

By: Representative Horne

To: Public Utilities

HOUSE BILL NO. 1554

1 AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL
2 SUBSCRIBERS WHO GIVE NOTICE OF THEIR OBJECTION TO SUCH CALLS TO
3 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 AND FROM USING AUTOMATED DIALING
13 SYSTEMS WHEN MAKING TELEPHONE SOLICITATIONS; TO PROVIDE CIVIL
14 PENALTIES FOR VIOLATIONS OF THIS ACT; TO BRING FORWARD SECTIONS
15 77-3-601 THROUGH 77-3-619, MISSISSIPPI CODE OF 1972, WHICH
16 REGULATE THE GENERAL CONDUCT OF TELEPHONE SOLICITORS AND REQUIRE
17 TELEPHONE SOLICITORS TO REGISTER WITH THE ATTORNEY GENERAL'S
18 OFFICE; 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 have the meanings ascribed in this section
32 unless the context clearly indicates otherwise:

33 (a) "Consumer" means a person to whom is assigned in
34 the State of Mississippi a residential telephone line and



35 corresponding telephone number, who uses the residential line
36 primarily for residential purposes.

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

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

47 (d) "Telephone solicitation" means any voice or
48 facsimile communication over a telephone line to a consumer for
49 the purpose of persuading, enticing, requesting, petitioning or
50 otherwise seeking to induce the consumer to take some action, but
51 does not include communications:

52 (i) To any residential subscriber with that
53 subscriber's prior invitation or permission;

54 (ii) By or on behalf of any person or entity with
55 whom a residential subscriber has a current business relationship;
56 or

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

60 (e) "Commission" means the Mississippi Public Service
61 Commission.

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

66 **SECTION 4.** (1) A telephone solicitor may not make or cause
67 to be made any telephone solicitation to any consumer in this



68 state unless the telephone solicitor has purchased the most
69 current "no-calls" database from the commission.

70 (2) A telephone solicitor may not make or cause to be made
71 any telephone solicitation to any consumer in this state who has
72 given notice to the commission of his or her objection to
73 receiving telephone solicitations.

74 (3) The commission shall establish and operate a "no-calls"
75 database composed of a list of telephone numbers of consumers who
76 give notice of their objection to receiving telephone
77 solicitations.

78 (4) Each local exchange company and each competing local
79 exchange carrier shall provide written notification on a
80 semiannual basis to each of its consumers, beginning on July 1,
81 2002, of the opportunity to provide notification to the commission
82 or the entity under contract with the commission that the consumer
83 objects to receiving telephone solicitations. The notification
84 must be disseminated, at the option of the carrier, by television,
85 radio or newspaper advertisements, written correspondence, bill
86 inserts or messages, a publication in the consumer information
87 pages of the local telephone directory or any other method not
88 prohibited expressly by the commission.

89 **SECTION 5.** All telephone solicitors must register with the
90 commission before conducting any telephonic solicitations in the
91 State of Mississippi.

92 **SECTION 6.** The commission may promulgate rules necessary to
93 effectuate this article, including, but not limited to, the
94 following:

95 (a) Methods by which consumers may give notice to the
96 commission or its contractor of their objection to receiving
97 solicitations or revocation of the notice;

98 (b) Methods by which a notice of objection becomes
99 effective and the effect of a change of telephone number on the
100 notice;



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

103 (d) Methods by which a person or entity desiring to
104 make telephone solicitations may obtain access to the database as
105 required to avoid calling the telephone number of consumers
106 included in the database;

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

109 (f) The process by which telephone solicitors must
110 register with the commission for the purpose of conducting
111 telephonic solicitations in the state;

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

115 (h) All other matters relating to the database that the
116 commission deems necessary.

117 **SECTION 7.** If the Federal Communications Commission
118 establishes a single national database of telephone numbers of
119 consumers who object to receiving telephone solicitations, the
120 commission must include the portion of the single national
121 database which relates to the State of Mississippi in the database
122 established under this article.

123 **SECTION 8.** Information contained in the database established
124 pursuant to this article may be used and accessed only for the
125 purpose of compliance with this article and may not be subject
126 otherwise to public inspection or disclosure. Such information is
127 exempt from the Mississippi Public Records Act of 1983.

