

By: Representative Bounds

To: Public Utilities

HOUSE BILL NO. 1225

1 AN ACT TO BRING FORWARD SECTIONS 77-3-601, 77-3-603,
 2 77-3-605, 77-3-607, 77-3-609, 77-3-611, 77-3-613, 77-3-615,
 3 77-3-617 AND 77-3-619, MISSISSIPPI CODE OF 1972, WHICH RELATE TO
 4 UNSOLICITED RESIDENTIAL TELEPHONIC SALES CALLS, FOR PURPOSES OF
 5 POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS 77-3-701, 77-3-703,
 6 77-3-705, 77-3-707, 77-3-709, 77-3-711, 77-3-713, 77-3-715,
 7 77-3-717, 77-3-719, 77-3-721, 77-3-723, 77-3-725, 77-3-727,
 8 77-3-729, 77-3-731, 77-3-733 AND 77-3-735, MISSISSIPPI CODE OF
 9 1972, WHICH RELATES TO THE MISSISSIPPI TELEPHONE SOLICITATION ACT
 10 AND PENALTIES, FOR PURPOSES OF POSSIBLE AMENDMENT; TO BRING
 11 FORWARD SECTION 77-3-801, 77-3-803, 77-3-805, 77-3-807 AND
 12 77-3-809, MISSISSIPPI CODE OF 1972, WHICH RELATES TO THE CALLER ID
 13 ANTI-SPOOFING ACT, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR
 14 RELATED PURPOSES.

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

16 **SECTION 1.** Section 77-3-601, Mississippi Code of 1972, is
 17 brought forward as follows:

18 77-3-601. As used in this article:

19 (a) "Telephonic sales call" means a call made by a
 20 telephone solicitor to a consumer for the purpose of soliciting a
 21 sale of any consumer goods or services, or for the purpose of
 22 soliciting an extension of credit for consumer goods or services,
 23 or for the purpose of obtaining information or an extension of
 24 credit for these purposes.



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

32 (c) "Unsolicited telephonic sales call" means a
33 telephonic sales call other than a call made:

34 (i) In response to an express request of the
35 person called;

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

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

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

43 (e) "Merchant" means a person who, directly or
44 indirectly, offers or makes available to consumers any consumer
45 goods or services.

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



50 (g) "Doing business in this state" refers to businesses
51 who conduct telephonic sales calls from a location in Mississippi
52 or from other states or nations to consumers located in
53 Mississippi.

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

61 **SECTION 2.** Section 77-3-603, Mississippi Code of 1972, is
62 brought forward as follows:

63 77-3-603. Any telephone solicitor who makes an unsolicited
64 telephonic sales call to a residential telephone number shall:

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

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



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

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

78 77-3-605. Any telephone solicitor shall apply for a
79 certificate of registration from the Office of the Attorney
80 General as a condition for doing business in this state. The
81 certificate of registration shall be in a form as prescribed by
82 the Attorney General.

83 The application for a certificate of registration shall be
84 accompanied by a surety bond in the penal sum of Seventy-five
85 Thousand Dollars (\$75,000.00) with conditions and in a form
86 prescribed by the Attorney General. The bond shall provide for
87 the indemnification of any person suffering loss as the result of
88 any fraud, misrepresentation or violation of Sections 77-3-601
89 through 77-3-619 by the principal. The term of the bond shall be
90 continuous, but it shall be subject to cancellation by the surety
91 in the manner described in this section. The surety may terminate
92 the bond upon giving a sixty-day written notice to the principal
93 and to the Attorney General, but the liability of the surety for
94 acts of the principal and its agents shall continue during the
95 sixty (60) days of cancellation notice. The notice does not
96 absolve the surety from liability which accrues before the
97 cancellation becomes final but which is discovered after that date



98 and which may have arisen at any time during the term of the bond.
99 Unless the bond is replaced by that of another surety before the
100 expiration of the sixty (60) days' notice of cancellation, the
101 certificate of registration shall be suspended. Any person
102 required pursuant to this section to file a bond with an
103 application for a certificate of registration may file, in lieu
104 thereof, cash, a certificate of deposit, or government bonds in
105 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such
106 deposit is subject to the same terms and conditions as are
107 provided for in the surety bond required herein. Any interest or
108 earnings on such deposits are payable to the depositor.

