

Senate Amendments to House Bill No. 1225

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

33 SECTION 1. (1) All positions, duties and functions of the
34 Mississippi Public Service Commission that are substantially
35 involved with the Mississippi No Call Program, and/or the
36 No-Call list, database or registry, shall be transferred to the
37 Mississippi Attorney General.

38 Any person whose position was transferred to the Attorney
39 General in this section shall be given first priority to be
40 employed in that position by the Attorney General.

41 (2) All records, property, and contractual rights and
42 obligations of, and unexpended balances of appropriations and any
43 other allocations to, the Public Service Commission that relate to
44 positions, duties and functions that are substantially involved
45 with the Mississippi No Call Program, and/or the No-Call list,
46 database or registry, shall be transferred to the Attorney
47 General.

48 The State Fiscal Officer shall transfer to the Attorney
49 General all funds that are allocated to the Public Service

50 Commission for the purpose of implementing or administering the
51 Mississippi No Call Program, and/or the No-Call list, database or
52 registry, in House Bill _____, 2023 Regular Session, and such funds
53 shall be used by the Attorney General during fiscal year 2024,
54 under the same terms and conditions as specified for those funds
55 in House Bill _____, 2023 Regular Session.

56 The Public Service Commission shall assist the Attorney
57 General with the greatest degree of cooperation to carry out the
58 intent and purpose of this act and to accomplish an orderly
59 transition.

60 **SECTION 2.** Section 77-3-705, Mississippi Code of 1972, is
61 amended as follows:

62 77-3-705. For the purposes of this article, the following
63 words and terms shall have the meanings ascribed in this section
64 unless the context clearly indicates otherwise:

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

67 (b) "Caller identification service" means a type of
68 telephone service which permits a telephone subscriber to view the
69 telephone number and name of the person or entity making an
70 incoming telephone call or text message.

71 (c) "Telephone solicitor" means any person, firm,
72 entity, organization, partnership, association, corporation,
73 charitable entity, or a subsidiary or affiliate thereof, who
74 engages in any type of telephone solicitation on his or her own
75 behalf or through representatives, independent contractors,

76 salespersons, agents, automated dialing systems, text messaging
77 systems, or any other machines or other individuals or systems.

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

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

83 (ii) Soliciting a sale of any consumer goods or
84 services, or an extension of credit for consumer goods or
85 services;

86 (iii) Soliciting any other item of value,
87 pecuniary or otherwise, regardless of whether a sales presentation
88 is made; or

89 (iv) Soliciting a charitable contribution of money
90 or property.

91 * * *

92 (* * *e) "Doing business in this state" refers to
93 businesses which conduct telephone solicitations from any location
94 to consumers located in this state.

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

101 (* * *g) "Established business relationship" means a
102 prior or existing relationship formed by a voluntary two-way
103 communication between a person or entity and a consumer, with or
104 without an exchange of consideration, on the basis of an inquiry,
105 application, purchase or transaction by the consumer, which
106 relationship is currently existing or was terminated within six
107 (6) months of the telephone solicitation; however, the act of
108 purchasing consumer goods or services under an extension of credit
109 does not create an existing business relationship between the
110 consumer and the entity extending credit to the consumer for such
111 purchase. The term does not include the situation wherein the
112 consumer has merely been subject to a telephone solicitation by or
113 at the behest of the telephone solicitor within the six (6) months
114 immediately preceding the contemplated telephone solicitation.

115 (* * *h) "Charitable organization" means any person or
116 entity holding itself out to be established for any benevolent,
117 educational, philanthropic, humane, scientific, patriotic, social
118 welfare or advocacy, public health, environmental or conservation,
119 civic or other eleemosynary purpose or for the benefit of law
120 enforcement personnel, firefighters, or any other persons who
121 protect the public safety, or for any other purpose where a
122 charitable appeal is the basis of the solicitation.

123 (* * *i) "Sales presentation" means attempting to
124 obtain something of value, pecuniary or otherwise, regardless of
125 whether consideration is or is expected to be exchanged.

126 (j) "Do Not Call Registry" means the registry created and
127 maintained by the Federal Trade Commission pursuant to the
128 Telemarketing Sales Rule or any other telemarketing registry
129 created by the federal government, or the prior registry created
130 by the Mississippi Public Service Commission.

131 (k) "Attorney General" means the Attorney General of the
132 State of Mississippi.

133 **SECTION 3.** Section 77-3-707, Mississippi Code of 1972, is
134 amended as follows:

135 77-3-707. (1) Except as otherwise provided pursuant to
136 Section 77-3-709 or 77-3-711, a telephone solicitor may not make
137 or cause to be made any telephone solicitation to any consumer in
138 this state unless the telephone solicitor has * * * obtained the
139 "no-calls" database directly from * * * the Federal Trade
140 Commission or other federal agency.