128 **SECTION 9.** A special fund is created in the State Treasury
129 into which all fees collected under this article must be deposited
130 to be expended by the commission for the implementation and
131 administration of this article. At the end of each fiscal year,
132 unexpended monies remaining in the fund will not revert to any
133 other fund of the state, but must remain available for



134 appropriations to administer this article. The Legislature shall
135 appropriate annually from the fund the amount necessary for the
136 administration of this article to the commission.

137 **SECTION 10.** (1) Any person or entity who makes a telephone
138 solicitation to a consumer in this state who is not listed on the
139 most current "no-calls" database shall announce clearly, at the
140 beginning of each call, his or her name, the company he or she
141 represents and the purpose of the call. Such calls may only be
142 made between the hours of 9:00 a.m. and 8:00 p.m. No telephone
143 solicitation may be made on a Sunday.

144 (2) A person or entity who makes a telephone solicitation to
145 a consumer in this state may not utilize knowingly any method that
146 blocks or otherwise circumvents the use of Caller Identification
147 Service by the consumer.

148 (3) A person or entity making a telephone solicitation to a
149 consumer in this state may not use an automated dialing system or
150 any like system that uses a recorded voice message to communicate
151 to the consumer.

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



166 each violation to be assessed and collected by the commission.

167 Each telephonic communication constitutes a separate violation.

168 All penalties collected by the commission must be deposited
169 in the special fund created under Section 9 for the administration
170 of this article.

171 The commission may issue subpoenas, require the production of
172 relevant documents, administer oaths, conduct hearings and do all
173 things necessary in the course of investigating, determining and
174 adjudicating an alleged violation.

175 The remedies, duties, prohibitions and penalties set forth
176 under this article are not exclusive and are in addition to all
177 other causes of action, remedies and penalties provided by law,
178 including, but not limited to, the penalties provided by Section
179 77-1-53.

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

185 **SECTION 13.** It is a defense in any action or proceeding
186 brought under Section 11 or 12 of this article that the defendant
187 has established and implemented, with due care, reasonable
188 practices and procedures to effectively prevent telephone
189 solicitations in violation of this article.

190 **SECTION 14.** The commission is granted personal jurisdiction
191 over any telephone solicitor, whether a resident or a nonresident,
192 notwithstanding that telephone solicitors are not deemed to be a
193 public utility, for the purpose of administering this article.
194 The commission is granted personal jurisdiction over any
195 nonresident telephone solicitor, its executor, administrator,
196 receiver, trustee or any other appointed representative of such
197 nonresident as to an action or proceeding authorized by this
198 article or any rules and regulations promulgated pursuant to this



199 article as authorized by Section 13-3-57, and also upon any
200 nonresident, his or her executor, administrator, receiver, trustee
201 or any other appointed representative of such nonresident who has
202 qualified under the laws of this state to do business in
203 Mississippi. Service of summons and process upon the alleged
204 violator of this article shall be had or made in the manner
205 provided by the Mississippi Rules of Civil Procedure.

206 **SECTION 15.** Any party aggrieved by any final order of the
207 commission pursuant to this article, or any rules and regulations
208 promulgated pursuant to this article, has the right of appeal to
209 the Chancery Court of the First Judicial District of Hinds County,
210 Mississippi.

211 **SECTION 16.** A provider of telephonic Caller Identification
212 Service, local exchange telephone company or long distance company
213 certificated by the commission may not be held liable for
214 violations of this article committed by other persons or entities.

215 **SECTION 17.** If any section, paragraph, sentence, phrase or
216 any part of this article is held invalid or unconstitutional, such
217 holding does not affect any other section, paragraph, sentence,
218 clause, phrase or part of this article which is not in and of
219 itself invalid or unconstitutional. Moreover, if the application
220 of this article, or any portion of it, to any person or
221 circumstance is held invalid, the invalidity does not affect the
222 application of this article to other persons or circumstances
223 which can be given effect without the invalid provision or
224 application.

225 **SECTION 18.** Section 77-3-601, Mississippi Code of 1972, is
226 brought forward as follows:

227 77-3-601. As used in this article:

228 (a) "Telephonic sales call" means a call made by a
229 telephone solicitor to a consumer for the purpose of soliciting a
230 sale of any consumer goods or services, or for the purpose of
231 soliciting an extension of credit for consumer goods or services,



232 or for the purpose of obtaining information or an extension of
233 credit for these purposes.

