HOUSE BILL NO. 1216
(As Passed the House)

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

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

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

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

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

(a) "Consumer" means a person to whom is assigned in the State of Mississippi a residential telephone line and corresponding telephone number, who uses the residential line primarily for residential purposes.
(b) "Caller identification service" means a type of telephone service which permits a telephone subscriber to view the telephone number and name of the person or entity making an incoming telephone call.

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

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

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

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

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

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

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

(h) "Established business relationship" means an existing relationship formed by a voluntary two-way communication between a person or entity and a consumer, with or without an
exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer, which relationship has not been terminated by either party; however, the act of purchasing consumer goods or services under an extension of credit does not create an existing business relationship between the consumer and the entity extending credit to the consumer for such purchase.

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

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

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

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

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

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

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

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

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

In making its determination of whether to allow a telephone
solicitation to be made under the policy which will include the
limitations set forth in this section, the commission shall
exercise due care in investigating previous conduct of the
telephone solicitor seeking such authority. The commission may
deny any telephone solicitor the privilege of making telephone
solicitations under this section, notwithstanding that any of the
criteria set forth in this section have been met.

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

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

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

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

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

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

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

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

(c) The methods by which objections and revocations are
collected and added to the database;
(d) The methods by which a person or entity desiring to make telephone solicitations may obtain access to the database as required to avoid calling the telephone number of consumers included in the database;

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

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

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

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

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

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

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

SECTION 11. All fees collected under the provisions of this article shall be deposited into a special fund which is created in the State Treasury to be expended by the commission for the implementation and administration of this article. At the end of
each fiscal year, earned interest and unexpended monies remaining
in the fund may not revert to any other fund of the state, but
shall remain available for appropriations to administer this
article. The Legislature shall appropriate annually from the fund
the amount necessary for the administration of this article to the
commission.

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

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

**SECTION 13.** The commission may investigate alleged
violations and to initiate proceedings relative to a violation of
this article or any rules and regulations promulgated pursuant to
this article. Such proceedings include, without limitation,
proceedings to issue a cease and desist order, and to issue an
order imposing a civil penalty not to exceed Five Thousand Dollars
($5,000.00) for each violation. The commission shall afford an
opportunity for a fair hearing to the alleged violator(s) after giving written notice of the time and place for said hearing. Failure to appear at any such hearing may result in the commission finding the alleged violator(s) liable by default. Any telephone solicitor found to have violated this article, pursuant to a hearing or by default, may be subject to a civil penalty not to exceed Five Thousand Dollars ($5,000.00) for each violation to be assessed and collected by the commission. Each telephonic communication shall constitute a separate violation.

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

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

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

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

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

SECTION 16. The commission is granted personal jurisdiction over any telephone solicitor, whether a resident or a nonresident,
notwithstanding that telephone solicitors are not deemed to be a public utility, for the purpose of administering this article.

The commission is granted personal jurisdiction over any nonresident telephone solicitor, its executor, administrator, receiver, trustee or any other appointed representative of such nonresident as to an action or proceeding authorized by this article or any rules and regulations promulgated pursuant to this article as authorized by Section 13-3-57, and also upon any nonresident, his or her executor, administrator, receiver, trustee or any other appointed representative of such nonresident who has qualified under the laws of this state to do business herein.

Service of summons and process upon the alleged violator of this article shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

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

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

SECTION 19. If any section, paragraph, sentence, phrase or any part of this article shall be held invalid or unconstitutional, such holding shall not affect any other section, paragraph, sentence, clause, phrase or part of this article which is not in and of itself invalid or unconstitutional. Moreover, if the application of this article, or any portion of it, to any person or circumstance is held invalid, the invalidity shall not affect the application of this article to other persons or circumstances which can be given effect without the invalid provision or application.
SECTION 20. Sections 77-3-601, 77-3-603, 77-3-605, 77-3-607, 77-3-609, 77-3-611, 77-3-613, 77-3-615, 77-3-617 and 77-3-619, Mississippi Code of 1972, which regulate the general conduct of telephone solicitors under the supervision of the Attorney General, and which exempt certain telephone solicitors from such regulation, are repealed.

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

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