141 (2) Except as otherwise provided pursuant to Section
142 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
143 to be made any telephone solicitation to any consumer in this
144 state who has given notice to the * * * federal government, or
145 given notice to the Public Service Commission prior to July 1,
146 2023, of his or her objection to receiving telephone
147 solicitations.

148 * * *

149 (* * *3) Each local exchange company and each competing
150 local exchange carrier shall provide written notification on a
151 semiannual basis to each of its consumers of the opportunity to

152 provide notification to the * * * Federal Trade Commission, or
153 other entity as designed by federal law, that the consumer objects
154 to receiving telephone solicitations. The notification must be
155 disseminated at the option of the carrier, by television, radio or
156 newspaper advertisements, written correspondence, bill inserts or
157 messages, a publication in the consumer information pages of the
158 local telephone directory, or any other method not expressly
159 prohibited by the * * * Attorney General.

160 * * *

161 **SECTION 4.** Section 77-3-709, Mississippi Code of 1972, is
162 amended as follows:

163 77-3-709. The * * * Attorney General, in * * * his or her
164 discretion, may allow telephone solicitors to make telephone
165 solicitations without requiring them to purchase the "no-calls"
166 database, and regardless of whether a telephone solicitation may
167 be made to a consumer who has given notice of his objection to
168 receiving such solicitations, provided that it adopts a written
169 policy incorporating the following criteria:

170 (a) The telephone solicitor must demonstrate to
171 the * * * Attorney General that its proposed telephone
172 solicitation is reasonably related to an established business
173 relationship as defined in Section 77-3-705(h), or is being made
174 in response to an invitation or notice from a consumer which
175 clearly signifies that he is open to a contact being initiated;

176 (b) The telephone solicitation is to be made by a
177 person or entity for the purpose of soliciting a contribution or

178 donation to a bona fide nonprofit corporation, regardless of
179 whether consumer goods or services will be provided to the
180 consumer in return for the contribution or donation; or

181 (c) The consumer will not be telephoned for a telephone
182 solicitation as defined in Section 77-3-705(d), but he will be
183 telephoned for a bona fide religious or charitable purpose,
184 including an invitation to attend an event or a request for a
185 contribution or donation.

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

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

198 **SECTION 5.** Section 77-3-713, Mississippi Code of 1972, is
199 amended as follows:

200 77-3-713. All telephone solicitors must register with
201 the * * * Attorney General before conducting any telephone
202 solicitations in the State of Mississippi.

203 **SECTION 6.** Section 77-3-715, Mississippi Code of 1972, is
204 amended as follows:

205 77-3-715. The * * * Attorney General may promulgate rules
206 and regulations necessary to effectuate this article, including,
207 but not limited to, the following:

208 * * *

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

212 * * *

213 (* * * b) The process by which telephone solicitors
214 must register with the * * * Attorney General for the purpose of
215 conducting telephonic solicitations in the state;

216 * * *

217 (* * * c) The establishment of a written policy which
218 clearly articulates the circumstances under which the * * *
219 Attorney General, in * * * his or her discretion, may allow
220 exceptions to the provisions of this article pursuant to Section
221 77-3-703; and

222 (* * * d) All other matters relating to the database
223 that the * * * Attorney General deems necessary.

224 **SECTION 7.** Section 77-3-717, Mississippi Code of 1972, is
225 amended as follows:

226 77-3-717. If the Federal Trade Commission establishes a
227 single national database of telephone numbers of consumers who
228 object to receiving telephone solicitations, the * * * Attorney

229 General may utilize the single national database * * * for
230 enforcement in the State of Mississippi * * *. * * * The * * *
231 Attorney General shall make available the state's database of
232 telephone numbers of consumers who object to receiving telephone
233 solicitations to the Federal Trade Commission for inclusion in the
234 national database.

235 **SECTION 8.** Section 77-3-721, Mississippi Code of 1972, is
236 amended as follows:

237 77-3-721. All fees collected under the provisions of this
238 article shall be deposited into a special fund which is created in
239 the State Treasury to be expended by the * * * Attorney General
240 for the implementation and administration of this article. From
241 and after July 1, 2016, the expenses of * * * the Attorney General
242 to implement the Mississippi Telephone Solicitation Act shall be
243 defrayed by appropriation from the State General Fund, and all
244 user charges and fees authorized under this article shall be
245 deposited into the State General Fund as authorized by law and as
246 determined by the State Fiscal Officer.

247 * * *

248 **SECTION 9.** Section 77-3-725, Mississippi Code of 1972, is
249 amended as follows:

250 77-3-725. The * * * Attorney General may investigate alleged
251 violations and initiate proceedings relative to a violation of
252 this article or any rules and regulations promulgated pursuant to
253 this article. Such proceedings include, without limitation,
254 proceedings to issue a cease and desist order * * *. Any

255 telephone solicitor found to have violated this article, pursuant
256 to * * * an investigation or by default, may be subject to a civil
257 penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each
258 violation to be assessed and collected by the * * * Attorney
259 General. Each telephonic communication shall constitute a
260 separate violation.