109 **SECTION 4.** Section 77-3-607, Mississippi Code of 1972, is
110 brought forward as follows:

111 77-3-607. (1) A contract made pursuant to a telephonic
112 sales call is not valid and enforceable against a consumer unless
113 made in compliance with this section.

114 (2) A contract made pursuant to a telephonic sales call
115 shall:

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

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

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

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



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

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

127 (f) Include in its terms any oral or written
128 representations made by the telephone solicitor to the consumer in
129 connection with the transaction.

130 (3) The provisions of this section do not apply to
131 contractual sales regulated under other sections of the
132 Mississippi statutes and to contractual sales of companies which
133 provide telecommunication services and reach binding agreements by
134 telephone for these services.

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

140 (5) The provisions of this section do not apply to a
141 transaction:

142 (a) Made in accordance with prior negotiations in the
143 course of a visit by the consumer to a merchant operating a retail
144 business establishment which has a fixed permanent location and
145 where consumer goods are displayed or offered for sale on a
146 continuing basis;



147 (b) In which the consumer may obtain a full refund for
148 the return of undamaged and unused goods or a cancellation of
149 services notice to the seller within seven (7) days after receipt
150 by the consumer, and the seller will process the refund within
151 thirty (30) days after receipt of the returned merchandise by the
152 consumer;

153 (c) In which the consumer purchases goods or services
154 after an examination of a television, radio, or print
155 advertisement or a sample, brochure, or catalog of the merchant
156 that contains the name, address and telephone number of the
157 merchant; a description of the goods or services being sold; and
158 any limitations or restrictions that apply to the offer; or

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

161 **SECTION 5.** Section 77-3-609, Mississippi Code of 1972, is
162 brought forward as follows:

163 77-3-609. The provisions of Sections 77-3-601 through
164 77-3-619 shall not apply to:

165 (a) A person engaging in commercial telephone
166 solicitation where the solicitation is an isolated transaction and
167 not done in the course of a pattern of repeated transactions of
168 like nature.

169 (b) A person making calls for religious, charitable,
170 political, education or other noncommercial purposes, or a person
171 soliciting for a nonprofit corporation if that corporation is



172 properly registered as such with the Secretary of State and is
173 included within the exemption of Section 501(c)(3) or Section
174 501(c)(6) of the Internal Revenue Code.

175 (c) A person soliciting:

176 (i) Without the intent to complete or obtain
177 provisional acceptance of a sale during the telephone
178 solicitation;

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

181 (iii) Without the intent to complete, and who does
182 not complete, the sales presentation during the telephone
183 solicitation, but who completes the sales presentation at a later
184 face-to-face meeting between the seller and the prospective
185 purchaser. However, if a seller, directly following a telephone
186 solicitation, causes an individual whose primary purpose it is to
187 go to the prospective purchaser to collect the payment or deliver
188 any item purchased, this exemption does not apply.

189 (d) Any licensed securities, commodities, or
190 investments broker, dealer or investment advisor, when soliciting
191 within the scope of his license. As used in this section,
192 "licensed securities, commodities, or investments broker, dealer
193 or investment advisor" means a person subject to license or
194 registration as such by the Securities and Exchange Commission, by
195 the National Association of Securities Dealers or other
196 self-regulatory organization as defined by the Securities Exchange



197 Act of 1934 (15 USC Section 781), or by an official or agency of
198 this state or of any state of the United States.

199 (e) Any licensed associated person of a securities,
200 commodities, or investments broker, dealer or investment advisor,
201 when soliciting within the scope of his license. As used in this
202 section, "licensed associated person of a securities, commodities,
203 or investment broker, dealer or investment advisor" means any
204 associated person registered or licensed by the National
205 Association of Securities Dealers or other self-regulatory
206 organization as defined by the Securities Exchange Act of 1934 (15
207 USC Section 781) or by an official or agency of this state or of
208 any state of the United States.

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

212 (g) A book, video or record club or contractual plan or
213 arrangement:

214 (i) Under which the seller provides the consumer
215 with a form which the consumer may use to instruct the seller not
216 to ship the offered merchandise;

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

220 (iii) Which provides for the sale of books,
221 records or videos which are not covered under paragraphs (i) or



222 (ii), including continuity plans, subscription arrangements,
223 standing order arrangements, supplements and series arrangements
224 under which the seller periodically ships merchandise to a
225 consumer who has consented in advance to receive such merchandise
226 on a periodic basis.

