

**Adopted
AMENDMENT NO 1 PROPOSED TO**

House Bill No. 1225

BY: Representative Bounds

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

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

21 77-3-601. As used in this article:

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



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

35 (c) "Unsolicited telephonic sales call" means a
36 telephonic sales call other than a call made:

37 (i) In response to an express request of the
38 person called;

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

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

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

46 (e) "Merchant" means a person who, directly or
47 indirectly, offers or makes available to consumers any consumer
48 goods or services.

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



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

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

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

66 77-3-603. Any telephone solicitor who makes an unsolicited
67 telephonic sales call to a residential telephone number shall:

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

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



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

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

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

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



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

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

114 77-3-607. (1) A contract made pursuant to a telephonic
115 sales call is not valid and enforceable against a consumer unless
116 made in compliance with this section.

117 (2) A contract made pursuant to a telephonic sales call
118 shall:

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

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

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

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



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

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

130 (f) Include in its terms any oral or written
131 representations made by the telephone solicitor to the consumer in
132 connection with the transaction.

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

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

143 (5) The provisions of this section do not apply to a
144 transaction:

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



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

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

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

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

166 77-3-609. The provisions of Sections 77-3-601 through
167 77-3-619 shall not apply to:

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

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



175 properly registered as such with the Secretary of State and is
176 included within the exemption of Section 501(c)(3) or Section
177 501(c)(6) of the Internal Revenue Code.

178 (c) A person soliciting:

179 (i) Without the intent to complete or obtain
180 provisional acceptance of a sale during the telephone
181 solicitation;

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

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

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



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

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

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

215 (g) A book, video or record club or contractual plan or
216 arrangement:

217 (i) Under which the seller provides the consumer
218 with a form which the consumer may use to instruct the seller not
219 to ship the offered merchandise;

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

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



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

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

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

245 (j) A person soliciting the sale of services provided
246 by a cable television system operating under authority of a
247 franchise or permit.



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

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

253 (ii) Includes the business address or home office
254 address of the seller;

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

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

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

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

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



273 subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2)
274 of subsection (g) of Section 12 of the Securities Exchange Act of
275 1934 (15 USC Section 781), or any subsidiary of such a
276 corporation.

277 (o) A business soliciting exclusively the sale of
278 telephone answering services, provided that the telephone
279 answering services will be supplied by the solicitor.

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

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

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

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



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

299 (i) Either products are displayed and offered for
300 sale, or services are offered for sale and provided at the
301 business establishment; and

302 (ii) A majority of the seller's business involves
303 the buyer obtaining such products or services at the seller's
304 location.

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

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

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



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

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

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

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

339 77-3-615. (1) In any civil litigation resulting from a
340 transaction involving a violation of Sections 77-3-601 through
341 77-3-619, the prevailing party, after judgment in the trial court
342 and exhaustion of all appeals, if any, shall receive his
343 reasonable attorney's fees and costs from the nonprevailing party.

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



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

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

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

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

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

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

366 (a) Annual inserts in the billing statements mailed to
367 customers; and

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



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

372 77-3-619. The Attorney General is authorized to issue any
373 necessary rules and regulations in order to carry out the
374 provisions of Sections 77-3-601 through 77-3-619.

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

377 77-3-701. This article shall be known and may be cited as
378 the "Mississippi Telephone Solicitation Act."

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

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

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

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

392 77-3-705. For the purposes of this article, the following
393 words and terms shall have the meanings ascribed in this section
394 unless the context clearly indicates otherwise:



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

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

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

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

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

413 (ii) Soliciting a sale of any consumer goods or
414 services, or an extension of credit for consumer goods or
415 services;

416 (iii) Soliciting any other item of value,
417 pecuniary or otherwise, regardless of whether a sales presentation
418 is made; or



419 (iv) Soliciting a charitable contribution of money
420 or property.

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

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

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

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



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

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

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

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

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

465 (2) Except as otherwise provided pursuant to Section
466 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
467 to be made any telephone solicitation to any consumer in this
468 state who has given notice to the commission, or the entity under



469 contract with the commission, of his or her objection to receiving
470 telephone solicitations.

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

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

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



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

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

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

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

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

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



518 including an invitation to attend an event or a request for a
519 contribution or donation.

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

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

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

534 77-3-711. The provisions of this article shall not apply to:

535 (a) A person soliciting:

536 (i) Who does not make the major sales presentation
537 during the telephone solicitation;

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



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

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

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

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

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



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

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

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

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



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

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

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

600 77-3-713. All telephone solicitors must register with the
601 commission before conducting any telephone solicitations in the
602 State of Mississippi.

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

605 77-3-715. The commission may promulgate rules and
606 regulations necessary to effectuate this article, including, but
607 not limited to, the following:

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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



764 77-3-801. This article may be cited as the "Caller ID
765 Anti-Spoofing Act."

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

768 77-3-803. As used in this article:

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

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

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

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



788 (i) Enables real-time, two-way voice
789 communications;

790 (ii) Requires a broadband internet connection from
791 the user's location;

792 (iii) Requires internet protocol-compatible
793 customer premises equipment; and

794 (iv) Permits users generally to receive calls that
795 originate on the public switched telephone network and to
796 terminate calls to the public switched telephone network.

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

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

804 (ii) Within the licensed service area of the
805 provider.

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

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

811 (h) "Subscriber" means a person:



812 (i) Who subscribes to a caller identification
813 service in connection with a telecommunications service or an
814 interconnected VoIP service; and

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

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

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

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

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

832 77-3-807. This article does not apply to:

833 (a) The blocking of caller identification information.

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



836 (c) Any intelligence or security agency of the federal
837 government.

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

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

844 77-3-809. (1) Any person who violates this article shall be
845 guilty of a misdemeanor and, upon conviction thereof, shall be
846 subject to a fine of not more than One Thousand Dollars
847 (\$1,000.00) or shall be imprisoned in the county jail not
848 exceeding one (1) year, or both.

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

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

859 **SECTION 34.** Section 23-15-875, Mississippi Code of 1972, is
860 brought forward as follows:



861 23-15-875. No person, including a candidate, shall publicly
862 or privately make, in a campaign then in progress, any charge or
863 charges reflecting upon the honesty, integrity or moral character
864 of any candidate, so far as his or her private life is concerned,
865 unless the charge be in fact true and actually capable of proof;
866 and any person who makes any such charge shall have the burden of
867 proof to show the truth thereof when called to account therefor
868 under any affidavit or indictment against him or her for a
869 violation of this section. Any language deliberately uttered or
870 published which, when fairly and reasonably construed and as
871 commonly understood, would clearly and unmistakably imply any such
872 charge, shall be deemed and held to be the equivalent of a direct
873 charge.

874 **SECTION 35.** This act shall take effect and be in force from
875 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 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; TO BRING
14 FORWARD SECTION 23-15-875, MISSISSIPPI CODE OF 1972, WHICH RELATES



15 TO LANGUAGE UTTERED OR PUBLISHED REGARDING THE INTEGRITY OF A
16 CANDIDATE FOR OFFICE, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR
17 RELATED PURPOSES.

