

By: Representatives Barnett (116th), Mayo

To: Public Utilities

HOUSE BILL NO. 1216  
(As Passed the House)

1 AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL  
2 SUBSCRIBERS WHO HAVE GIVEN NOTICE OF THEIR OBJECTION TO SUCH CALLS  
3 TO THE PUBLIC SERVICE COMMISSION; TO REQUIRE THE PUBLIC SERVICE  
4 COMMISSION TO ESTABLISH A DATABASE TO COLLECT SUCH OBJECTIONS; TO  
5 RESTRICT THE USE OF INFORMATION CONTAINED IN THE DATABASE; TO  
6 REQUIRE ALL TELEPHONE SOLICITORS TO REGISTER WITH THE PUBLIC  
7 SERVICE COMMISSION BEFORE CONDUCTING TELEPHONE SOLICITATIONS AND  
8 TO PROVIDE FEES THEREFOR; TO AUTHORIZE THE PUBLIC SERVICE  
9 COMMISSION TO GRANT CERTAIN LIMITED EXCEPTIONS TO THE PROVISIONS  
10 OF THIS ACT AND TO PROMULGATE RULES NECESSARY TO EFFECTUATE THIS  
11 ACT; TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; TO  
12 GRANT AN EXEMPTION FOR CERTAIN TYPES OF SALES; TO REPEAL SECTIONS  
13 77-3-601 THROUGH 77-3-619, MISSISSIPPI CODE OF 1972, WHICH  
14 REGULATE THE GENERAL CONDUCT OF CERTAIN TELEPHONE SOLICITORS UNDER  
15 THE SUPERVISION OF THE ATTORNEY GENERAL; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** This article shall be known and may be cited as  
18 the "Mississippi Telephone Solicitation Act."

19 **SECTION 2.** The use of the telephone to make all types of  
20 solicitations to consumers is pervasive. This act gives consumers  
21 a tool by which to object to telemarketing calls as these  
22 communications can amount to a nuisance, an invasion of privacy,  
23 and can create a health and safety risk for certain consumers who  
24 maintain their phone service primarily for emergency medical  
25 situations.

26 **SECTION 3.** For the purposes of this article, the following  
27 words and terms shall have the meanings ascribed in this section  
28 unless the context clearly indicates otherwise:

29 (a) "Consumer" means a person to whom is assigned in  
30 the State of Mississippi a residential telephone line and  
31 corresponding telephone number, who uses the residential line  
32 primarily for residential purposes.



33           (b) "Caller identification service" means a type of  
34 telephone service which permits a telephone subscriber to view the  
35 telephone number and name of the person or entity making an  
36 incoming telephone call.

37           (c) "Telephone solicitor" means any person, firm,  
38 entity, organization, partnership, association, corporation,  
39 charitable entity, or a subsidiary or affiliate thereof, whose  
40 primary purpose is to engage in any type of telephone solicitation  
41 on his or her own behalf or through representatives, independent  
42 contractors, salespersons, agents, automated dialing systems or  
43 machines or other individuals or systems.

44           (d) "Telephone solicitation" means any voice  
45 communication over the telephone line of a consumer for the  
46 purpose of:

47                   (i) Encouraging the purchase or rental of, or  
48 investment in, property; or

49                   (ii) Soliciting a sale of any consumer goods or  
50 services, or an extension of credit for consumer goods or  
51 services.

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

54           (f) "Doing business in this state" refers to businesses  
55 which conduct telephone solicitations from any location to  
56 consumers located in this state.

57           (g) "Consumer goods or services" means any real  
58 property or any tangible or intangible personal property which is  
59 normally used for personal, family or household purposes,  
60 including, without limitation, any property intended to be  
61 attached to, or installed in, any real property, and any services  
62 related to the property.

63           (h) "Established business relationship" means an  
64 existing relationship formed by a voluntary two-way communication  
65 between a person or entity and a consumer, with or without an



66 exchange of consideration, on the basis of an inquiry,  
67 application, purchase or transaction by the consumer, which  
68 relationship has not been terminated by either party; however, the  
69 act of purchasing consumer goods or services under an extension of  
70 credit does not create an existing business relationship between  
71 the consumer and the entity extending credit to the consumer for  
72 such purchase.