227 (h) Any supervised financial institution or parent,
228 subsidiary or affiliate thereof. As used in this section,
229 "supervised financial institution" means any commercial bank,
230 trust company, savings and loan association, mutual savings bank,
231 credit union, industrial loan company, consumer finance lender,
232 commercial finance lender or insurer, provided that the
233 institution is subject to supervision by an official or agency of
234 this state, of any state or of the United States.

235 (i) Any licensed insurance or real estate broker,
236 agent, customer representative or solicitor when soliciting within
237 the scope of his license. As used in this section, "licensed
238 insurance or real estate broker, agent, customer representative or
239 solicitor" means any insurance or real estate broker, agent,
240 customer representative or solicitor licensed by an official or
241 agency of this state or of any state of the United States.

242 (j) A person soliciting the sale of services provided
243 by a cable television system operating under authority of a
244 franchise or permit.



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

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

250 (ii) Includes the business address or home office
251 address of the seller;

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

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

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

260 (m) A telephone company, or its subsidiary or agents,
261 or a business which is regulated by the Mississippi Public Service
262 Commission, or a Federal Communications Commission licensed
263 cellular telephone company or other bona fide radio
264 telecommunication services provider.

265 (n) Any publicly traded corporation which has
266 securities registered with the Securities and Exchange Commission
267 which are a reported security within the meaning of subparagraph
268 (4) of Regulation Section 240.11a3-1, (a), under the Securities
269 Exchange Act of 1934, or which is exempt from registration under



270 subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2)
271 of subsection (g) of Section 12 of the Securities Exchange Act of
272 1934 (15 USC Section 781), or any subsidiary of such a
273 corporation.

274 (o) A business soliciting exclusively the sale of
275 telephone answering services, provided that the telephone
276 answering services will be supplied by the solicitor.

277 (p) A person soliciting a transaction regulated by the
278 Commodity Futures Trading Commission if the person is registered
279 or temporarily licensed for this activity with the Commodity
280 Futures Trading Commission under the Commodity Exchange Act (7 USC
281 Section 1 et seq.) and the registration or license has not expired
282 or been suspended or revoked.

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

287 (r) A person soliciting business from prospective
288 consumers who have an established business relationship with, or
289 who have previously purchased from, the business enterprise for
290 which the solicitor is calling, if the solicitor is operating
291 under the same exact business name.

292 (s) A person who has been operating, for at least one
293 (1) year, a retail business establishment under the same name as



294 that used in connection with telemarketing, and both of the
295 following occur on a continuing basis:

296 (i) Either products are displayed and offered for
297 sale, or services are offered for sale and provided at the
298 business establishment; and

299 (ii) A majority of the seller's business involves
300 the buyer obtaining such products or services at the seller's
301 location.

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

308 **SECTION 6.** Section 77-3-611, Mississippi Code of 1972, is
309 brought forward as follows:

310 77-3-611. The Attorney General shall investigate any
311 complaints received concerning violations of Sections 77-3-601
312 through 77-3-619. If, after investigating any complaint, the
313 Attorney General finds that there has been a violation of Sections
314 77-3-601 through 77-3-619, the Attorney General may bring an
315 action to impose a civil penalty and to seek other relief,
316 including injunctive relief, as the court deems appropriate
317 against the telephone solicitor. The civil penalty shall not
318 exceed Ten Thousand Dollars (\$10,000.00) per violation and shall



319 be deposited in the State General Fund, unallocated. This civil
320 penalty may be recovered in any action brought under Sections
321 77-3-601 through 77-3-619 by the Attorney General. Alternatively,
322 the Attorney General may terminate any investigation or action
323 upon agreement by the person to pay a stipulated civil penalty.
324 The Attorney General or the court may waive any civil penalty if
325 the person has previously made full restitution or reimbursement
326 or has paid actual damages to the consumers who have been injured
327 by the violation.

328 **SECTION 7.** Section 77-3-613, Mississippi Code of 1972, is
329 brought forward as follows:

330 77-3-613. In any civil proceeding alleging a violation of
331 Sections 77-3-601 through 77-3-619, the burden of proving an
332 exemption or an exemption from a definition is upon the person
333 claiming it.

