special fund to be known as the Regulation Of Unsolicited Telephonic Sales Calls Fund. The Attorney General shall deposit into the fund any fees collected under Section 2 of this act. The Office of Consumer Protection of the Office of the Attorney General shall use the moneys in the fund, upon appropriation of the Legislature, for the administration and enforcement of this act and for providing public education about this act.

SECTION 4. (1) (a) No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call to any telephone customer that appears on the most current "no sales solicitation calls" list maintained by the Attorney General.

(b) No telephone solicitor or person that offers for sale any consumer information that includes residential, mobile, or paging device telephone numbers, except directory assistance or telephone directories sold by telephone companies, shall include those telephone customer numbers that appear on the most current "no sales solicitation calls" list.

(c) No telephone solicitor shall knowingly block or otherwise circumvent a telephone customer's use of a caller identification service.

(2) A violation of subsection (1) of this section is an unfair or deceptive trade practice in violation of Section 75-24-5.
(3) In addition to any remedy or penalty provided under law, including subsection (2) of this section, a telephone customer that has received a telephone call within any twelve-month period by or on behalf of a telephone solicitor in violation of this section or rules and regulations adopted under Section 2 of this act may do either or both of the following:

(a) Bring a civil action based on a violation of subsection (1) of this section, requesting a court of competent jurisdiction to enjoin the violation;

(b) Bring a civil action to collect damages of up to Five Hundred Dollars ($500.00) for each violation of subsection (1) of this section.

SECTION 5. Section 75-24-5, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

(e) Representing that goods or services have benefits, or quantities that they do not have or that a person has
a sponsorship, approval, status, affiliation, or connection that he does not have;
(f) Representing that goods are original or new if they are reconditioned, reclaimed, used, or secondhand;
(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
(h) Disparaging the goods, services, or business of another by false or misleading representation of fact;
(i) Advertising goods or services with intent not to sell them as advertised;
(j) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
(k) Misrepresentations of fact concerning the reasons for, existence of, or amounts of price reductions;
(l) Actions by telephone solicitors in violation of Section 4(1) of this act.

SECTION 6. Section 77-3-603, Mississippi Code of 1972, is brought forward as follows:
77-3-603. Any telephone solicitor who makes an unsolicited telephonic sales call to a residential telephone number shall:
(a) Make calls between the hours of 8:00 a.m. and 9:00 p.m., Central Standard Time, Monday through Friday, and between the hours of 8:00 a.m. and 9:00 p.m. on Saturdays (no calls shall be made on Sundays);
(b) Identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation; and
(c) Discontinue the call immediately if at any time during the conversation the person being solicited expresses disinterest in continuing the call or sales presentation.
SECTION 7. Section 77-3-605, Mississippi Code of 1972, is brought forward as follows:

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

The application for a certificate of registration shall be accompanied by a surety bond in the penal sum of Seventy-five Thousand Dollars ($75,000.00) with conditions and in a form prescribed by the Attorney General. The bond shall provide for the indemnification of any person suffering loss as the result of any fraud, misrepresentation or violation of Sections 77-3-601 through 77-3-619 by the principal. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the Attorney General, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice. The notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended. Any person required pursuant to this section to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Seventy-five Thousand Dollars ($75,000.00). Such deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.
SECTION 8. This act shall take effect and be in force from and after July 1, 2001.