261 All penalties collected by the * * * Attorney General shall
262 be deposited in the special fund created under Section 77-3-721,
263 or as otherwise authorized by law for the administration of this
264 article.

265 The * * * Attorney General may issue subpoenas, require the
266 production of relevant documents, administer oaths, conduct
267 hearings, and do all things necessary in the course of
268 investigating, determining and adjudicating an alleged violation.

269 The remedies, duties, prohibitions and penalties set forth
270 under this article shall not be exclusive and shall be in addition
271 to all other causes of action, remedies and penalties provided by
272 law * * *.

273 **SECTION 10.** Section 77-3-727, Mississippi Code of 1972, is
274 amended as follows:

275 77-3-727. Any person who has received a telephone
276 solicitation in violation of this article, or any rules and
277 regulations promulgated pursuant to this article, may file a
278 complaint with the * * * Attorney General. The complaint will be
279 processed pursuant to complaint procedures established by
280 the * * * Attorney General.

281 **SECTION 11.** Section 77-3-731, Mississippi Code of 1972, is
282 amended as follows:

283 77-3-731. The * * * Attorney General is granted personal
284 jurisdiction over any telephone solicitor, whether a resident or a
285 nonresident, * * * for the purpose of administering this article.
286 The * * * Attorney General is granted personal jurisdiction over
287 any nonresident telephone solicitor, its executor, administrator,
288 receiver, trustee or any other appointed representative of such
289 nonresident as to an action or proceeding authorized by this
290 article or any rules and regulations promulgated pursuant to this
291 article as authorized by Section 13-3-57, and also upon any
292 nonresident, his or her executor, administrator, receiver, trustee
293 or any other appointed representative of such nonresident who has
294 qualified under the laws of this state to do business herein. The
295 Attorney General may bring an action to enforce this act in the
296 Chancery Court of Hinds County, Mississippi, First Judicial
297 District, or in the Chancery Court of the county where a defendant
298 resides or has their principal place of business. Service of
299 summons and process upon the alleged violator of this article
300 shall be had or made as is provided by the Mississippi Rules of
301 Civil Procedure.

302 **SECTION 12.** Section 77-3-733, Mississippi Code of 1972, is
303 amended as follows:

304 77-3-733. Any party aggrieved by any final order of
305 the * * * Chancery Court pursuant to this article, or any rules

306 and regulations promulgated pursuant to this article, shall have
307 the right of appeal to the * * * Supreme Court of Mississippi.

308 **SECTION 13.** Section 77-3-735, Mississippi Code of 1972, is
309 amended as follows:

310 77-3-735. No provider of telephonic caller identification
311 service, local exchange telephone company or long distance company
312 certificated by the * * * Mississippi Public Service Commission
313 may be held liable for violations of this article committed by
314 other persons or entities.

315 **SECTION 14.** Section 77-3-701, Mississippi Code of 1972, is
316 brought forward as follows:

317 77-3-701. This article shall be known and may be cited as
318 the "Mississippi Telephone Solicitation Act."

319 **SECTION 15.** Section 77-3-703, Mississippi Code of 1972, is
320 brought forward as follows:

321 77-3-703. (1) The use of the telephone to make all types of
322 solicitations to consumers is pervasive. This article gives
323 consumers a tool by which to object to telemarketing calls and
324 text messages, as these communications can amount to a nuisance,
325 an invasion of privacy, and can create a health and safety risk
326 for certain consumers who maintain their phone service primarily
327 for emergency medical situations.

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

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

332 77-3-711. The provisions of this article shall not apply to:

333 (a) A person soliciting:

334 (i) Who does not make the major sales presentation
335 during the telephone solicitation;

336 (ii) Without the intent to complete or obtain
337 provisional acceptance of a sale, a charitable contribution, or
338 the payment of some other item of value, pecuniary or otherwise,
339 during the telephone solicitation; or

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

345 (b) A person who is a licensee under Chapter 35, Title
346 73, Mississippi Code of 1972, who is a resident of the State of
347 Mississippi, and whose telephone solicitation is for the sole
348 purpose of selling, exchanging, purchasing, renting, listing for
349 sale or rent or leasing real estate in connection with his real
350 estate license and not in conjunction with any other offer.

351 (c) A motor vehicle dealer as that term is defined in
352 Section 63-17-55, who is a resident of the State of Mississippi
353 and who maintains a current motor vehicle dealer's license issued
354 by the Mississippi Motor Vehicle Commission, whose telephone
355 solicitation is for the sole purpose of selling, offering to sell,
356 soliciting or advertising the sale of motor vehicles in connection

357 with his motor vehicle dealer's license and not in conjunction
358 with any other offer.

