

By: Representative Ellis (By Request)

To: Public Utilities

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; TO BRING FORWARD SECTIONS  
 6 77-3-603 THROUGH 77-3-619, MISSISSIPPI CODE OF 1972, WHICH  
 7 REGULATE THE GENERAL CONDUCT OF TELEPHONE SOLICITORS AND REQUIRE  
 8 TELEPHONE SOLICITORS TO REGISTER WITH THE ATTORNEY GENERAL'S  
 9 OFFICE; AND FOR RELATED PURPOSES.

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

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

13 77-3-601. As used in this article:

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

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

27 (c) "Unsolicited telephonic sales call" means a  
 28 telephonic sales call other than a call made:

29 (i) In response to an express request of the  
 30 person called;



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

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

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

38 (e) "Merchant" means a person who, directly or  
39 indirectly, offers or makes available to consumers any consumer  
40 goods or services.

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

45 (g) "Doing business in this state" refers to businesses  
46 who conduct telephonic sales calls from a location in Mississippi  
47 or from other states or nations to consumers located in  
48 Mississippi.

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

56 (i) "Commission" means the Mississippi Public Service  
57 Commission.

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



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

69           **SECTION 2.** The following shall be codified as Section  
70 77-3-621, Mississippi Code of 1972:

71           77-3-621. (1) All telemarketers shall obtain, no less  
72 frequently than on a semi-annual basis, subscription listings of  
73 consumers in this state who have arranged to be included on the  
74 national do-not-call list.

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

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

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

92           (5) Any person violating this section is guilty of a civil  
93 offense and is subject to a fine of up to One Hundred Dollars  
94 (\$100.00) per violation. All fines levied under this section are  
95 payable to the commission.



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

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

109           (8) This section applies independently of all other sections  
110 contained in this article, and no exemptions enumerated in this  
111 article other than those specifically authorized under this  
112 section have any application for purposes of this section.

113           **SECTION 3.** Section 77-3-603, Mississippi Code of 1972, is  
114 brought forward as follows:

115           77-3-603. Any telephone solicitor who makes an unsolicited  
116 telephonic sales call to a residential telephone number shall:

117           (a) Make calls between the hours of 8:00 a.m. and 9:00  
118 p.m., Central Standard Time, Monday through Friday, and between  
119 the hours of 8:00 a.m. and 9:00 p.m. on Saturdays (no calls shall  
120 be made on Sundays);

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

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



128           **SECTION 4.** Section 77-3-605, Mississippi Code of 1972, is  
129 brought forward as follows:

130           77-3-605. Any telephone solicitor shall apply for a  
131 certificate of registration from the Office of the Attorney  
132 General as a condition for doing business in this state. The  
133 certificate of registration shall be in a form as prescribed by  
134 the Attorney General.

135           The application for a certificate of registration shall be  
136 accompanied by a surety bond in the penal sum of Seventy-five  
137 Thousand Dollars (\$75,000.00) with conditions and in a form  
138 prescribed by the Attorney General. The bond shall provide for  
139 the indemnification of any person suffering loss as the result of  
140 any fraud, misrepresentation or violation of Sections 77-3-601  
141 through 77-3-619 by the principal. The term of the bond shall be  
142 continuous, but it shall be subject to cancellation by the surety  
143 in the manner described in this section. The surety may terminate  
144 the bond upon giving a sixty-day written notice to the principal  
145 and to the Attorney General, but the liability of the surety for  
146 acts of the principal and its agents shall continue during the  
147 sixty (60) days of cancellation notice. The notice does not  
148 absolve the surety from liability which accrues before the  
149 cancellation becomes final but which is discovered after that date  
150 and which may have arisen at any time during the term of the bond.  
151 Unless the bond is replaced by that of another surety before the  
152 expiration of the sixty (60) days' notice of cancellation, the  
153 certificate of registration shall be suspended. Any person  
154 required pursuant to this section to file a bond with an  
155 application for a certificate of registration may file, in lieu  
156 thereof, cash, a certificate of deposit, or government bonds in  
157 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such  
158 deposit is subject to the same terms and conditions as are  
159 provided for in the surety bond required herein. Any interest or  
160 earnings on such deposits are payable to the depositor.



161           **SECTION 5.** Section 77-3-607, Mississippi Code of 1972, is  
162 brought forward as follows:

163           77-3-607. (1) A contract made pursuant to a telephonic  
164 sales call is not valid and enforceable against a consumer unless  
165 made in compliance with this section.

