

By: Representative Ellis (By Request)

To: Public Utilities

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1550

1 AN ACT TO AMEND SECTION 77-3-601, MISSISSIPPI CODE OF 1972,
2 TO DEFINE CERTAIN TERMS RELATING TO TELEMARKETING; TO CREATE NEW
3 SECTION 77-3-621, MISSISSIPPI CODE OF 1972, TO REQUIRE
4 TELEMARKETERS TO OBTAIN THE NATIONAL DO-NOT-CALL LIST AND TO
5 PROHIBIT CALLS TO CONSUMERS ON THE LIST; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 77-3-601, Mississippi Code of 1972, is
8 amended as follows:

9 77-3-601. As used in this article:

10 (a) "Telephonic sales call" means a call made by a
11 telephone solicitor to a consumer for the purpose of soliciting a
12 sale of any consumer goods or services, or for the purpose of
13 soliciting an extension of credit for consumer goods or services,
14 or for the purpose of obtaining information or an extension of
15 credit for these purposes.

16 (b) "Consumer goods or services" means any real
17 property or any tangible or intangible personal property which is
18 normally used for personal, family or household purposes,
19 including, without limitation, any property intended to be
20 attached to or installed in any real property regardless of
21 whether it is attached or installed, as well as cemetery lots and
22 time-share estates, and any services related to the property.

23 (c) "Unsolicited telephonic sales call" means a
24 telephonic sales call other than a call made:

25 (i) In response to an express request of the
26 person called;



27 (ii) In connection with an existing debt or
28 contract, payment or performance which has not been completed at
29 the time of the call; or

30 (iii) To any person with whom the telephone
31 solicitor has an established business relationship.

32 (d) "Consumer" means an actual or prospective
33 purchaser, lessee or recipient of consumer goods or services.

34 (e) "Merchant" means a person who, directly or
35 indirectly, offers or makes available to consumers any consumer
36 goods or services.

37 (f) "Telephone solicitor" means any natural person,
38 firm, organization, partnership, association, corporation, or a
39 subsidiary or affiliate thereof, doing business in this state, who
40 makes or causes to be made a telephonic sales call.

41 (g) "Doing business in this state" refers to businesses
42 who conduct telephonic sales calls from a location in Mississippi
43 or from other states or nations to consumers located in
44 Mississippi.

45 (h) "Established business relationship" means a prior
46 or existing relationship formed by a voluntary two-way
47 communication between a person or entity and a consumer with or
48 without an exchange of consideration, on the basis of an inquiry,
49 application, purchase or transaction by such person or entity,
50 which relationship has not been previously terminated by either
51 party.

52 (i) "Commission" means the Mississippi Public Service
53 Commission.

54 (j) "National do-not-call list" means the list
55 maintained by the Telephone Preference Service of the Direct
56 Marketing Association, Inc., or its successor organization, of
57 consumers throughout the nation who have requested that they not
58 receive unsolicited telephonic sales calls from telemarketers or
59 other persons engaging in telemarketing or similar activities.



60 (k) "Telemarketer" means any person or organization who
61 is a telephone solicitor or a telemarketer as defined in the
62 Federal Trade Commission's Telemarketing Sales Rule, 16 Code of
63 Federal Regulations, Section 310.2, as that section may be in
64 effect after December 31, 2002.

65 **SECTION 2.** The following shall be codified as Section
66 77-3-621, Mississippi Code of 1972:

67 77-3-621. (1) All telemarketers shall obtain, no less
68 frequently than on a semi-annual basis, subscription listings of
69 consumers in this state who have arranged to be included on the
70 national do-not-call list.

71 (2) Any telemarketer who calls a consumer in this state
72 whose name and current telephone number is on the national
73 do-not-call list is in violation of this section unless the
74 telemarketer has an established business relationship with the
75 consumer at the time of the call or had an established business
76 relationship with the consumer within the six-month period
77 immediately preceding the call.

78 (3) Any telemarketer who violates any provision of the
79 Federal Trade Commission's Telemarketing Sales Rule, 16 Code of
80 Federal Regulations, Part 310, as that part may be in effect after
81 December 31, 2002, with respect to any call made to a consumer in
82 this state is in violation of this section.

83 (4) All calls made to consumers in this state by
84 telemarketers are subject to the jurisdiction, control and
85 regulation of the commission. The commission may investigate and
86 enforce this section and impose fines for all violations of this
87 section.

88 (5) Any person violating this section is guilty of a civil
89 offense and is subject to a fine of up to One Hundred Dollars
90 (\$100.00) per violation. All fines levied under this section are
91 payable to the commission.



92 (6) The commission shall promulgate rules to ensure that
93 telecommunications companies providing local exchange service
94 inform their customers of this section. The notification may be
95 made by information provided annually in the billing statements
96 mailed to customers and by conspicuous publication of the notice
97 in the consumer information pages of the local telephone
98 directories.

99 (7) This section does not apply to nonprofit organizations,
100 political parties and candidates, and other firms that obtain an
101 exemption from the commission. The commission shall establish and
102 publish appropriate criteria by which persons may obtain
103 exemptions and may approve or deny exemptions in accordance with
104 those criteria.

105 (8) This section applies independently of all other sections
106 contained in this article, and no exemptions enumerated in this
107 article other than those specifically authorized under this
108 section have any application for purposes of this section.

109 **SECTION 3.** This act shall take effect and be in force from
110 and after July 1, 2002.