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

363 (e) A broker-dealer, agent, or investment advisor
364 registered under Chapter 71, Title 75, Mississippi Code of 1972,
365 whose telephone solicitation is for the sole purpose of effecting
366 or attempting to effect the purchase or sale of securities or has
367 the purpose of providing or seeking to provide investment or
368 financial advice.

369 (f) A person calling on behalf of a charitable
370 organization which is registered under Chapter 11, Title 79,
371 Mississippi Code of 1972, whose telephone solicitation is for the
372 sole purpose of soliciting for the charitable organization and who
373 receives no compensation for his activities on behalf of the
374 organization.

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

379 (h) A person calling on behalf of any supervised
380 financial institution or parent, subsidiary or affiliate thereof.
381 As used in this section, "supervised financial institution" means
382 any commercial bank, trust company, savings and loan association,

383 mutual savings bank, credit union, industrial loan company, small
384 loan company, consumer finance lender, commercial finance lender
385 or insurer, provided that the institution has a physical office
386 located in the State of Mississippi and is subject to supervision
387 by an official or agency of the State of Mississippi or of the
388 United States.

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

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

396 **SECTION 17.** Section 77-3-719, Mississippi Code of 1972, is
397 brought forward as follows:

398 77-3-719. Information contained in the database established
399 under this article may be used and accessed only for the purpose
400 of compliance with this article and shall not be otherwise subject
401 to public inspection or disclosure.

402 **SECTION 18.** Section 77-3-723, Mississippi Code of 1972, is
403 brought forward as follows:

404 77-3-723. (1) Any person or entity who makes an authorized
405 telephone solicitation to a consumer in this state shall announce
406 clearly, at the beginning of each call, his or her name, the
407 company he or she represents and the purpose of the call. Such
408 calls may only be made between the hours of 8:00 a.m. and 8:00

409 p.m. Central Standard Time. No telephone solicitations may be
410 made on a Sunday. For purposes of this provision, an "authorized
411 telephone solicitation" means a solicitation that is made: (a) to
412 a consumer who is not listed on the most current "no-calls"
413 database; (b) by a telephone solicitor who has been authorized to
414 make such solicitations under the provisions of Section 77-3-709;
415 or (c) by a telephone solicitor who is exempt from this article
416 under the provisions of Section 77-3-711.

417 (2) A person or entity who makes a telephone solicitation to
418 a consumer in this state may not utilize knowingly any method that
419 blocks or otherwise circumvents the consumer's use of a caller
420 identification service, nor may the person or entity use an
421 automated dialing system or any like system that uses a recorded
422 voice message to communicate with the consumer unless the person
423 or entity has an established business relationship with the
424 consumer and uses the recorded voice message to inform the
425 consumer about a new product or service.

426 **SECTION 19.** Section 77-3-729, Mississippi Code of 1972, is
427 brought forward as follows:

428 77-3-729. It shall be a defense in any action or proceeding
429 brought under Section 77-3-725 or 77-3-727 that the defendant has
430 established and implemented, with due care, reasonable practices
431 and procedures to effectively prevent telephone solicitations in
432 violation of this article.

433 **SECTION 20.** Section 77-3-601, Mississippi Code of 1972, is
434 brought forward as follows:

435 77-3-601. As used in this article:

436 (a) "Telephonic sales call" means a call made by a
437 telephone solicitor to a consumer for the purpose of soliciting a
438 sale of any consumer goods or services, or for the purpose of
439 soliciting an extension of credit for consumer goods or services,
440 or for the purpose of obtaining information or an extension of
441 credit for these purposes.

442 (b) "Consumer goods or services" means any real
443 property or any tangible or intangible personal property which is
444 normally used for personal, family or household purposes,
445 including, without limitation, any property intended to be
446 attached to or installed in any real property regardless of
447 whether it is attached or installed, as well as cemetery lots and
448 time-share estates, and any services related to the property.

449 (c) "Unsolicited telephonic sales call" means a
450 telephonic sales call other than a call made:

451 (i) In response to an express request of the
452 person called;

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

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

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

460 (e) "Merchant" means a person who, directly or
461 indirectly, offers or makes available to consumers any consumer
462 goods or services.

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

467 (g) "Doing business in this state" refers to businesses
468 who conduct telephonic sales calls from a location in Mississippi
469 or from other states or nations to consumers located in
470 Mississippi.

471 (h) "Established business relationship" means a prior
472 or existing relationship formed by a voluntary two-way
473 communication between a person or entity and a consumer with or
474 without an exchange of consideration, on the basis of an inquiry,
475 application, purchase or transaction by such person or entity,
476 which relationship has not been previously terminated by either
477 party.

