

**\*\*\* Pending \*\*\***

**COMMITTEE AMENDMENT NO 1 PROPOSED TO**

**Senate Bill No. 2445**

**BY: Committee**

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

7           **SECTION 1.** Section 77-3-701, Mississippi Code of 1972, is  
8 reenacted as follows:

9           77-3-701. This article shall be known and may be cited as  
10 the "Mississippi Telephone Solicitation Act."

11           **SECTION 2.** Section 77-3-703, Mississippi Code of 1972, is  
12 reenacted as follows:

13           77-3-703. The use of the telephone to make all types of  
14 solicitations to consumers is pervasive. This article gives  
15 consumers a tool by which to object to telemarketing calls as  
16 these communications can amount to a nuisance, an invasion of  
17 privacy, and can create a health and safety risk for certain  
18 consumers who maintain their phone service primarily for emergency  
19 medical situations.

20           **SECTION 3.** Section 77-3-705, Mississippi Code of 1972, is  
21 reenacted as follows:

22           77-3-705. For the purposes of this article, the following  
23 words and terms shall have the meanings ascribed in this section  
24 unless the context clearly indicates otherwise:

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

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

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

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

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

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

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

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

53           (g) "Consumer goods or services" means any real  
54 property or any tangible or intangible personal property which is  
55 normally used for personal, family or household purposes,  
56 including, without limitation, any property intended to be

57 attached to, or installed in, any real property, and any services  
58 related to the property.

59 (h) "Established business relationship" means a prior  
60 or existing relationship formed by a voluntary two-way  
61 communication between a person or entity and a consumer, with or  
62 without an exchange of consideration, on the basis of an inquiry,  
63 application, purchase or transaction by the consumer, which  
64 relationship is currently existing or was terminated within six  
65 (6) months of the telephone solicitation; however, the act of  
66 purchasing consumer goods or services under an extension of credit  
67 does not create an existing business relationship between the  
68 consumer and the entity extending credit to the consumer for such  
69 purchase. The term does not include the situation wherein the  
70 consumer has merely been subject to a telephone solicitation by or  
71 at the behest of the telephone solicitor within the six (6) months  
72 immediately preceding the contemplated telephone solicitation.

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

81 **SECTION 4.** Section 77-3-707, Mississippi Code of 1972, is  
82 reenacted as follows:

83 77-3-707. (1) Except as otherwise provided pursuant to  
84 Section 77-3-709 or 77-3-711 of this article, a telephone  
85 solicitor may not make or cause to be made any telephone  
86 solicitation to any consumer in this state unless the telephone  
87 solicitor has purchased the "no-calls" database from the  
88 commission or the entity under contract with the commission.

89           (2) Except as otherwise provided pursuant to Section  
90 77-3-709 or 77-3-711 of this article, a telephone solicitor may  
91 not make or cause to be made any telephone solicitation to any  
92 consumer in this state who has given notice to the commission, or  
93 the entity under contract with the commission, of his or her  
94 objection to receiving telephone solicitations.

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

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

113           **SECTION 5.** Section 77-3-709, Mississippi Code of 1972, is  
114 reenacted as follows:

115           77-3-709. The commission, in its discretion, may allow  
116 telephone solicitors to make telephone solicitations without  
117 requiring them to purchase the "no-calls" database, and regardless  
118 of whether a telephone solicitation may be made to a consumer who  
119 has given notice of his objection to receiving such solicitations,

120 provided that it adopts a written policy incorporating the  
121 following criteria:

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

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

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

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

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

150           **SECTION 6.** Section 77-3-711, Mississippi Code of 1972, is  
151 reenacted as follows:

152           77-3-711. The provisions of this article shall not apply to:

153           (a) A person soliciting:

154                 (i) Who does not make the major sales presentation  
155 during the telephone solicitation;

156                 (ii) Without the intent to complete or obtain  
157 provisional acceptance of a sale during the telephone  
158 solicitation; or

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

164           (b) A person who is a licensee under Chapter 35, Title  
165 73, Mississippi Code of 1972, who is a resident of the State of  
166 Mississippi, and whose telephone solicitation is for the sole  
167 purpose of selling, exchanging, purchasing, renting, listing for  
168 sale or rent or leasing real estate in connection with his real  
169 estate license and not in conjunction with any other offer.

170           (c) A motor vehicle dealer as that term is defined in  
171 Section 63-17-55, who is a resident of the State of Mississippi  
172 and who maintains a current motor vehicle dealer's license issued  
173 by the Mississippi Motor Vehicle Commission, whose telephone  
174 solicitation is for the sole purpose of selling, offering to sell,  
175 soliciting or advertising the sale of motor vehicles in connection  
176 with his motor vehicle dealer's license and not in conjunction  
177 with any other offer.