166           (2) A contract made pursuant to a telephonic sales call  
167 shall:

168                   (a) Be reduced to writing and signed by the consumer.

169                   (b) Comply with all other applicable laws and rules.

170                   (c) Match the description of goods or services as  
171 principally used in the telephone solicitations.

172                   (d) Contain the name, address, and telephone number of  
173 the seller, the total price of the contract and a detailed  
174 description of the goods or services being sold.

175                   (e) Contain, in bold, conspicuous type, immediately  
176 preceding the signature, the following statement:

177                   **"YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS**  
178 **CONTRACT AND RETURN IT TO THE SELLER."**

179                   (f) Include in its terms any oral or written  
180 representations made by the telephone solicitor to the consumer in  
181 connection with the transaction.

182           (3) The provisions of this section do not apply to  
183 contractual sales regulated under other sections of the  
184 Mississippi statutes and to contractual sales of companies which  
185 provide telecommunication services and reach binding agreements by  
186 telephone for these services.

187           (4) A merchant who engages a telephone solicitor to make or  
188 cause to be made a telephonic sales call shall not make or submit  
189 any charge to the consumer's credit card account until after the  
190 merchant receives from the consumer a copy of the contract which  
191 complies with this section.

192           (5) The provisions of this section do not apply to a  
193 transaction:



194 (a) Made in accordance with prior negotiations in the  
195 course of a visit by the consumer to a merchant operating a retail  
196 business establishment which has a fixed permanent location and  
197 where consumer goods are displayed or offered for sale on a  
198 continuing basis;

199 (b) In which the consumer may obtain a full refund for  
200 the return of undamaged and unused goods or a cancellation of  
201 services notice to the seller within seven (7) days after receipt  
202 by the consumer, and the seller will process the refund within  
203 thirty (30) days after receipt of the returned merchandise by the  
204 consumer;

205 (c) In which the consumer purchases goods or services  
206 after an examination of a television, radio, or print  
207 advertisement or a sample, brochure, or catalog of the merchant  
208 that contains the name, address and telephone number of the  
209 merchant; a description of the goods or services being sold; and  
210 any limitations or restrictions that apply to the offer; or

211 (d) In which the merchant is a bona fide charitable  
212 organization ruled tax-exempt by the Internal Revenue Service.

213 **SECTION 6.** Section 77-3-609, Mississippi Code of 1972, is  
214 brought forward as follows:

215 77-3-609. The provisions of Sections 77-3-601 through  
216 77-3-619 shall not apply to:

217 (a) A person engaging in commercial telephone  
218 solicitation where the solicitation is an isolated transaction and  
219 not done in the course of a pattern of repeated transactions of  
220 like nature.

221 (b) A person making calls for religious, charitable,  
222 political, education or other noncommercial purposes, or a person  
223 soliciting for a nonprofit corporation if that corporation is  
224 properly registered as such with the Secretary of State and is  
225 included within the exemption of S.501(c)(3) or S.501(c)(6) of the  
226 Internal Revenue Code.



227 (c) A person soliciting:  
228 (i) Without the intent to complete or obtain  
229 provisional acceptance of a sale during the telephone  
230 solicitation;  
231 (ii) Who does not make the major sales  
232 presentation during the telephone solicitation; or  
233 (iii) Without the intent to complete, and who does  
234 not complete, the sales presentation during the telephone  
235 solicitation, but who completes the sales presentation at a later  
236 face-to-face meeting between the seller and the prospective  
237 purchaser. However, if a seller, directly following a telephone  
238 solicitation, causes an individual whose primary purpose it is to  
239 go to the prospective purchaser to collect the payment or deliver  
240 any item purchased, this exemption does not apply.  
241 (d) Any licensed securities, commodities, or  
242 investments broker, dealer or investment advisor, when soliciting  
243 within the scope of his license. As used in this section,  
244 "licensed securities, commodities, or investments broker, dealer  
245 or investment advisor" means a person subject to license or  
246 registration as such by the Securities and Exchange Commission, by  
247 the National Association of Securities Dealers or other  
248 self-regulatory organization as defined by the Securities Exchange  
249 Act of 1934 (15 USCS Sec. 781), or by an official or agency of  
250 this state or of any state of the United States.  
251 (e) Any licensed associated person of a securities,  
252 commodities, or investments broker, dealer or investment advisor,  
253 when soliciting within the scope of his license. As used in this  
254 section, "licensed associated person of a securities, commodities,  
255 or investment broker, dealer or investment advisor" means any  
256 associated person registered or licensed by the National  
257 Association of Securities Dealers or other self-regulatory  
258 organization as defined by the Securities Exchange Act of 1934 (15





259 USCS Sec. 781) or by an official or agency of this state or of any  
260 state of the United States.

261 (f) A person primarily soliciting the sale of a  
262 newspaper, magazine or periodical of general circulation by its  
263 publisher, or by the publisher's agent through written agreement.

