

**\*\*\*Adopted\*\*\*  
AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 2362**

**By Representative(s) Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

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

15        SECTION 2. The use of the telephone to make all types of  
16 solicitations to consumers is pervasive. This act gives consumers  
17 a tool by which to object to telemarketing calls as these  
18 communications can amount to a nuisance, an invasion of privacy,  
19 and can create a health and safety risk for certain consumers who  
20 maintain their phone service primarily for emergency medical  
21 situations. Notwithstanding any other act or provisions of the  
22 law to the contrary, this article shall control.

23        SECTION 3. For the purposes of this article, the following  
24 words and terms shall have the meanings ascribed to them herein:

25            (a) "Consumer" means any person to whom has been  
26 assigned in the State of Mississippi any residential telephone  
27 line and corresponding telephone number, and who uses the  
28 residential line for primarily residential purposes.

29            (b) "Caller Identification Service" means a type of

30 telephone service which permits telephone subscribers to see the  
31 telephone number and name of incoming telephone calls.

32 (c) "Telephone solicitor" means any person, firm,  
33 entity, organization, partnership, association, corporation,  
34 charitable entity, or a subsidiary or affiliate thereof, who  
35 engages in any type of telephone solicitation on his or her own  
36 behalf or through representatives, independent contractors,  
37 salespersons, agents, automated dialing machines or others;  
38 however, the term "telephone solicitor" does not include any  
39 person engaged in an insurance, real estate or securities business  
40 that is licensed or regulated by the State of Mississippi.

41 (d) "Telephone solicitation" means any voice  
42 communication over the telephone line for the purpose of  
43 encouraging the purchase or rental of, or investment in property,  
44 or for the purpose of soliciting a sale of any consumer goods or  
45 services, but does not include communications:

46 (i) To any residential subscriber with that  
47 subscriber's prior express invitation or permission;

48 (ii) By or on behalf of any person or entity with  
49 whom a residential subscriber has a current business relationship;  
50 or

51 (iii) In connection with an existing debt or  
52 contract, the payment of which has not been completed at the time  
53 of the call.

54 (e) "Commission" means the Mississippi Public Service  
55 Commission.

56 (f) "Doing business in this state" refers to businesses  
57 which conduct telephonic sales calls from a location in the State  
58 of Mississippi or from other states or nations to consumers  
59 located in this state.

60        SECTION 4. (1) No telephone solicitor may make or cause to  
61 be made any telephone solicitation to any consumer in this state  
62 unless the telephone solicitor has purchased the "no-calls"  
63 database from the commission.

64        (2) No telephone solicitor may make or cause to be made any  
65 telephone solicitation to any consumer in this state who has given  
66 notice to the commission of his or her objection to receiving  
67 telephone solicitations.

68        (3) The commission shall establish and operate a "no-calls"  
69 database composed of a list of telephone numbers of consumers who  
70 have given notice of their objection to receiving telephone  
71 solicitations.

72        (4) Each local exchange company and each competing local  
73 exchange carrier shall provide written notification on a  
74 semiannual basis to each of its consumers, beginning July 1, 2001,  
75 of the opportunity to provide notification to the commission that  
76 the consumer objects to receiving telephone solicitations. The  
77 notification shall be disseminated at the option of the carrier,  
78 by television, radio or newspaper advertisements, written  
79 correspondence, bill inserts or messages, a publication in the  
80 consumer information pages of the local telephone directory, or  
81 any other method not expressly prohibited by the commission.

82        SECTION 5. All telephone solicitors shall register with the  
83 commission prior to conducting any telephonic solicitations in the  
84 State of Mississippi.

85        SECTION 6. The commission is authorized to promulgate rules  
86 necessary to effectuate this article, including, but not limited  
87 to, the following:

88            (a) Methods by which consumers may give notice to the  
89 commission of their objection to receive solicitations or

90 revocation of the notice;

91 (b) Methods by which a notice of objection becomes  
92 effective and the effect of a change of telephone number on the  
93 notice;

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

96 (d) Methods by which a person or entity desiring to  
97 make telephone solicitation may obtain access to the database as  
98 required to avoid calling the telephone number of consumers  
99 included in the database;

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

102 (f) The process by which telephone solicitors must  
103 register with the commission for the purpose of conducting  
104 telephonic solicitations in the state;

105 (g) Establishment of fees to be charged by the  
106 commission to telephone solicitors for access to or for paper or  
107 electronic copies of the database on an annual basis; and

108 (h) All other matters relating to the database that the  
109 commission deems necessary.

110 SECTION 7. If the Federal Communications Commission  
111 establishes a single national database of telephone numbers of  
112 consumers who object to receiving telephone solicitations, the  
113 commission shall include the portion of the single national  
114 database that relates to the State of Mississippi in the database  
115 established under this article.

116 SECTION 8. Information contained in the database established  
117 pursuant to this article may be used and accessed only for the  
118 purpose of compliance with this article and shall not be otherwise  
119 subject to public inspection or disclosure.