478 **SECTION 21.** Section 77-3-603, Mississippi Code of 1972, is
479 brought forward as follows:

480 77-3-603. Any telephone solicitor who makes an unsolicited
481 telephonic sales call to a residential telephone number shall:

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

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

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

493 **SECTION 22.** Section 77-3-605, Mississippi Code of 1972, is
494 brought forward as follows:

495 77-3-605. Any telephone solicitor shall apply for a
496 certificate of registration from the Office of the Attorney
497 General as a condition for doing business in this state. The
498 certificate of registration shall be in a form as prescribed by
499 the Attorney General.

500 The application for a certificate of registration shall be
501 accompanied by a surety bond in the penal sum of Seventy-five
502 Thousand Dollars (\$75,000.00) with conditions and in a form
503 prescribed by the Attorney General. The bond shall provide for
504 the indemnification of any person suffering loss as the result of
505 any fraud, misrepresentation or violation of Sections 77-3-601
506 through 77-3-619 by the principal. The term of the bond shall be
507 continuous, but it shall be subject to cancellation by the surety
508 in the manner described in this section. The surety may terminate
509 the bond upon giving a sixty-day written notice to the principal
510 and to the Attorney General, but the liability of the surety for
511 acts of the principal and its agents shall continue during the

512 sixty (60) days of cancellation notice. The notice does not
513 absolve the surety from liability which accrues before the
514 cancellation becomes final but which is discovered after that date
515 and which may have arisen at any time during the term of the bond.
516 Unless the bond is replaced by that of another surety before the
517 expiration of the sixty (60) days' notice of cancellation, the
518 certificate of registration shall be suspended. Any person
519 required pursuant to this section to file a bond with an
520 application for a certificate of registration may file, in lieu
521 thereof, cash, a certificate of deposit, or government bonds in
522 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such
523 deposit is subject to the same terms and conditions as are
524 provided for in the surety bond required herein. Any interest or
525 earnings on such deposits are payable to the depositor.

526 **SECTION 23.** Section 77-3-607, Mississippi Code of 1972, is
527 brought forward as follows:

528 77-3-607. (1) A contract made pursuant to a telephonic
529 sales call is not valid and enforceable against a consumer unless
530 made in compliance with this section.

531 (2) A contract made pursuant to a telephonic sales call
532 shall:

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

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

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

536 principally used in the telephone solicitations.

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

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

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

544 (f) Include in its terms any oral or written
545 representations made by the telephone solicitor to the consumer in
546 connection with the transaction.

547 (3) The provisions of this section do not apply to
548 contractual sales regulated under other sections of the
549 Mississippi statutes and to contractual sales of companies which
550 provide telecommunication services and reach binding agreements by
551 telephone for these services.

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

557 (5) The provisions of this section do not apply to a
558 transaction:

559 (a) Made in accordance with prior negotiations in the
560 course of a visit by the consumer to a merchant operating a retail
561 business establishment which has a fixed permanent location and

562 where consumer goods are displayed or offered for sale on a
563 continuing basis;

564 (b) In which the consumer may obtain a full refund for
565 the return of undamaged and unused goods or a cancellation of
566 services notice to the seller within seven (7) days after receipt
567 by the consumer, and the seller will process the refund within
568 thirty (30) days after receipt of the returned merchandise by the
569 consumer;

570 (c) In which the consumer purchases goods or services
571 after an examination of a television, radio, or print
572 advertisement or a sample, brochure, or catalog of the merchant
573 that contains the name, address and telephone number of the
574 merchant; a description of the goods or services being sold; and
575 any limitations or restrictions that apply to the offer; or

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

578 **SECTION 24.** Section 77-3-609, Mississippi Code of 1972, is
579 brought forward as follows:

580 77-3-609. The provisions of Sections 77-3-601 through
581 77-3-619 shall not apply to:

582 (a) A person engaging in commercial telephone
583 solicitation where the solicitation is an isolated transaction and
584 not done in the course of a pattern of repeated transactions of
585 like nature.

586 (b) A person making calls for religious, charitable,
587 political, education or other noncommercial purposes, or a person

588 soliciting for a nonprofit corporation if that corporation is
589 properly registered as such with the Secretary of State and is
590 included within the exemption of Section 501(c)(3) or Section
591 501(c)(6) of the Internal Revenue Code.

592 (c) A person soliciting:

593 (i) Without the intent to complete or obtain
594 provisional acceptance of a sale during the telephone
595 solicitation;

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

598 (iii) Without the intent to complete, and who does
599 not complete, the sales presentation during the telephone
600 solicitation, but who completes the sales presentation at a later
601 face-to-face meeting between the seller and the prospective
602 purchaser. However, if a seller, directly following a telephone
603 solicitation, causes an individual whose primary purpose it is to
604 go to the prospective purchaser to collect the payment or deliver
605 any item purchased, this exemption does not apply.