234 (b) "Consumer goods or services" means any real
235 property or any tangible or intangible personal property which is
236 normally used for personal, family or household purposes,
237 including, without limitation, any property intended to be
238 attached to or installed in any real property regardless of
239 whether it is attached or installed, as well as cemetery lots and
240 time-share estates, and any services related to the property.

241 (c) "Unsolicited telephonic sales call" means a
242 telephonic sales call other than a call made:

243 (i) In response to an express request of the
244 person called;

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

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

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

252 (e) "Merchant" means a person who, directly or
253 indirectly, offers or makes available to consumers any consumer
254 goods or services.

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

259 (g) "Doing business in this state" refers to businesses
260 who conduct telephonic sales calls from a location in Mississippi
261 or from other states or nations to consumers located in
262 Mississippi.

263 (h) "Established business relationship" means a prior
264 or existing relationship formed by a voluntary two-way



265 communication between a person or entity and a consumer with or
266 without an exchange of consideration, on the basis of an inquiry,
267 application, purchase or transaction by such person or entity,
268 which relationship has not been previously terminated by either
269 party.

270 **SECTION 19.** Section 77-3-603, Mississippi Code of 1972, is
271 brought forward as follows:

272 77-3-603. Any telephone solicitor who makes an unsolicited
273 telephonic sales call to a residential telephone number shall:

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

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

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

285 **SECTION 20.** Section 77-3-605, Mississippi Code of 1972, is
286 brought forward as follows:

287 77-3-605. Any telephone solicitor shall apply for a
288 certificate of registration from the Office of the Attorney
289 General as a condition for doing business in this state. The
290 certificate of registration shall be in a form as prescribed by
291 the Attorney General.

292 The application for a certificate of registration shall be
293 accompanied by a surety bond in the penal sum of Seventy-five
294 Thousand Dollars (\$75,000.00) with conditions and in a form
295 prescribed by the Attorney General. The bond shall provide for
296 the indemnification of any person suffering loss as the result of
297 any fraud, misrepresentation or violation of Sections 77-3-601



298 through 77-3-619 by the principal. The term of the bond shall be
299 continuous, but it shall be subject to cancellation by the surety
300 in the manner described in this section. The surety may terminate
301 the bond upon giving a sixty-day written notice to the principal
302 and to the Attorney General, but the liability of the surety for
303 acts of the principal and its agents shall continue during the
304 sixty (60) days of cancellation notice. The notice does not
305 absolve the surety from liability which accrues before the
306 cancellation becomes final but which is discovered after that date
307 and which may have arisen at any time during the term of the bond.
308 Unless the bond is replaced by that of another surety before the
309 expiration of the sixty (60) days' notice of cancellation, the
310 certificate of registration shall be suspended. Any person
311 required pursuant to this section to file a bond with an
312 application for a certificate of registration may file, in lieu
313 thereof, cash, a certificate of deposit, or government bonds in
314 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such
315 deposit is subject to the same terms and conditions as are
316 provided for in the surety bond required herein. Any interest or
317 earnings on such deposits are payable to the depositor.

318 **SECTION 21.** Section 77-3-607, Mississippi Code of 1972, is
319 brought forward as follows:

320 77-3-607. (1) A contract made pursuant to a telephonic
321 sales call is not valid and enforceable against a consumer unless
322 made in compliance with this section.

323 (2) A contract made pursuant to a telephonic sales call
324 shall:

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

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

327 (c) Match the description of goods or services as

328 principally used in the telephone solicitations.



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

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

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

336 (f) Include in its terms any oral or written
337 representations made by the telephone solicitor to the consumer in
338 connection with the transaction.

339 (3) The provisions of this section do not apply to
340 contractual sales regulated under other sections of the
341 Mississippi statutes and to contractual sales of companies which
342 provide telecommunication services and reach binding agreements by
343 telephone for these services.

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

349 (5) The provisions of this section do not apply to a
350 transaction:

351 (a) Made in accordance with prior negotiations in the
352 course of a visit by the consumer to a merchant operating a retail
353 business establishment which has a fixed permanent location and
354 where consumer goods are displayed or offered for sale on a
355 continuing basis;

356 (b) In which the consumer may obtain a full refund for
357 the return of undamaged and unused goods or a cancellation of
358 services notice to the seller within seven (7) days after receipt
359 by the consumer, and the seller will process the refund within
360 thirty (30) days after receipt of the returned merchandise by the
361 consumer;



362 (c) In which the consumer purchases goods or services
363 after an examination of a television, radio, or print
364 advertisement or a sample, brochure, or catalog of the merchant
365 that contains the name, address and telephone number of the
366 merchant; a description of the goods or services being sold; and
367 any limitations or restrictions that apply to the offer; or

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

370 **SECTION 22.** Section 77-3-609, Mississippi Code of 1972, is
371 brought forward as follows:

372 77-3-609. The provisions of Sections 77-3-601 through
373 77-3-619 shall not apply to:

374 (a) A person engaging in commercial telephone
375 solicitation where the solicitation is an isolated transaction and
376 not done in the course of a pattern of repeated transactions of
377 like nature.