334 **SECTION 8.** Section 77-3-615, Mississippi Code of 1972, is
335 brought forward as follows:

336 77-3-615. (1) In any civil litigation resulting from a
337 transaction involving a violation of Sections 77-3-601 through
338 77-3-619, the prevailing party, after judgment in the trial court
339 and exhaustion of all appeals, if any, shall receive his
340 reasonable attorney's fees and costs from the nonprevailing party.

341 (2) The attorney for the prevailing party shall submit a
342 sworn affidavit of his time spent on the case and his costs



343 incurred for all the motions, hearings, and appeals to the trial
344 judge who presided over the civil case.

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

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

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

357 **SECTION 9.** Section 77-3-617, Mississippi Code of 1972, is
358 brought forward as follows:

359 77-3-617. The Attorney General shall by rule ensure that
360 telecommunications companies inform their customers of the
361 provisions of Sections 77-3-601 through 77-3-619. The
362 notification may be made by:

363 (a) Annual inserts in the billing statements mailed to
364 customers; and

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



367 **SECTION 10.** Section 77-3-619, Mississippi Code of 1972, is
368 brought forward as follows:

369 77-3-619. The Attorney General is authorized to issue any
370 necessary rules and regulations in order to carry out the
371 provisions of Sections 77-3-601 through 77-3-619.

372 **SECTION 11.** Section 77-3-701, Mississippi Code of 1972, is
373 brought forward as follows:

374 77-3-701. This article shall be known and may be cited as
375 the "Mississippi Telephone Solicitation Act."

376 **SECTION 12.** Section 77-3-703, Mississippi Code of 1972, is
377 brought forward as follows:

378 77-3-703. (1) The use of the telephone to make all types of
379 solicitations to consumers is pervasive. This article gives
380 consumers a tool by which to object to telemarketing calls and
381 text messages, as these communications can amount to a nuisance,
382 an invasion of privacy, and can create a health and safety risk
383 for certain consumers who maintain their phone service primarily
384 for emergency medical situations.

385 (2) Any calls made for political purposes shall be governed
386 by Section 23-15-875.

387 **SECTION 13.** Section 77-3-705, Mississippi Code of 1972, is
388 brought forward as follows:

389 77-3-705. For the purposes of this article, the following
390 words and terms shall have the meanings ascribed in this section
391 unless the context clearly indicates otherwise:



392 (a) "Consumer" means a person or business that receives
393 a telephone call or text message from a telephone solicitor.

394 (b) "Caller identification service" means a type of
395 telephone service which permits a telephone subscriber to view the
396 telephone number and name of the person or entity making an
397 incoming telephone call or text message.

398 (c) "Telephone solicitor" means any person, firm,
399 entity, organization, partnership, association, corporation,
400 charitable entity, or a subsidiary or affiliate thereof, who
401 engages in any type of telephone solicitation on his or her own
402 behalf or through representatives, independent contractors,
403 salespersons, agents, automated dialing systems, text messaging
404 systems, or any other machines or other individuals or systems.

405 (d) "Telephone solicitation" means any voice or text
406 message communication over the telephone line or cellular network
407 of a consumer for the purpose of:

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

410 (ii) Soliciting a sale of any consumer goods or
411 services, or an extension of credit for consumer goods or
412 services;

413 (iii) Soliciting any other item of value,
414 pecuniary or otherwise, regardless of whether a sales presentation
415 is made; or



416 (iv) Soliciting a charitable contribution of money
417 or property.

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

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

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

429 (h) "Established business relationship" means a prior
430 or existing relationship formed by a voluntary two-way
431 communication between a person or entity and a consumer, with or
432 without an exchange of consideration, on the basis of an inquiry,
433 application, purchase or transaction by the consumer, which
434 relationship is currently existing or was terminated within six
435 (6) months of the telephone solicitation; however, the act of
436 purchasing consumer goods or services under an extension of credit
437 does not create an existing business relationship between the
438 consumer and the entity extending credit to the consumer for such
439 purchase. The term does not include the situation wherein the
440 consumer has merely been subject to a telephone solicitation by or



441 at the behest of the telephone solicitor within the six (6) months
442 immediately preceding the contemplated telephone solicitation.