606 (d) Any licensed securities, commodities, or
607 investments broker, dealer or investment advisor, when soliciting
608 within the scope of his license. As used in this section,
609 "licensed securities, commodities, or investments broker, dealer
610 or investment advisor" means a person subject to license or
611 registration as such by the Securities and Exchange Commission, by
612 the National Association of Securities Dealers or other
613 self-regulatory organization as defined by the Securities Exchange

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

616 (e) Any licensed associated person of a securities,
617 commodities, or investments broker, dealer or investment advisor,
618 when soliciting within the scope of his license. As used in this
619 section, "licensed associated person of a securities, commodities,
620 or investment broker, dealer or investment advisor" means any
621 associated person registered or licensed by the National
622 Association of Securities Dealers or other self-regulatory
623 organization as defined by the Securities Exchange Act of 1934 (15
624 USC Section 781) or by an official or agency of this state or of
625 any state of the United States.

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

629 (g) A book, video or record club or contractual plan or
630 arrangement:

631 (i) Under which the seller provides the consumer
632 with a form which the consumer may use to instruct the seller not
633 to ship the offered merchandise;

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

637 (iii) Which provides for the sale of books,
638 records or videos which are not covered under paragraphs (i) or
639 (ii), including continuity plans, subscription arrangements,

640 standing order arrangements, supplements and series arrangements
641 under which the seller periodically ships merchandise to a
642 consumer who has consented in advance to receive such merchandise
643 on a periodic basis.

644 (h) Any supervised financial institution or parent,
645 subsidiary or affiliate thereof. As used in this section,
646 "supervised financial institution" means any commercial bank,
647 trust company, savings and loan association, mutual savings bank,
648 credit union, industrial loan company, consumer finance lender,
649 commercial finance lender or insurer, provided that the
650 institution is subject to supervision by an official or agency of
651 this state, of any state or of the United States.

652 (i) Any licensed insurance or real estate broker,
653 agent, customer representative or solicitor when soliciting within
654 the scope of his license. As used in this section, "licensed
655 insurance or real estate broker, agent, customer representative or
656 solicitor" means any insurance or real estate broker, agent,
657 customer representative or solicitor licensed by an official or
658 agency of this state or of any state of the United States.

659 (j) A person soliciting the sale of services provided
660 by a cable television system operating under authority of a
661 franchise or permit.

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

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

667 (ii) Includes the business address or home office
668 address of the seller;

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

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

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

677 (m) A telephone company, or its subsidiary or agents,
678 or a business which is regulated by the Mississippi Public Service
679 Commission, or a Federal Communications Commission licensed
680 cellular telephone company or other bona fide radio
681 telecommunication services provider.

682 (n) Any publicly traded corporation which has
683 securities registered with the Securities and Exchange Commission
684 which are a reported security within the meaning of subparagraph
685 (4) of Regulation Section 240.11a3-1, (a), under the Securities
686 Exchange Act of 1934, or which is exempt from registration under
687 subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2)
688 of subsection (g) of Section 12 of the Securities Exchange Act of
689 1934 (15 USC Section 781), or any subsidiary of such a
690 corporation.

691 (o) A business soliciting exclusively the sale of
692 telephone answering services, provided that the telephone
693 answering services will be supplied by the solicitor.

694 (p) A person soliciting a transaction regulated by the
695 Commodity Futures Trading Commission if the person is registered
696 or temporarily licensed for this activity with the Commodity
697 Futures Trading Commission under the Commodity Exchange Act (7 USC
698 Section 1 et seq.) and the registration or license has not expired
699 or been suspended or revoked.

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

704 (r) A person soliciting business from prospective
705 consumers who have an established business relationship with, or
706 who have previously purchased from, the business enterprise for
707 which the solicitor is calling, if the solicitor is operating
708 under the same exact business name.

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

713 (i) Either products are displayed and offered for
714 sale, or services are offered for sale and provided at the
715 business establishment; and

716 (ii) A majority of the seller's business involves
717 the buyer obtaining such products or services at the seller's
718 location.

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

725 **SECTION 25.** Section 77-3-611, Mississippi Code of 1972, is
726 brought forward as follows:

727 77-3-611. The Attorney General shall investigate any
728 complaints received concerning violations of Sections 77-3-601
729 through 77-3-619. If, after investigating any complaint, the
730 Attorney General finds that there has been a violation of Sections
731 77-3-601 through 77-3-619, the Attorney General may bring an
732 action to impose a civil penalty and to seek other relief,
733 including injunctive relief, as the court deems appropriate
734 against the telephone solicitor. The civil penalty shall not
735 exceed Ten Thousand Dollars (\$10,000.00) per violation and shall
736 be deposited in the State General Fund, unallocated. This civil
737 penalty may be recovered in any action brought under Sections
738 77-3-601 through 77-3-619 by the Attorney General. Alternatively,
739 the Attorney General may terminate any investigation or action
740 upon agreement by the person to pay a stipulated civil penalty.
741 The Attorney General or the court may waive any civil penalty if

742 the person has previously made full restitution or reimbursement
743 or has paid actual damages to the consumers who have been injured
744 by the violation.