73 **SECTION 4.** (1) Except as otherwise provided pursuant to  
74 Section 5 or 6 of this act, a telephone solicitor may not make or  
75 cause to be made any telephone solicitation to any consumer in  
76 this state unless the telephone solicitor has purchased the  
77 "no-calls" database from the commission or the entity under  
78 contract with the commission.

79 (2) Except as otherwise provided pursuant to Section 5 or 6  
80 of this act, a telephone solicitor may not make or cause to be  
81 made any telephone solicitation to any consumer in this state who  
82 has given notice to the commission, or the entity under contract  
83 with the commission, of his or her objection to receiving  
84 telephone solicitations.

85 (3) The commission, or an entity under contract with the  
86 commission, shall establish and operate a "no-calls" database  
87 composed of a list of telephone numbers of consumers who have  
88 given notice of their objection to receiving telephone  
89 solicitations. The "no-calls" database may be operated by the  
90 commission or by another entity under contract with the  
91 commission.

92 (4) Each local exchange company and each competing local  
93 exchange carrier shall provide written notification on a  
94 semiannual basis to each of its consumers of the opportunity to  
95 provide notification to the commission or the entity under  
96 contract with the commission, that the consumer objects to  
97 receiving telephone solicitations. The notification must be  
98 disseminated at the option of the carrier, by television, radio or



99 newspaper advertisements, written correspondence, bill inserts or  
100 messages, a publication in the consumer information pages of the  
101 local telephone directory, or any other method not expressly  
102 prohibited by the commission.

103 **SECTION 5.** The commission, in its discretion, may allow  
104 telephone solicitors to make telephone solicitations without  
105 requiring them to purchase the "no-calls" database, and regardless  
106 of whether a telephone solicitation may be made to a consumer who  
107 has given notice of his objection to receiving such solicitations,  
108 provided that it adopts a written policy incorporating the  
109 following criteria:

110 (a) The telephone solicitor must demonstrate to the  
111 commission that its proposed telephone solicitation is reasonably  
112 related to an established business relationship as defined in  
113 Section 3(h), or is being made in response to an invitation or  
114 notice from a consumer which clearly signifies that he is open to  
115 a contact being initiated;

116 (b) The telephone solicitation is to be made by a  
117 person or entity for the purpose of soliciting a contribution or  
118 donation to a bona fide nonprofit corporation, regardless of  
119 whether consumer goods or services will be provided to the  
120 consumer in return for the contribution or donation; or

121 (c) The consumer will not be telephoned for a telephone  
122 solicitation as defined in Section 3(d), but he will be telephoned  
123 for a bona fide religious or charitable purpose, including an  
124 invitation to attend an event or a request for a contribution or  
125 donation.

126 In all cases, the telephone solicitor must demonstrate that  
127 it will not use an automated dialing system or a method that will  
128 block or otherwise circumvent the consumer's use of a caller  
129 identification service.

130 In making its determination of whether to allow a telephone  
131 solicitation to be made under the policy which will include the



132 limitations set forth in this section, the commission shall  
133 exercise due care in investigating previous conduct of the  
134 telephone solicitor seeking such authority. The commission may  
135 deny any telephone solicitor the privilege of making telephone  
136 solicitations under this section, notwithstanding that any of the  
137 criteria set forth in this section have been met.

138 **SECTION 6.** The provisions of this act shall not apply to a  
139 person soliciting:

140 (a) Who does not make the major sales presentation  
141 during the telephone solicitation;

142 (b) Without the intent to complete or obtain  
143 provisional acceptance of a sale during the telephone  
144 solicitation; or

145 (c) Without the intent to complete, and who does not  
146 complete, the sales presentation during the telephone  
147 solicitation, but who completes the sales presentation at a later  
148 face-to-face meeting between the person soliciting and the  
149 prospective purchaser or consumer.