120        SECTION 9. All fees collected under the provisions of this  
121 article shall be deposited into a special fund in the State  
122 Treasury to be expended by the commission for the implementation  
123 and administration of this article. At the end of each fiscal  
124 year, unexpended monies remaining in the fund shall not revert to  
125 any other fund of the state, but shall remain available for  
126 appropriations to administer this article. The Legislature shall  
127 annually appropriate from the fund the amount necessary for the  
128 administration of this article to the commission.

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

136        No person or entity who makes a telephone solicitation to a  
137 consumer in this state may knowingly utilize any method which  
138 blocks or otherwise circumvents the use of Caller Identification  
139 Service by the consumer.

140        SECTION 11. The commission is authorized to investigate  
141 alleged violations and to initiate proceedings relative to a  
142 violation of this article or any rules and regulations promulgated  
143 pursuant to this article. Such proceedings include, without  
144 limitation, proceedings to issue a cease and desist order, and to  
145 issue an order imposing a civil penalty not to exceed Five  
146 Thousand Dollars (\$5,000.00) for each violation. The commission  
147 shall afford an opportunity for a fair hearing to the alleged  
148 violator(s) after giving written notice of the time and place for  
149 said hearing. Failure to appear at any such hearing may result in

150 the commission finding the alleged violator(s) liable by default.

151 Any telephone solicitor found to have violated this article,  
152 pursuant to a hearing or by default, may be subject to a civil  
153 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each  
154 violation to be assessed and collected by the commission. Each  
155 telephonic communication shall constitute a separate violation.

156 All penalties collected by the commission shall be deposited  
157 in the special fund created herein for the administration of this  
158 article.

159 The commission may issue subpoenas, require the production of  
160 relevant documents, administer oaths, conduct hearings, and do all  
161 things necessary in the course of investigating, determining and  
162 adjudicating an alleged violation.

163 The remedies, duties, prohibitions and penalties set forth  
164 under this article shall not be exclusive and shall be in addition  
165 to all other causes of action, remedies and penalties provided by  
166 law, including, but not limited to, the penalties provided by  
167 Section 77-1-53.

168 SECTION 12. Any person who has received a telephone  
169 solicitation in violation of this article, or any rules and  
170 regulations promulgated pursuant to this article, may file a  
171 complaint with the commission. The complaint will be processed  
172 pursuant to complaint procedures established by the commission.

173 SECTION 13. It shall be a defense in any action or  
174 proceeding brought under Section 11 or 12 of this act that the  
175 defendant has established and implemented, with due care,  
176 reasonable practices and procedures to effectively prevent  
177 telephone solicitations in violation of this article.

178 SECTION 14. The commission is granted personal jurisdiction  
179 over any telephone solicitor, whether a resident or a nonresident,

180 and even though they are deemed not to be a public utility, for  
181 the purpose of administering the provisions of this article. The  
182 commission is granted personal jurisdiction over any nonresident  
183 telephone solicitor, its executor, administrator, receiver,  
184 trustee or any other appointed representative of such nonresident  
185 as to an action or proceeding authorized by this article or any  
186 rules and regulations promulgated pursuant to this article as  
187 authorized by Section 13-3-57, and also upon nonresidents, his or  
188 her executor, administrator, receiver, trustee or any other  
189 appointed representative of such nonresident who have qualified  
190 under the laws of this state to do business herein. Service of  
191 summons and process upon the alleged violator of this article  
192 shall be had or made as is provided by the Mississippi Rules of  
193 Civil Procedure.

194       SECTION 15. Any party aggrieved by any final order of the  
195 commission pursuant to this article, or any rules and regulations  
196 promulgated pursuant to this article, shall have the right of  
197 appeal to the Chancery Court of Hinds County, Mississippi, First  
198 Judicial District.

199       SECTION 16. No provider of telephonic Caller Identification  
200 Service, local exchange telephone company or long distance company  
201 certificated by the commission may be held liable for violations  
202 of this article committed by other persons or entities.

203       SECTION 17. If any section, paragraph, sentence, phrase or  
204 any part of this article shall be held invalid or  
205 unconstitutional, such holding shall not affect any other section,  
206 paragraph, sentence, clause, phrase or part of this article which  
207 is not in and of itself invalid or unconstitutional. Moreover, if  
208 the application of this article, or any portion of it, to any  
209 person or circumstance is held invalid, the invalidity shall not

210 affect the application of this article to other persons or  
211 circumstances which can be given effect without the invalid  
212 provision or application.

213 SECTION 18. Sections 1 through 18 of this act shall be  
214 repealed on July 1, 2003.

215 SECTION 19. This act shall be codified as a new article  
216 within Chapter 3, Title 77, Mississippi Code of 1972.

217 SECTION 20. This act shall take effect and be in force from  
218 and after July 1, 2001.