443 (i) "Charitable organization" means any person or
444 entity holding itself out to be established for any benevolent,
445 educational, philanthropic, humane, scientific, patriotic, social
446 welfare or advocacy, public health, environmental or conservation,
447 civic or other eleemosynary purpose or for the benefit of law
448 enforcement personnel, firefighters, or any other persons who
449 protect the public safety, or for any other purpose where a
450 charitable appeal is the basis of the solicitation.

451 (j) "Sales presentation" means attempting to obtain
452 something of value, pecuniary or otherwise, regardless of whether
453 consideration is or is expected to be exchanged.

454 **SECTION 14.** Section 77-3-707, Mississippi Code of 1972, is
455 brought forward as follows:

456 77-3-707. (1) Except as otherwise provided pursuant to
457 Section 77-3-709 or 77-3-711, a telephone solicitor may not make
458 or cause to be made any telephone solicitation to any consumer in
459 this state unless the telephone solicitor has purchased the
460 "no-calls" database from the commission or the entity under
461 contract with the commission.

462 (2) Except as otherwise provided pursuant to Section
463 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
464 to be made any telephone solicitation to any consumer in this
465 state who has given notice to the commission, or the entity under



466 contract with the commission, of his or her objection to receiving
467 telephone solicitations.

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

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

486 (5) A telephone solicitor may not violate the Caller ID
487 Anti-Spoofing Act in Section 77-3-801 et seq., and if in violation
488 of such act, he shall also be in violation of this article. In
489 addition to any remedies or penalties otherwise provided by law,



490 such telephone solicitor shall be subject to any remedies or
491 penalties available for a violation of this article.

492 **SECTION 15.** Section 77-3-709, Mississippi Code of 1972, is
493 brought forward as follows:

494 77-3-709. The commission, in its discretion, may allow
495 telephone solicitors to make telephone solicitations without
496 requiring them to purchase the "no-calls" database, and regardless
497 of whether a telephone solicitation may be made to a consumer who
498 has given notice of his objection to receiving such solicitations,
499 provided that it adopts a written policy incorporating the
500 following criteria:

501 (a) The telephone solicitor must demonstrate to the
502 commission that its proposed telephone solicitation is reasonably
503 related to an established business relationship as defined in
504 Section 77-3-705(h), or is being made in response to an invitation
505 or notice from a consumer which clearly signifies that he is open
506 to a contact being initiated;

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

512 (c) The consumer will not be telephoned for a telephone
513 solicitation as defined in Section 77-3-705(d), but he will be
514 telephoned for a bona fide religious or charitable purpose,



515 including an invitation to attend an event or a request for a
516 contribution or donation.

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

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

529 **SECTION 16.** Section 77-3-711, Mississippi Code of 1972, is
530 brought forward as follows:

531 77-3-711. The provisions of this article shall not apply to:

532 (a) A person soliciting:

533 (i) Who does not make the major sales presentation
534 during the telephone solicitation;

535 (ii) Without the intent to complete or obtain
536 provisional acceptance of a sale, a charitable contribution, or
537 the payment of some other item of value, pecuniary or otherwise,
538 during the telephone solicitation; or



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

544 (b) A person who is a licensee under Chapter 35, Title
545 73, Mississippi Code of 1972, who is a resident of the State of
546 Mississippi, and whose telephone solicitation is for the sole
547 purpose of selling, exchanging, purchasing, renting, listing for
548 sale or rent or leasing real estate in connection with his real
549 estate license and not in conjunction with any other offer.

550 (c) A motor vehicle dealer as that term is defined in
551 Section 63-17-55, who is a resident of the State of Mississippi
552 and who maintains a current motor vehicle dealer's license issued
553 by the Mississippi Motor Vehicle Commission, whose telephone
554 solicitation is for the sole purpose of selling, offering to sell,
555 soliciting or advertising the sale of motor vehicles in connection
556 with his motor vehicle dealer's license and not in conjunction
557 with any other offer.

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

562 (e) A broker-dealer, agent, or investment advisor
563 registered under Chapter 71, Title 75, Mississippi Code of 1972,



564 whose telephone solicitation is for the sole purpose of effecting
565 or attempting to effect the purchase or sale of securities or has
566 the purpose of providing or seeking to provide investment or
567 financial advice.