150 **SECTION 7.** All telephone solicitors must register with the  
151 commission before conducting any telephone solicitations in the  
152 State of Mississippi.

153 **SECTION 8.** The commission may promulgate rules and  
154 regulations necessary to effectuate this article, including, but  
155 not limited to, the following:

156 (a) The methods by which consumers may give notice to  
157 the commission or its contractor of their objection to receive  
158 solicitations or revocation of the notice;

159 (b) The methods by which a notice of objection becomes  
160 effective and the effect of a change of telephone number on the  
161 notice;

162 (c) The methods by which objections and revocations are  
163 collected and added to the database;



164 (d) The methods by which a person or entity desiring to  
165 make telephone solicitations may obtain access to the database as  
166 required to avoid calling the telephone number of consumers  
167 included in the database;

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

170 (f) The process by which telephone solicitors must  
171 register with the commission for the purpose of conducting  
172 telephonic solicitations in the state;

173 (g) The establishment of fees to be charged by the  
174 commission or its contractor to telephone solicitors for access to  
175 or for paper or electronic copies of the database on an annual  
176 basis;

177 (h) The establishment of a written policy which clearly  
178 articulates the circumstances under which the commission, in its  
179 discretion, may allow exceptions to the provisions of this article  
180 pursuant to Section 5 of this act; and

181 (i) All other matters relating to the database that the  
182 commission deems necessary.

183 **SECTION 9.** If the Federal Trade Commission establishes a  
184 single national database of telephone numbers of consumers who  
185 object to receiving telephone solicitations, the commission must  
186 include the portion of the single national database that relates  
187 to the State of Mississippi in the database established under this  
188 article.

189 **SECTION 10.** Information contained in the database  
190 established under this article may be used and accessed only for  
191 the purpose of compliance with this article and shall not be  
192 otherwise subject to public inspection or disclosure.

193 **SECTION 11.** All fees collected under the provisions of this  
194 article shall be deposited into a special fund which is created in  
195 the State Treasury to be expended by the commission for the  
196 implementation and administration of this article. At the end of



197 each fiscal year, earned interest and unexpended monies remaining  
198 in the fund may not revert to any other fund of the state, but  
199 shall remain available for appropriations to administer this  
200 article. The Legislature shall appropriate annually from the fund  
201 the amount necessary for the administration of this article to the  
202 commission.

203       **SECTION 12.** (1) Any person or entity who makes an  
204 authorized telephone solicitation to a consumer in this state  
205 shall announce clearly, at the beginning of each call, his or her  
206 name, the company he or she represents and the purpose of the  
207 call. Such calls may only be made between the hours of 8:00 a.m.  
208 and 8:00 p.m. Central Standard Time. No telephone solicitations  
209 may be made on a Saturday or Sunday. For purposes of this  
210 provision, an "authorized telephone solicitation" means a  
211 solicitation that is made: (a) to a consumer who is not listed on  
212 the most current "no-calls" database; (b) by a telephone solicitor  
213 who has been authorized to make such solicitations under the  
214 provisions of Section 5 of this act; or (c) by a telephone  
215 solicitor who is exempt from this act under the provisions of  
216 Section 6 of this act.

217       (2) A person or entity who makes a telephone solicitation to  
218 a consumer in this state may not utilize knowingly any method that  
219 blocks or otherwise circumvents the consumer's use of a caller  
220 identification service, nor may the person or entity use an  
221 automated dialing system or any like system that uses a recorded  
222 voice message to communicate with the consumer.

223       **SECTION 13.** The commission may investigate alleged  
224 violations and to initiate proceedings relative to a violation of  
225 this article or any rules and regulations promulgated pursuant to  
226 this article. Such proceedings include, without limitation,  
227 proceedings to issue a cease and desist order, and to issue an  
228 order imposing a civil penalty not to exceed Five Thousand Dollars  
229 (\$5,000.00) for each violation. The commission shall afford an



230 opportunity for a fair hearing to the alleged violator(s) after  
231 giving written notice of the time and place for said hearing.  
232 Failure to appear at any such hearing may result in the commission  
233 finding the alleged violator(s) liable by default. Any telephone  
234 solicitor found to have violated this article, pursuant to a  
235 hearing or by default, may be subject to a civil penalty not to  
236 exceed Five Thousand Dollars (\$5,000.00) for each violation to be  
237 assessed and collected by the commission. Each telephonic  
238 communication shall constitute a separate violation.