264 (g) A book, video or record club or contractual plan or  
265 arrangement:

266 (i) Under which the seller provides the consumer  
267 with a form which the consumer may use to instruct the seller not  
268 to ship the offered merchandise;

269 (ii) Which is regulated by the Federal Trade  
270 Commission trade regulation concerning "use of negative option  
271 plans by sellers in commerce"; or

272 (iii) Which provides for the sale of books,  
273 records or videos which are not covered under paragraphs (i) or  
274 (ii), including continuity plans, subscription arrangements,  
275 standing order arrangements, supplements and series arrangements  
276 under which the seller periodically ships merchandise to a  
277 consumer who has consented in advance to receive such merchandise  
278 on a periodic basis.

279 (h) Any supervised financial institution or parent,  
280 subsidiary or affiliate thereof. As used in this section,  
281 "supervised financial institution" means any commercial bank,  
282 trust company, savings and loan association, mutual savings bank,  
283 credit union, industrial loan company, consumer finance lender,  
284 commercial finance lender or insurer, provided that the  
285 institution is subject to supervision by an official or agency of  
286 this state, of any state or of the United States.

287 (i) Any licensed insurance or real estate broker,  
288 agent, customer representative or solicitor when soliciting within  
289 the scope of his license. As used in this section, "licensed  
290 insurance or real estate broker, agent, customer representative or  
291 solicitor" means any insurance or real estate broker, agent,



292 customer representative or solicitor licensed by an official or  
293 agency of this state or of any state of the United States.

294 (j) A person soliciting the sale of services provided  
295 by a cable television system operating under authority of a  
296 franchise or permit.

297 (k) A person who solicits sales by periodically  
298 publishing and delivering a catalog of the seller's merchandise to  
299 prospective purchasers, if the catalog:

300 (i) Contains a written description or illustration  
301 of each item offered for sale;

302 (ii) Includes the business address or home office  
303 address of the seller;

304 (iii) Includes at least twenty-four (24) pages of  
305 written material and illustrations and is distributed in more than  
306 one (1) state; or

307 (iv) Has an annual circulation by mailing of not  
308 less than two hundred fifty thousand (250,000).

309 (l) A person who solicits contracts for the maintenance  
310 or repair of goods previously purchased from the person making the  
311 solicitation or on whose behalf the solicitation is made.

312 (m) A telephone company, or its subsidiary or agents,  
313 or a business which is regulated by the Mississippi Public Service  
314 Commission, or a Federal Communications Commission licensed  
315 cellular telephone company or other bona fide radio  
316 telecommunication services provider.

317 (n) Any publicly traded corporation which has  
318 securities registered with the Securities and Exchange Commission  
319 which are a reported security within the meaning of subparagraph  
320 (4) of Regulation Section 240.11a3-1, (a), under the Securities  
321 Exchange Act of 1934, or which is exempt from registration under  
322 subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2)  
323 of subsection (g) of Section 12 of the Securities Exchange Act of



324 1934 (15 USCS Section 781), or any subsidiary of such a  
325 corporation.

326 (o) A business soliciting exclusively the sale of  
327 telephone answering services, provided that the telephone  
328 answering services will be supplied by the solicitor.

329 (p) A person soliciting a transaction regulated by the  
330 Commodity Futures Trading Commission if the person is registered  
331 or temporarily licensed for this activity with the Commodity  
332 Futures Trading Commission under the Commodity Exchange Act (7  
333 USCS Section 1 et seq.) and the registration or license has not  
334 expired or been suspended or revoked.

335 (q) A person soliciting the sale of food or produce if  
336 the solicitation neither intends to result in, or actually results  
337 in, a sale which costs the purchaser in excess of One Hundred  
338 Dollars (\$100.00).

339 (r) A person soliciting business from prospective  
340 consumers who have an established business relationship with, or  
341 who have previously purchased from, the business enterprise for  
342 which the solicitor is calling, if the solicitor is operating  
343 under the same exact business name.