378 (b) A person making calls for religious, charitable,
379 political, education or other noncommercial purposes, or a person
380 soliciting for a nonprofit corporation if that corporation is
381 properly registered as such with the Secretary of State and is
382 included within the exemption of S.501(c)(3) or S.501(c)(6) of the
383 Internal Revenue Code.

384 (c) A person soliciting:

385 (i) Without the intent to complete or obtain
386 provisional acceptance of a sale during the telephone
387 solicitation;

388 (ii) Who does not make the major sales
389 presentation during the telephone solicitation; or

390 (iii) Without the intent to complete, and who does
391 not complete, the sales presentation during the telephone
392 solicitation, but who completes the sales presentation at a later
393 face-to-face meeting between the seller and the prospective
394 purchaser. However, if a seller, directly following a telephone



395 solicitation, causes an individual whose primary purpose it is to
396 go to the prospective purchaser to collect the payment or deliver
397 any item purchased, this exemption does not apply.

398 (d) Any licensed securities, commodities, or
399 investments broker, dealer or investment advisor, when soliciting
400 within the scope of his license. As used in this section,
401 "licensed securities, commodities, or investments broker, dealer
402 or investment advisor" means a person subject to license or
403 registration as such by the Securities and Exchange Commission, by
404 the National Association of Securities Dealers or other
405 self-regulatory organization as defined by the Securities Exchange
406 Act of 1934 (15 USCS Sec. 781), or by an official or agency of
407 this state or of any state of the United States.

408 (e) Any licensed associated person of a securities,
409 commodities, or investments broker, dealer or investment advisor,
410 when soliciting within the scope of his license. As used in this
411 section, "licensed associated person of a securities, commodities,
412 or investment broker, dealer or investment advisor" means any
413 associated person registered or licensed by the National
414 Association of Securities Dealers or other self-regulatory
415 organization as defined by the Securities Exchange Act of 1934 (15
416 USCS Sec. 781) or by an official or agency of this state or of any
417 state of the United States.

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

421 (g) A book, video or record club or contractual plan or
422 arrangement:

423 (i) Under which the seller provides the consumer
424 with a form which the consumer may use to instruct the seller not
425 to ship the offered merchandise;



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

429 (iii) Which provides for the sale of books,
430 records or videos which are not covered under paragraphs (i) or
431 (ii), including continuity plans, subscription arrangements,
432 standing order arrangements, supplements and series arrangements
433 under which the seller periodically ships merchandise to a
434 consumer who has consented in advance to receive such merchandise
435 on a periodic basis.

436 (h) Any supervised financial institution or parent,
437 subsidiary or affiliate thereof. As used in this section,
438 "supervised financial institution" means any commercial bank,
439 trust company, savings and loan association, mutual savings bank,
440 credit union, industrial loan company, consumer finance lender,
441 commercial finance lender or insurer, provided that the
442 institution is subject to supervision by an official or agency of
443 this state, of any state or of the United States.

444 (i) Any licensed insurance or real estate broker,
445 agent, customer representative or solicitor when soliciting within
446 the scope of his license. As used in this section, "licensed
447 insurance or real estate broker, agent, customer representative or
448 solicitor" means any insurance or real estate broker, agent,
449 customer representative or solicitor licensed by an official or
450 agency of this state or of any state of the United States.

451 (j) A person soliciting the sale of services provided
452 by a cable television system operating under authority of a
453 franchise or permit.

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

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



459 (ii) Includes the business address or home office
460 address of the seller;

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

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

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

469 (m) A telephone company, or its subsidiary or agents,
470 or a business which is regulated by the Mississippi Public Service
471 Commission, or a Federal Communications Commission licensed
472 cellular telephone company or other bona fide radio
473 telecommunication services provider.