239 All penalties collected by the commission shall be deposited  
240 in the special fund created under Section 11 for the  
241 administration of this article.

242 The commission may issue subpoenas, require the production of  
243 relevant documents, administer oaths, conduct hearings, and do all  
244 things necessary in the course of investigating, determining and  
245 adjudicating an alleged violation.

246 The remedies, duties, prohibitions and penalties set forth  
247 under this article shall not be exclusive and shall be in addition  
248 to all other causes of action, remedies and penalties provided by  
249 law, including, but not limited to, the penalties provided by  
250 Section 77-1-53.

251 **SECTION 14.** Any person who has received a telephone  
252 solicitation in violation of this article, or any rules and  
253 regulations promulgated pursuant to this article, may file a  
254 complaint with the commission. The complaint will be processed  
255 pursuant to complaint procedures established by the commission.

256 **SECTION 15.** It shall be a defense in any action or  
257 proceeding brought under Section 13 or 14 of this act that the  
258 defendant has established and implemented, with due care,  
259 reasonable practices and procedures to effectively prevent  
260 telephone solicitations in violation of this article.

261 **SECTION 16.** The commission is granted personal jurisdiction  
262 over any telephone solicitor, whether a resident or a nonresident,



263 notwithstanding that telephone solicitors are not deemed to be a  
264 public utility, for the purpose of administering this article.  
265 The commission is granted personal jurisdiction over any  
266 nonresident telephone solicitor, its executor, administrator,  
267 receiver, trustee or any other appointed representative of such  
268 nonresident as to an action or proceeding authorized by this  
269 article or any rules and regulations promulgated pursuant to this  
270 article as authorized by Section 13-3-57, and also upon any  
271 nonresident, his or her executor, administrator, receiver, trustee  
272 or any other appointed representative of such nonresident who has  
273 qualified under the laws of this state to do business herein.  
274 Service of summons and process upon the alleged violator of this  
275 article shall be had or made as is provided by the Mississippi  
276 Rules of Civil Procedure.

277 **SECTION 17.** Any party aggrieved by any final order of the  
278 commission pursuant to this article, or any rules and regulations  
279 promulgated pursuant to this article, shall have the right of  
280 appeal to the Chancery Court of Hinds County, Mississippi, First  
281 Judicial District.

282 **SECTION 18.** No provider of telephonic caller identification  
283 service, local exchange telephone company or long distance company  
284 certificated by the commission may be held liable for violations  
285 of this article committed by other persons or entities.

286 **SECTION 19.** If any section, paragraph, sentence, phrase or  
287 any part of this article shall be held invalid or  
288 unconstitutional, such holding shall not affect any other section,  
289 paragraph, sentence, clause, phrase or part of this article which  
290 is not in and of itself invalid or unconstitutional. Moreover, if  
291 the application of this article, or any portion of it, to any  
292 person or circumstance is held invalid, the invalidity shall not  
293 affect the application of this article to other persons or  
294 circumstances which can be given effect without the invalid  
295 provision or application.



296           **SECTION 20.** Sections 77-3-601, 77-3-603, 77-3-605, 77-3-607,  
297 77-3-609, 77-3-611, 77-3-613, 77-3-615, 77-3-617 and 77-3-619,  
298 Mississippi Code of 1972, which regulate the general conduct of  
299 telephone solicitors under the supervision of the Attorney  
300 General, and which exempt certain telephone solicitors from such  
301 regulation, are repealed.

302           **SECTION 21.** Sections 1 through 18 of this act shall be  
303 codified as a new article within Chapter 3, Title 77, Mississippi  
304 Code of 1972.

305           **SECTION 22.** This act shall take effect and be in force from  
306 and after July 1, 2003.