745 **SECTION 26.** Section 77-3-613, Mississippi Code of 1972, is
746 brought forward as follows:

747 77-3-613. In any civil proceeding alleging a violation of
748 Sections 77-3-601 through 77-3-619, the burden of proving an
749 exemption or an exemption from a definition is upon the person
750 claiming it.

751 **SECTION 27.** Section 77-3-615, Mississippi Code of 1972, is
752 brought forward as follows:

753 77-3-615. (1) In any civil litigation resulting from a
754 transaction involving a violation of Sections 77-3-601 through
755 77-3-619, the prevailing party, after judgment in the trial court
756 and exhaustion of all appeals, if any, shall receive his
757 reasonable attorney's fees and costs from the nonprevailing party.

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

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

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

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

774 **SECTION 28.** Section 77-3-617, Mississippi Code of 1972, is
775 brought forward as follows:

776 77-3-617. The Attorney General shall by rule ensure that
777 telecommunications companies inform their customers of the
778 provisions of Sections 77-3-601 through 77-3-619. The
779 notification may be made by:

780 (a) Annual inserts in the billing statements mailed to
781 customers; and

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

784 **SECTION 29.** Section 77-3-619, Mississippi Code of 1972, is
785 brought forward as follows:

786 77-3-619. The Attorney General is authorized to issue any
787 necessary rules and regulations in order to carry out the
788 provisions of Sections 77-3-601 through 77-3-619.

789 **SECTION 30.** Section 77-3-801, Mississippi Code of 1972, is
790 brought forward as follows:

791 77-3-801. This article may be cited as the "Caller ID
792 Anti-Spoofing Act."

793 **SECTION 31.** Section 77-3-803, Mississippi Code of 1972, is
794 brought forward as follows:

795 77-3-803. As used in this article:

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

801 (b) "Caller identification information" means
802 information provided by a caller identification service regarding
803 the telephone number, or other origination information, of a call
804 or facsimile transmission made using a telecommunications service
805 or an interconnected VoIP service, or of a text message sent using
806 a text-messaging service.

807 (c) "Caller identification service" means any service
808 or device designed to provide the user of the service or device
809 with the telephone number of, or other information regarding the
810 origination of, a call made using a telecommunications service or
811 interconnected VoIP service. The term includes automatic number
812 identification services.

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

815 (i) Enables real-time, two-way voice
816 communications;

817 (ii) Requires a broadband internet connection from
818 the user's location;

819 (iii) Requires internet protocol-compatible
820 customer premises equipment; and

821 (iv) Permits users generally to receive calls that
822 originate on the public switched telephone network and to
823 terminate calls to the public switched telephone network.

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

827 (i) The residential street address or the primary
828 business street address of the subscriber or, in the case of a
829 subscriber of interconnected VoIP service, the subscriber's
830 registered location; and

831 (ii) Within the licensed service area of the
832 provider.

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

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

838 (h) "Subscriber" means a person:

839 (i) Who subscribes to a caller identification
840 service in connection with a telecommunications service or an
841 interconnected VoIP service; and

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

844 (i) "Telecommunications service" means the offering of
845 telecommunications for a fee directly to the public, or to classes
846 of users so as to be effectively available directly to the public,
847 regardless of the facilities used.

848 **SECTION 32.** Section 77-3-805, Mississippi Code of 1972, is
849 brought forward as follows:

850 77-3-805. Except as provided in Section 77-3-807, a person
851 shall not, in connection with any telecommunications service or
852 interconnected VOIP service, knowingly and with the intent to
853 defraud or cause harm to another person or to wrongfully obtain
854 anything of value, cause any caller identification service to
855 transmit misleading or inaccurate caller identification
856 information to a subscriber.

857 **SECTION 33.** Section 77-3-807, Mississippi Code of 1972, is
858 brought forward as follows:

859 77-3-807. This article does not apply to:

860 (a) The blocking of caller identification information.

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

863 (c) Any intelligence or security agency of the federal
864 government.

865 (d) A telecommunications, broadband or
866 voice-over-Internet service provider that is acting solely as an
867 intermediary for the transmission of telephone service between the
868 caller and the recipient.

869 **SECTION 34.** Section 77-3-809, Mississippi Code of 1972, is
870 brought forward as follows:

871 77-3-809. (1) Any person who violates this article shall be
872 guilty of a misdemeanor and, upon conviction thereof, shall be
873 subject to a fine of not more than One Thousand Dollars
874 (\$1,000.00) or shall be imprisoned in the county jail not
875 exceeding one (1) year, or both.