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

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

184 whose telephone solicitation is for the sole purpose of effecting  
185 or attempting to effect the purchase or sale of securities or has  
186 the purpose of providing or seeking to provide investment or  
187 financial advice.

188 (f) A person calling on behalf of a charitable  
189 organization which is registered under Chapter 11, Title 79,  
190 Mississippi Code of 1972, whose telephone solicitation is for the  
191 sole purpose of soliciting for the charitable organization and who  
192 receives no compensation for his activities on behalf of the  
193 organization.

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

198 (h) A person calling on behalf of any supervised  
199 financial institution or parent, subsidiary or affiliate thereof.  
200 As used in this section, "supervised financial institution" means  
201 any commercial bank, trust company, savings and loan association,  
202 mutual savings bank, credit union, industrial loan company, small  
203 loan company, consumer finance lender, commercial finance lender  
204 or insurer, provided that the institution has a physical office  
205 located in the State of Mississippi and is subject to supervision  
206 by an official or agency of the State of Mississippi or of the  
207 United States.

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

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

214 **SECTION 7.** Section 77-3-713, Mississippi Code of 1972, is  
215 reenacted as follows:

216           77-3-713. All telephone solicitors must register with the  
217 commission before conducting any telephone solicitations in the  
218 State of Mississippi.

219           **SECTION 8.** Section 77-3-715, Mississippi Code of 1972, is  
220 reenacted as follows:

221           77-3-715. The commission may promulgate rules and  
222 regulations necessary to effectuate this article, including, but  
223 not limited to, the following:

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

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

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

232           (d) The methods by which a person or entity desiring to  
233 make telephone solicitations may obtain access to the database as  
234 required to avoid calling the telephone number of consumers  
235 included in the database;

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

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

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

245           (h) The establishment of a written policy which clearly  
246 articulates the circumstances under which the commission, in its



247 discretion, may allow exceptions to the provisions of this article  
248 pursuant to Section 77-3-703 of this article; and

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

251 **SECTION 9.** Section 77-3-717, Mississippi Code of 1972, is  
252 reenacted as follows:

253 77-3-717. If the Federal Trade Commission establishes a  
254 single national database of telephone numbers of consumers who  
255 object to receiving telephone solicitations, the commission must  
256 include the portion of the single national database that relates  
257 to the State of Mississippi in the database established under this  
258 article.

259 **SECTION 10.** Section 77-3-719, Mississippi Code of 1972, is  
260 reenacted as follows:

261 77-3-719. Information contained in the database established  
262 under this article may be used and accessed only for the purpose  
263 of compliance with this article and shall not be otherwise subject  
264 to public inspection or disclosure.

265 **SECTION 11.** Section 77-3-721, Mississippi Code of 1972, is  
266 reenacted as follows:

267 77-3-721. All fees collected under the provisions of this  
268 article shall be deposited into a special fund which is created in  
269 the State Treasury to be expended by the commission for the  
270 implementation and administration of this article. At the end of  
271 each fiscal year, earned interest and unexpended monies remaining  
272 in the fund may not revert to any other fund of the state, but  
273 shall remain available for appropriations to administer this  
274 article. The Legislature shall appropriate annually from the fund  
275 the amount necessary for the administration of this article to the  
276 commission.

277 **SECTION 12.** Section 77-3-723, Mississippi Code of 1972, is  
278 reenacted as follows:

279           77-3-723. (1) Any person or entity who makes an authorized  
280 telephone solicitation to a consumer in this state shall announce  
281 clearly, at the beginning of each call, his or her name, the  
282 company he or she represents and the purpose of the call. Such  
283 calls may only be made between the hours of 8:00 a.m. and 8:00  
284 p.m. Central Standard Time. No telephone solicitations may be  
285 made on a Sunday. For purposes of this provision, an "authorized  
286 telephone solicitation" means a solicitation that is made: (a) to  
287 a consumer who is not listed on the most current "no-calls"  
288 database; (b) by a telephone solicitor who has been authorized to  
289 make such solicitations under the provisions of Section  
290 77-3-709 of this article; or (c) by a telephone solicitor who is  
291 exempt from this act under the provisions of Section 77-3-711 of  
292 this article.

293           (2) A person or entity who makes a telephone solicitation to  
294 a consumer in this state may not utilize knowingly any method that  
295 blocks or otherwise circumvents the consumer's use of a caller  
296 identification service, nor may the person or entity use an  
297 automated dialing system or any like system that uses a recorded  
298 voice message to communicate with the consumer unless the person  
299 or entity has an established business relationship with the  
300 consumer and uses the recorded voice message to inform the  
301 consumer about a new product or service.