568 (f) A person calling on behalf of a charitable
569 organization which is registered under Chapter 11, Title 79,
570 Mississippi Code of 1972, whose telephone solicitation is for the
571 sole purpose of soliciting for the charitable organization and who
572 receives no compensation for his activities on behalf of the
573 organization.

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

578 (h) A person calling on behalf of any supervised
579 financial institution or parent, subsidiary or affiliate thereof.
580 As used in this section, "supervised financial institution" means
581 any commercial bank, trust company, savings and loan association,
582 mutual savings bank, credit union, industrial loan company, small
583 loan company, consumer finance lender, commercial finance lender
584 or insurer, provided that the institution has a physical office
585 located in the State of Mississippi and is subject to supervision
586 by an official or agency of the State of Mississippi or of the
587 United States.



588 (i) A person calling on behalf of a funeral
589 establishment licensed under Section 73-11-41, cemetery or
590 monument dealer, if the sole purpose of the telephone solicitation
591 relates to services provided by the funeral or death related
592 establishments in the course of its ordinary business.

593 (j) Any telephone solicitor who solicits a consumer
594 with whom he has an established business relationship.

595 **SECTION 17.** Section 77-3-713, Mississippi Code of 1972, is
596 brought forward as follows:

597 77-3-713. All telephone solicitors must register with the
598 commission before conducting any telephone solicitations in the
599 State of Mississippi.

600 **SECTION 18.** Section 77-3-715, Mississippi Code of 1972, is
601 brought forward as follows:

602 77-3-715. The commission may promulgate rules and
603 regulations necessary to effectuate this article, including, but
604 not limited to, the following:

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

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

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



613 (d) The methods by which a person or entity desiring to
614 make telephone solicitations may obtain access to the database as
615 required to avoid calling the telephone number of consumers
616 included in the database;

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

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

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

626 (h) The establishment of a written policy which clearly
627 articulates the circumstances under which the commission, in its
628 discretion, may allow exceptions to the provisions of this article
629 pursuant to Section 77-3-703; and

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

632 **SECTION 19.** Section 77-3-717, Mississippi Code of 1972, is
633 brought forward as follows:

634 77-3-717. If the Federal Trade Commission establishes a
635 single national database of telephone numbers of consumers who
636 object to receiving telephone solicitations, the commission must
637 include the portion of the single national database that relates



638 to the State of Mississippi in the database established under this
639 article. Likewise, the commission shall make available the
640 state's database to the Federal Trade Commission for inclusion in
641 the national database.

642 **SECTION 20.** Section 77-3-719, Mississippi Code of 1972, is
643 brought forward as follows:

644 77-3-719. Information contained in the database established
645 under this article may be used and accessed only for the purpose
646 of compliance with this article and shall not be otherwise subject
647 to public inspection or disclosure.

648 **SECTION 21.** Section 77-3-721, Mississippi Code of 1972, is
649 brought forward as follows:

650 77-3-721. All fees collected under the provisions of this
651 article shall be deposited into a special fund which is created in
652 the State Treasury to be expended by the commission for the
653 implementation and administration of this article. From and after
654 July 1, 2016, the expenses of this agency shall be defrayed by
655 appropriation from the State General Fund, and all user charges
656 and fees authorized under this article shall be deposited into the
657 State General Fund as authorized by law and as determined by the
658 State Fiscal Officer.

659 This section shall stand repealed on July 1, 2024.

660 **SECTION 22.** Section 77-3-723, Mississippi Code of 1972, is
661 brought forward as follows:



662 77-3-723. (1) Any person or entity who makes an authorized
663 telephone solicitation to a consumer in this state shall announce
664 clearly, at the beginning of each call, his or her name, the
665 company he or she represents and the purpose of the call. Such
666 calls may only be made between the hours of 8:00 a.m. and 8:00
667 p.m. Central Standard Time. No telephone solicitations may be
668 made on a Sunday. For purposes of this provision, an "authorized
669 telephone solicitation" means a solicitation that is made: (a) to
670 a consumer who is not listed on the most current "no-calls"
671 database; (b) by a telephone solicitor who has been authorized to
672 make such solicitations under the provisions of Section 77-3-709;
673 or (c) by a telephone solicitor who is exempt from this article
674 under the provisions of Section 77-3-711.