474 (n) Any publicly traded corporation which has
475 securities registered with the Securities and Exchange Commission
476 which are a reported security within the meaning of subparagraph
477 (4) of Regulation Section 240.11a3-1, (a), under the Securities
478 Exchange Act of 1934, or which is exempt from registration under
479 subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2)
480 of subsection (g) of Section 12 of the Securities Exchange Act of
481 1934 (15 USCS Section 781), or any subsidiary of such a
482 corporation.

483 (o) A business soliciting exclusively the sale of
484 telephone answering services, provided that the telephone
485 answering services will be supplied by the solicitor.

486 (p) A person soliciting a transaction regulated by the
487 Commodity Futures Trading Commission if the person is registered
488 or temporarily licensed for this activity with the Commodity
489 Futures Trading Commission under the Commodity Exchange Act (7
490 USCS Section 1 et seq.) and the registration or license has not
491 expired or been suspended or revoked.



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

496 (r) A person soliciting business from prospective
497 consumers who have an established business relationship with, or
498 who have previously purchased from, the business enterprise for
499 which the solicitor is calling, if the solicitor is operating
500 under the same exact business name.

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

505 (i) Either products are displayed and offered for
506 sale, or services are offered for sale and provided at the
507 business establishment; and

508 (ii) A majority of the seller's business involves
509 the buyer obtaining such products or services at the seller's
510 location.

511 (t) Any telephone marketing service company which
512 provides telemarketing sales services under contract to sellers
513 and has been operating continuously for at least five (5) years
514 under the same business name and seventy-five percent (75%) of its
515 contracts are performed on behalf of persons exempted from
516 Sections 77-3-601 through 77-3-619.

517 **SECTION 23.** Section 77-3-611, Mississippi Code of 1972, is
518 brought forward as follows:

519 77-3-611. The Attorney General shall investigate any
520 complaints received concerning violations of Sections 77-3-601
521 through 77-3-619. If, after investigating any complaint, the
522 Attorney General finds that there has been a violation of Sections
523 77-3-601 through 77-3-619, the Attorney General may bring an
524 action to impose a civil penalty and to seek other relief,



525 including injunctive relief, as the court deems appropriate
526 against the telephone solicitor. The civil penalty shall not
527 exceed Ten Thousand Dollars (\$10,000.00) per violation and shall
528 be deposited in the State General Fund, unallocated. This civil
529 penalty may be recovered in any action brought under Sections
530 77-3-601 through 77-3-619 by the Attorney General. Alternatively,
531 the Attorney General may terminate any investigation or action
532 upon agreement by the person to pay a stipulated civil penalty.
533 The Attorney General or the court may waive any civil penalty if
534 the person has previously made full restitution or reimbursement
535 or has paid actual damages to the consumers who have been injured
536 by the violation.

537 **SECTION 24.** Section 77-3-613, Mississippi Code of 1972, is
538 brought forward as follows:

539 77-3-613. In any civil proceeding alleging a violation of
540 Sections 77-3-601 through 77-3-619, the burden of proving an
541 exemption or an exemption from a definition is upon the person
542 claiming it.

543 **SECTION 25.** Section 77-3-615, Mississippi Code of 1972, is
544 brought forward as follows:

545 77-3-615. (1) In any civil litigation resulting from a
546 transaction involving a violation of Sections 77-3-601 through
547 77-3-619, the prevailing party, after judgment in the trial court
548 and exhaustion of all appeals, if any, shall receive his
549 reasonable attorney's fees and costs from the nonprevailing party.

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

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



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

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

566 **SECTION 26.** Section 77-3-617, Mississippi Code of 1972, is
567 brought forward as follows:

568 77-3-617. The Attorney General shall by rule ensure that
569 telecommunications companies inform their customers of the
570 provisions of Sections 77-3-601 through 77-3-619. The
571 notification may be made by:

572 (a) Annual inserts in the billing statements mailed to
573 customers; and

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

576 **SECTION 27.** Section 77-3-619, Mississippi Code of 1972, is
577 brought forward as follows:

578 77-3-619. The Attorney General is authorized to issue any
579 necessary rules and regulations in order to carry out the
580 provisions of Sections 77-3-601 through 77-3-619.

581 **SECTION 28.** Sections 1 through 17 of this act shall be
582 codified as a new article within Chapter 3, Title 77, Mississippi
583 Code of 1972.

584 **SECTION 29.** This act shall take effect and be in force from
585 and after July 1, 2002.