344 (s) A person who has been operating, for at least one  
345 (1) year, a retail business establishment under the same name as  
346 that used in connection with telemarketing, and both of the  
347 following occur on a continuing basis:

348 (i) Either products are displayed and offered for  
349 sale, or services are offered for sale and provided at the  
350 business establishment; and

351 (ii) A majority of the seller's business involves  
352 the buyer obtaining such products or services at the seller's  
353 location.

354 (t) Any telephone marketing service company which  
355 provides telemarketing sales services under contract to sellers  
356 and has been operating continuously for at least five (5) years



357 under the same business name and seventy-five percent (75%) of its  
358 contracts are performed on behalf of persons exempted from  
359 Sections 77-3-601 through 77-3-619.

360 **SECTION 7.** Section 77-3-611, Mississippi Code of 1972, is  
361 brought forward as follows:

362 77-3-611. The Attorney General shall investigate any  
363 complaints received concerning violations of Sections 77-3-601  
364 through 77-3-619. If, after investigating any complaint, the  
365 Attorney General finds that there has been a violation of Sections  
366 77-3-601 through 77-3-619, the Attorney General may bring an  
367 action to impose a civil penalty and to seek other relief,  
368 including injunctive relief, as the court deems appropriate  
369 against the telephone solicitor. The civil penalty shall not  
370 exceed Ten Thousand Dollars (\$10,000.00) per violation and shall  
371 be deposited in the State General Fund, unallocated. This civil  
372 penalty may be recovered in any action brought under Sections  
373 77-3-601 through 77-3-619 by the Attorney General. Alternatively,  
374 the Attorney General may terminate any investigation or action  
375 upon agreement by the person to pay a stipulated civil penalty.  
376 The Attorney General or the court may waive any civil penalty if  
377 the person has previously made full restitution or reimbursement  
378 or has paid actual damages to the consumers who have been injured  
379 by the violation.

380 **SECTION 8.** Section 77-3-613, Mississippi Code of 1972, is  
381 brought forward as follows:

382 77-3-613. In any civil proceeding alleging a violation of  
383 Sections 77-3-601 through 77-3-619, the burden of proving an  
384 exemption or an exemption from a definition is upon the person  
385 claiming it.

386 **SECTION 9.** Section 77-3-615, Mississippi Code of 1972, is  
387 brought forward as follows:

388 77-3-615. (1) In any civil litigation resulting from a  
389 transaction involving a violation of Sections 77-3-601 through



390 77-3-619, the prevailing party, after judgment in the trial court  
391 and exhaustion of all appeals, if any, shall receive his  
392 reasonable attorney's fees and costs from the nonprevailing party.

393 (2) The attorney for the prevailing party shall submit a  
394 sworn affidavit of his time spent on the case and his costs  
395 incurred for all the motions, hearings, and appeals to the trial  
396 judge who presided over the civil case.

397 (3) The trial judge shall award the prevailing party the sum  
398 of reasonable costs incurred in the action plus a reasonable legal  
399 fee for the hours actually spent on the case as sworn to in an  
400 affidavit.

401 (4) Any award of attorney's fees or costs shall become a  
402 part of the judgment and subject to execution as the law allows.

403 (5) In any civil litigation initiated by the Attorney  
404 General, the court may award to the prevailing party reasonable  
405 attorney's fees and costs if the court finds that there was a  
406 complete absence of a justiciable issue of either law or fact  
407 raised by the losing party, or if the court finds bad faith on the  
408 part of the losing party.

409 **SECTION 10.** Section 77-3-617, Mississippi Code of 1972, is  
410 brought forward as follows:

411 77-3-617. The Attorney General shall by rule ensure that  
412 telecommunications companies inform their customers of the  
413 provisions of Sections 77-3-601 through 77-3-619. The  
414 notification may be made by:

415 (a) Annual inserts in the billing statements mailed to  
416 customers; and

417 (b) Conspicuous publication of the notice in the  
418 consumer information pages of the local telephone directories.

419 **SECTION 11.** Section 77-3-619, Mississippi Code of 1972, is  
420 brought forward as follows:



421           77-3-619. The Attorney General is authorized to issue any  
422 necessary rules and regulations in order to carry out the  
423 provisions of Sections 77-3-601 through 77-3-619.

424           **SECTION 12.** This act shall take effect and be in force from  
425 and after July 1, 2002.