675 (2) A person or entity who makes a telephone solicitation to
676 a consumer in this state may not utilize knowingly any method that
677 blocks or otherwise circumvents the consumer's use of a caller
678 identification service, nor may the person or entity use an
679 automated dialing system or any like system that uses a recorded
680 voice message to communicate with the consumer unless the person
681 or entity has an established business relationship with the
682 consumer and uses the recorded voice message to inform the
683 consumer about a new product or service.

684 **SECTION 23.** Section 77-3-725, Mississippi Code of 1972, is
685 brought forward as follows:



686 77-3-725. The commission may investigate alleged violations
687 and initiate proceedings relative to a violation of this article
688 or any rules and regulations promulgated pursuant to this article.
689 Such proceedings include, without limitation, proceedings to issue
690 a cease and desist order, and to issue an order imposing a civil
691 penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each
692 violation. The commission shall afford an opportunity for a fair
693 hearing to the alleged violator(s) after giving written notice of
694 the time and place for said hearing. Failure to appear at any
695 such hearing may result in the commission finding the alleged
696 violator(s) liable by default. Any telephone solicitor found to
697 have violated this article, pursuant to a hearing or by default,
698 may be subject to a civil penalty not to exceed Ten Thousand
699 Dollars (\$10,000.00) for each violation to be assessed and
700 collected by the commission. Each telephonic communication shall
701 constitute a separate violation.

702 All penalties collected by the commission shall be deposited
703 in the special fund created under Section 77-3-721 for the
704 administration of this article.

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

709 The remedies, duties, prohibitions and penalties set forth
710 under this article shall not be exclusive and shall be in addition



711 to all other causes of action, remedies and penalties provided by
712 law, including, but not limited to, the penalties provided by
713 Section 77-1-53.

714 **SECTION 24.** Section 77-3-727, Mississippi Code of 1972, is
715 brought forward as follows:

716 77-3-727. Any person who has received a telephone
717 solicitation in violation of this article, or any rules and
718 regulations promulgated pursuant to this article, may file a
719 complaint with the commission. The complaint will be processed
720 pursuant to complaint procedures established by the commission.

721 **SECTION 25.** Section 77-3-729, Mississippi Code of 1972, is
722 brought forward as follows:

723 77-3-729. It shall be a defense in any action or proceeding
724 brought under Section 77-3-725 or 77-3-727 that the defendant has
725 established and implemented, with due care, reasonable practices
726 and procedures to effectively prevent telephone solicitations in
727 violation of this article.

728 **SECTION 26.** Section 77-3-731, Mississippi Code of 1972, is
729 brought forward as follows:

730 77-3-731. The commission is granted personal jurisdiction
731 over any telephone solicitor, whether a resident or a nonresident,
732 notwithstanding that telephone solicitors are not deemed to be a
733 public utility, for the purpose of administering this article.
734 The commission is granted personal jurisdiction over any
735 nonresident telephone solicitor, its executor, administrator,



736 receiver, trustee or any other appointed representative of such
737 nonresident as to an action or proceeding authorized by this
738 article or any rules and regulations promulgated pursuant to this
739 article as authorized by Section 13-3-57, and also upon any
740 nonresident, his or her executor, administrator, receiver, trustee
741 or any other appointed representative of such nonresident who has
742 qualified under the laws of this state to do business herein.
743 Service of summons and process upon the alleged violator of this
744 article shall be had or made as is provided by the Mississippi
745 Rules of Civil Procedure.

746 **SECTION 27.** Section 77-3-733, Mississippi Code of 1972, is
747 brought forward as follows:

748 77-3-733. Any party aggrieved by any final order of the
749 commission pursuant to this article, or any rules and regulations
750 promulgated pursuant to this article, shall have the right of
751 appeal to the Chancery Court of Hinds County, Mississippi, First
752 Judicial District.

753 **SECTION 28.** Section 77-3-735, Mississippi Code of 1972, is
754 brought forward as follows:

755 77-3-735. No provider of telephonic caller identification
756 service, local exchange telephone company or long distance company
757 certificated by the commission may be held liable for violations
758 of this article committed by other persons or entities.

759 **SECTION 29.** Section 77-3-801, Mississippi Code of 1972, is
760 brought forward as follows:



761 77-3-801. This article may be cited as the "Caller ID
762 Anti-Spoofing Act."

