

**\*\*\*Adopted\*\*\*  
AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 2445**

**By Representative(s) Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

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

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

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

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

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

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

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

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

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

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

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

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

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

70 such purchase.

71 (i) "Charitable organization" means any person or  
72 entity holding itself out to be established for any benevolent,  
73 educational, philanthropic, humane, scientific, patriotic, social  
74 welfare or advocacy, public health, environmental or conservation,  
75 civic or other eleemosynary purpose or for the benefit of law  
76 enforcement personnel, firefighters, or any other persons who  
77 protect the public safety, or for any other purpose where a  
78 charitable appeal is the basis of the solicitation.

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

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

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

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

105 newspaper advertisements, written correspondence, bill inserts or  
106 messages, a publication in the consumer information pages of the  
107 local telephone directory, or any other method not expressly  
108 prohibited by the commission.

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

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

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

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

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

136 In making its determination of whether to allow a telephone  
137 solicitation to be made under the policy which will include the  
138 limitations set forth in this section, the commission shall  
139 exercise due care in investigating previous conduct of the

140 telephone solicitor seeking such authority. The commission may  
141 deny any telephone solicitor the privilege of making telephone  
142 solicitations under this section, notwithstanding that any of the  
143 criteria set forth in this section have been met.

144 **SECTION 6.** The provisions of this act shall not apply to:

145 (a) A person soliciting:

146 (i) Who does not make the major sales presentation  
147 during the telephone solicitation;

148 (ii) Without the intent to complete or obtain  
149 provisional acceptance of a sale during the telephone  
150 solicitation; or

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

156 (b) A person who is a licensee under Chapter 35, Title  
157 73, Mississippi Code of 1972, who is a resident of the State of  
158 Mississippi, and whose telephone solicitation is for the sole  
159 purpose of selling, exchanging, purchasing, renting, listing for  
160 sale or rent or leasing real estate in connection with his real  
161 estate license and not in conjunction with any other offer.

162 (c) A motor vehicle dealer as that term is defined in  
163 Section 63-17-55, who is a resident of the State of Mississippi  
164 and who maintains a current motor vehicle dealer's license issued  
165 by the Mississippi Motor Vehicle Commission, whose telephone  
166 solicitation is for the sole purpose of selling, offering to sell,  
167 soliciting or advertising the sale of motor vehicles in connection  
168 with his motor vehicle dealer's license and not in conjunction  
169 with any other offer.

170 (d) An agent as that term is defined in Section 83-17-1  
171 whose telephone solicitation is for the sole purpose of  
172 soliciting, consulting, advising, or adjusting in the business of  
173 insurance.

174 (e) A broker-dealer, agent, or investment advisor

175 registered under Chapter 71, Title 75, Mississippi Code of 1972,  
176 whose telephone solicitation is for the sole purpose of effecting  
177 or attempting to effect the purchase or sale of securities or has  
178 the purpose of providing or seeking to provide investment or  
179 financial advice.

180 (f) A person calling on behalf of a charitable  
181 organization which is registered under Chapter 11, Title 79,  
182 Mississippi Code of 1972, whose telephone solicitation is for the  
183 sole purpose of soliciting for the charitable organization and who  
184 receives no compensation for his activities on behalf of the  
185 organization.

186 (g) A person calling on behalf of a newspaper of  
187 general circulation, whose telephone solicitation is for the sole  
188 purpose of soliciting a subscription to the newspaper from, or  
189 soliciting the purchase of advertising by, the consumer.

190 (h) A person calling on behalf of any national bank or  
191 state bank, if the call to the consumer relates to banking  
192 services, other than any form of credit card offer or any offer to  
193 extend credit by the issuance of a credit card.

194 (i) A person calling on behalf of a funeral  
195 establishment licensed under Section 73-11-41, if the sole purpose  
196 of the telephone solicitation relates to services provided by the  
197 funeral establishment in the course of its ordinary business.

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

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

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

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

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

212 (d) The methods by which a person or entity desiring to  
213 make telephone solicitations may obtain access to the database as  
214 required to avoid calling the telephone number of consumers  
215 included in the database;

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

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

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

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

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

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

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

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

245 each fiscal year, earned interest and unexpended monies remaining  
246 in the fund may not revert to any other fund of the state, but  
247 shall remain available for appropriations to administer this  
248 article. The Legislature shall appropriate annually from the fund  
249 the amount necessary for the administration of this article to the  
250 commission.

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

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

271 **SECTION 13.** The commission may investigate alleged  
272 violations and to initiate proceedings relative to a violation of  
273 this article or any rules and regulations promulgated pursuant to  
274 this article. Such proceedings include, without limitation,  
275 proceedings to issue a cease and desist order, and to issue an  
276 order imposing a civil penalty not to exceed Five Thousand Dollars  
277 (\$5,000.00) for each violation. The commission shall afford an  
278 opportunity for a fair hearing to the alleged violator(s) after  
279 giving written notice of the time and place for said hearing.



280 Failure to appear at any such hearing may result in the commission  
281 finding the alleged violator(s) liable by default. Any telephone  
282 solicitor found to have violated this article, pursuant to a  
283 hearing or by default, may be subject to a civil penalty not to  
284 exceed Five Thousand Dollars (\$5,000.00) for each violation to be  
285 assessed and collected by the commission. Each telephonic  
286 communication shall constitute a separate violation.

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

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

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

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

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

309 **SECTION 16.** The commission is granted personal jurisdiction  
310 over any telephone solicitor, whether a resident or a nonresident,  
311 notwithstanding that telephone solicitors are not deemed to be a  
312 public utility, for the purpose of administering this article.  
313 The commission is granted personal jurisdiction over any  
314 nonresident telephone solicitor, its executor, administrator,

315 receiver, trustee or any other appointed representative of such  
316 nonresident as to an action or proceeding authorized by this  
317 article or any rules and regulations promulgated pursuant to this  
318 article as authorized by Section 13-3-57, and also upon any  
319 nonresident, his or her executor, administrator, receiver, trustee  
320 or any other appointed representative of such nonresident who has  
321 qualified under the laws of this state to do business herein.  
322 Service of summons and process upon the alleged violator of this  
323 article shall be had or made as is provided by the Mississippi  
324 Rules of Civil Procedure.

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

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

334 **SECTION 19.** If any section, paragraph, sentence, phrase or  
335 any part of this article shall be held invalid or  
336 unconstitutional, such holding shall not affect any other section,  
337 paragraph, sentence, clause, phrase or part of this article which  
338 is not in and of itself invalid or unconstitutional. Moreover, if  
339 the application of this article, or any portion of it, to any  
340 person or circumstance is held invalid, the invalidity shall not  
341 affect the application of this article to other persons or  
342 circumstances which can be given effect without the invalid  
343 provision or application.

344 **SECTION 20.** The provisions of Sections 1 through 18 of this  
345 act shall supercede any other act or provision of law to the  
346 contrary, and they shall be codified as a new article within  
347 Chapter 3, Title 77, Mississippi Code of 1972.

348 **SECTION 21.** This act shall take effect and be in force from  
349 and after July 1, 2003.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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 EXEMPTIONS TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
13 PURPOSES.