302           **SECTION 13.** Section 77-3-725, Mississippi Code of 1972, is  
303 reenacted as follows:

304           77-3-725. The commission may investigate alleged violations  
305 and to initiate proceedings relative to a violation of this  
306 article or any rules and regulations promulgated pursuant to this  
307 article. Such proceedings include, without limitation,  
308 proceedings to issue a cease and desist order, and to issue an  
309 order imposing a civil penalty not to exceed Five Thousand Dollars  
310 (\$5,000.00) for each violation. The commission shall afford an

311 opportunity for a fair hearing to the alleged violator(s) after  
312 giving written notice of the time and place for said hearing.  
313 Failure to appear at any such hearing may result in the commission  
314 finding the alleged violator(s) liable by default. Any telephone  
315 solicitor found to have violated this article, pursuant to a  
316 hearing or by default, may be subject to a civil penalty not to  
317 exceed Five Thousand Dollars (\$5,000.00) for each violation to be  
318 assessed and collected by the commission. Each telephonic  
319 communication shall constitute a separate violation.

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

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

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

332 **SECTION 14.** Section 77-3-727, Mississippi Code of 1972, is  
333 reenacted as follows:

334 77-3-727. Any person who has received a telephone  
335 solicitation in violation of this article, or any rules and  
336 regulations promulgated pursuant to this article, may file a  
337 complaint with the commission. The complaint will be processed  
338 pursuant to complaint procedures established by the commission.

339 **SECTION 15.** Section 77-3-729, Mississippi Code of 1972, is  
340 reenacted as follows:

341 77-3-729. It shall be a defense in any action or proceeding  
342 brought under Section 77-3-725 or 77-3-727 of this article that

343 the defendant has established and implemented, with due care,  
344 reasonable practices and procedures to effectively prevent  
345 telephone solicitations in violation of this article.

346 **SECTION 16.** Section 77-3-731, Mississippi Code of 1972, is  
347 reenacted as follows:

348 77-3-731. The commission is granted personal jurisdiction  
349 over any telephone solicitor, whether a resident or a nonresident,  
350 notwithstanding that telephone solicitors are not deemed to be a  
351 public utility, for the purpose of administering this article.  
352 The commission is granted personal jurisdiction over any  
353 nonresident telephone solicitor, its executor, administrator,  
354 receiver, trustee or any other appointed representative of such  
355 nonresident as to an action or proceeding authorized by this  
356 article or any rules and regulations promulgated pursuant to this  
357 article as authorized by Section 13-3-57, and also upon any  
358 nonresident, his or her executor, administrator, receiver, trustee  
359 or any other appointed representative of such nonresident who has  
360 qualified under the laws of this state to do business herein.  
361 Service of summons and process upon the alleged violator of this  
362 article shall be had or made as is provided by the Mississippi  
363 Rules of Civil Procedure.

364 **SECTION 17.** Section 77-3-733, Mississippi Code of 1972, is  
365 reenacted as follows:

366 77-3-733. Any party aggrieved by any final order of the  
367 commission pursuant to this article, or any rules and regulations  
368 promulgated pursuant to this article, shall have the right of  
369 appeal to the Chancery Court of Hinds County, Mississippi, First  
370 Judicial District.

371 **SECTION 18.** Section 77-3-735, Mississippi Code of 1972, is  
372 reenacted as follows:

373 77-3-735. No provider of telephonic caller identification  
374 service, local exchange telephone company or long distance company

375 certificated by the commission may be held liable for violations  
376 of this article committed by other persons or entities.

377         **SECTION 19.** Section 77-3-737, Mississippi Code of 1972, is  
378 reenacted and amended as follows:

379         77-3-737. Sections 77-3-701 through 77-3-737 shall stand  
380 repealed from and after July 1, 2008.

381         **SECTION 20.** This act shall take effect and be in force from  
382 and after July 1, 2005.

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

1         AN ACT TO REENACT SECTIONS 77-3-701 THROUGH 77-3-735,  
2         MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE MISSISSIPPI TELEPHONE  
3         SOLICITATION ACT; TO AMEND SECTION 77-3-737, MISSISSIPPI CODE OF  
4         1972, TO EXTEND THE DATE OF REPEAL ON THOSE REENACTED SECTIONS  
5         FROM JULY 1, 2005, TO JULY 1, 2008; AND FOR RELATED PURPOSES.