876 (2) Any violation of this article constitutes an unlawful
877 trade practice under Section 75-24-5 and, in addition to any
878 remedies or penalties set forth in this article, shall be subject
879 to any remedies or penalties available for a violation of that
880 statute.

881 (3) Any violation of this article constitutes a violation of
882 the Mississippi Telephone Solicitation Act, Section 77-3-701 et
883 seq., and in addition to any remedies or penalties provided in
884 this article, shall be subject to any remedies or penalties
885 available for a violation of that act.

886 **SECTION 35.** Section 23-15-875, Mississippi Code of 1972, is
887 brought forward as follows:

888 23-15-875. No person, including a candidate, shall publicly
889 or privately make, in a campaign then in progress, any charge or
890 charges reflecting upon the honesty, integrity or moral character
891 of any candidate, so far as his or her private life is concerned,
892 unless the charge be in fact true and actually capable of proof;
893 and any person who makes any such charge shall have the burden of
894 proof to show the truth thereof when called to account therefor

895 under any affidavit or indictment against him or her for a
896 violation of this section. Any language deliberately uttered or
897 published which, when fairly and reasonably construed and as
898 commonly understood, would clearly and unmistakably imply any such
899 charge, shall be deemed and held to be the equivalent of a direct
900 charge.

901 **SECTION 36.** This act shall take effect and be in force from
902 and after July 1, 2023.

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

1 AN ACT TO AMEND SECTIONS 77-3-705, 77-3-707, 77-3-709,
2 77-3-713, 77-3-715, 77-3-717, 77-3-721, 77-3-725, 77-3-727,
3 77-3-731, 77-3-733 AND 77-3-735, MISSISSIPPI CODE OF 1972, WHICH
4 RELATE TO THE MISSISSIPPI TELEPHONE SOLICITATION ACT, TO TRANSFER
5 THE STATE'S TELEPHONE SOLICITATION ADMINISTRATIVE, INVESTIGATIVE,
6 AND ENFORCEMENT RESPONSIBILITIES AND DUTIES FROM THE MISSISSIPPI
7 PUBLIC SERVICE COMMISSION TO THE MISSISSIPPI ATTORNEY GENERAL; TO
8 REMOVE THE DEFINITION OF THE TERM "COMMISSION"; TO DEFINE THE TERM
9 "DO NOT CALL REGISTRY"; TO REMOVE ALL REFERENCES TO THE PUBLIC
10 SERVICE COMMISSION, AND INSERT THE ATTORNEY GENERAL IN LIEU
11 THEREOF; TO REMOVE THE REPEALER OF JULY 1, 2024, ON THE PROVISION
12 OF LAW RELATING TO EXPENSES OF THE AGENCY AND FEES COLLECTED; TO
13 REMOVE THE REQUIREMENT FOR A HEARING, AND PENALTY FOR FAILURE TO
14 APPEAR FOR A HEARING; TO PROVIDE THE COURT WHERE THE ATTORNEY
15 GENERAL MAY BRING AN ACTION TO ENFORCE THIS ACT; TO PROVIDE FOR
16 THE UTILIZATION OF A SINGLE DO NOT CALL REGISTRY; TO CLARIFY THAT
17 THE DO NOT CALL REGISTRY IS A FEDERAL REGISTRY; TO BRING FORWARD
18 SECTIONS 77-3-701, 77-3-703, 77-3-711, 77-3-719, 77-3-723 AND
19 77-3-729, WHICH RELATE TO THE MISSISSIPPI TELEPHONE SOLICITATION
20 ACT, FOR PURPOSES OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS
21 77-3-601, 77-3-603, 77-3-605, 77-3-607, 77-3-609, 77-3-611,
22 77-3-613, 77-3-615, 77-3-617 AND 77-3-619, MISSISSIPPI CODE OF
23 1972, WHICH RELATE TO UNSOLICITED RESIDENTIAL TELEPHONIC SALES
24 CALLS, FOR PURPOSES OF POSSIBLE AMENDMENT; TO BRING FORWARD
25 SECTIONS 77-3-801, 77-3-803, 77-3-805, 77-3-807 AND 77-3-809,
26 MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE CALLER ID
27 ANTI-SPOOFING ACT, FOR PURPOSES OF POSSIBLE AMENDMENT; TO BRING
28 FORWARD SECTION 23-15-875, MISSISSIPPI CODE OF 1972, WHICH RELATES
29 TO LANGUAGE UTTERED OR PUBLISHED REGARDING THE INTEGRITY OF A

30 CANDIDATE FOR OFFICE, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR
31 RELATED PURPOSES.

SS36\HB1225A.J

Eugene S. Clarke
Secretary of the Senate