763 **SECTION 30.** Section 77-3-803, Mississippi Code of 1972, is
764 brought forward as follows:

765 77-3-803. As used in this article:

766 (a) "Automatic number identification" means a system
767 that identifies the billing account for a call and includes an
768 enhanced 911 service capability that enables the automatic display
769 of the ten-digit number used to place a 911 call from a wire line,
770 wireless, interconnected VoIP or nontraditional telephone service.

771 (b) "Caller identification information" means
772 information provided by a caller identification service regarding
773 the telephone number, or other origination information, of a call
774 or facsimile transmission made using a telecommunications service
775 or an interconnected VoIP service, or of a text message sent using
776 a text-messaging service.

777 (c) "Caller identification service" means any service
778 or device designed to provide the user of the service or device
779 with the telephone number of, or other information regarding the
780 origination of, a call made using a telecommunications service or
781 interconnected VoIP service. The term includes automatic number
782 identification services.

783 (d) "Interconnected VoIP service" means an
784 interconnected Voice over Internet Protocol service that:



785 (i) Enables real-time, two-way voice
786 communications;

787 (ii) Requires a broadband internet connection from
788 the user's location;

789 (iii) Requires internet protocol-compatible
790 customer premises equipment; and

791 (iv) Permits users generally to receive calls that
792 originate on the public switched telephone network and to
793 terminate calls to the public switched telephone network.

794 (e) "Place of primary use" means the street address
795 where a subscriber's use of a telecommunications service or
796 interconnected VoIP service primarily occurs, which shall be:

797 (i) The residential street address or the primary
798 business street address of the subscriber or, in the case of a
799 subscriber of interconnected VoIP service, the subscriber's
800 registered location; and

801 (ii) Within the licensed service area of the
802 provider.

803 (f) "Provider" means a person or entity that offers
804 telecommunications service or interconnected VoIP service.

805 (g) "Registered location" means the most recent
806 information obtained by an interconnected VoIP service provider
807 that identifies the physical location of an end user.

808 (h) "Subscriber" means a person:



809 (i) Who subscribes to a caller identification
810 service in connection with a telecommunications service or an
811 interconnected VoIP service; and

812 (ii) Whose place of primary use for the service
813 described in paragraph (h)(i) is located in Mississippi.

814 (i) "Telecommunications service" means the offering of
815 telecommunications for a fee directly to the public, or to classes
816 of users so as to be effectively available directly to the public,
817 regardless of the facilities used.

818 **SECTION 31.** Section 77-3-805, Mississippi Code of 1972, is
819 brought forward as follows:

820 77-3-805. Except as provided in Section 77-3-807, a person
821 shall not, in connection with any telecommunications service or
822 interconnected VOIP service, knowingly and with the intent to
823 defraud or cause harm to another person or to wrongfully obtain
824 anything of value, cause any caller identification service to
825 transmit misleading or inaccurate caller identification
826 information to a subscriber.

827 **SECTION 32.** Section 77-3-807, Mississippi Code of 1972, is
828 brought forward as follows:

829 77-3-807. This article does not apply to:

830 (a) The blocking of caller identification information.

831 (b) Any law enforcement agency of the federal, state,
832 county or municipal government.



833 (c) Any intelligence or security agency of the federal
834 government.

835 (d) A telecommunications, broadband or
836 voice-over-Internet service provider that is acting solely as an
837 intermediary for the transmission of telephone service between the
838 caller and the recipient.

839 **SECTION 33.** Section 77-3-809, Mississippi Code of 1972, is
840 brought forward as follows:

841 77-3-809. (1) Any person who violates this article shall be
842 guilty of a misdemeanor and, upon conviction thereof, shall be
843 subject to a fine of not more than One Thousand Dollars
844 (\$1,000.00) or shall be imprisoned in the county jail not
845 exceeding one (1) year, or both.

846 (2) Any violation of this article constitutes an unlawful
847 trade practice under Section 75-24-5 and, in addition to any
848 remedies or penalties set forth in this article, shall be subject
849 to any remedies or penalties available for a violation of that
850 statute.

851 (3) Any violation of this article constitutes a violation of
852 the Mississippi Telephone Solicitation Act, Section 77-3-701 et
853 seq., and in addition to any remedies or penalties provided in
854 this article, shall be subject to any remedies or penalties
855 available for a violation of that act.

856 **SECTION 34.** This act shall take effect and be in force from
857 and after July 1, 2023.

