

TITLE 03 - OFFICE OF THE ATTORNEY GENERAL
Part 4--Mississippi Unsolicited Residential Telephone Sales Calls

CHAPTER 01--GENERAL PROVISIONS AND DEFINITIONS

Section 100	Scope.....	1
Section 101	Telephone Solicitors Require to Registered..	1
Section 102	Definitions and Terms Used in This Regulation.....	1
Section 103	Application Form for Certificate of Registration.....	2

CHAPTER 02--REGULATING UNSOLICITED RESIDENTIAL SALES CALLS

Section 200	Scope.....	3
Section 201	Authorization to Issue Rules and Regulations.....	3
Section 202	Enforcement Authority.....	3
Section 203	Award of Attorney's Fees and Costs.....	4

CHAPTER 03--CONDUCT OF TELEPHONE SOLICITORS

Section 300	Conduct of Telephone Solicitors.....	4
Section 301	Surety Bond Required.....	4
Section 302	In Lieu of Surety Bon ..	5
Section 303	Telephonic Sales Call Contracts.	5
Section 304	Consumer's Credit Card Account.....	6
Section 305	Transactions Not Effected.....	6
Section 306	Telecommunications Companies to Inform Customers of Provisions of Law.....	7
Section 307	Exempt Parties and Transactions.....	7
Section 308	Burden of Proving Exemption.	10

Title 03—Office of the Attorney General
Part 4—Mississippi Unsolicited Residential Telephone Sales Calls Act

Chapter 1 General Provisions and Definitions

100 Scope

The following rules are hereby adopted by the Attorney General by the authority granted in Mississippi Code Annotated, (hereinafter “the Act” or “this Act”) codified in §§ 77-3-601 through §§ 77-3-619. These rules implement the provisions of the Act; and establish regulations, procedures, and requirements for unsolicited residential telephonic sales calls as proscribed by Section 77-3-69 of the Act.

101 Telephone Solicitors Required to Register

- a. Any telephone solicitor shall apply for a certificate of registration from the Office of the Attorney General as a condition for doing business in this state. The certificate of registration shall be in a form as prescribed by the Attorney General.
- b. No person may act as a commercial telephone solicitor without first obtaining a “Certificate of Registration” to conduct such activity.

102 Definitions and Terms Used in This Regulation

The words defined in this section shall have the meaning set forth below, as prescribed by the Act, whenever they appear in these rules, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular chapter or provision.

- a. "Telephonic sales call" means a call made by a telephone solicitor to a consumer for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information or an extension of credit for these purposes.
- b. "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family or household purposes, including, without limitation, any property intended to be attached to or installed in any real property regardless of whether it is attached or installed, as well as cemetery lots and time-share estates, and any services related to the property.
- c. "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:
 - (i) In response to an express request of the person called;
 - (ii) In connection with an existing debt or contract, payment or performance which

has not been completed at the time of the call; or
(iii) To any person with whom the telephone solicitor has an established business relationship.

- d. "Consumer" means an actual or prospective purchaser, lessee or recipient of consumer goods or services.
- e. "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.
- f. "Telephone solicitor" means any natural person, firm, organization, partnership, association, corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call.
- g. "Doing business in this state" refers to businesses who conduct telephonic sales calls from a location in Mississippi or from other states or nations to consumers located in Mississippi.
- h. "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by such person or entity, which relationship has not been previously terminated by either party.
- i. "Salesperson" means a person who is hired by a telephone solicitor to make unsolicited telephonic sales calls to residential telephone numbers for and/or on behalf of a merchant.

103 Application Form for Certificate of Registration

- a. The telephone solicitor shall utilize the application form prescribed by the Office of the Attorney General as hereby adopted and incorporated herein by reference. All applications for a certificate of registration shall be submitted on forms authorized by the Office of the Attorney General.
- b. All information requested in such forms is essential and must be furnished.
- c. All forms and documentation furnished to the Office of the Attorney General become part of the records of this office and are not returnable.
- d. All papers, forms, or information required to be filed with the Office of the Attorney General may be filed through the mail or in person.
- e. The date on which the complete application, including papers, forms, or other

documents, is actually received by the Office of the Attorney General shall be considered the date of filing.

f. Application packets, consisting of the application form, a copy of these rules, are available by calling (601) 359-4230; writing the Consumer Protection Division at 802 N. State Street, P.O. Box 22947, Jackson, MS 39225-2947; or by downloading from the Attorney General's website at www.ago.state.ms.us/divisions/105.01.

Chapter 2 Regulating Unsolicited Residential Sales Calls

200 Scope

These rules implement the provisions of the Act and establish regulations, procedures, and requirements for any "telephone solicitor", as defined in Section 102, doing business in the State of Mississippi. To promote the general welfare of the public and preserve the integrity of the telemarketing industry, the Attorney General has been vested with the authority to regulate businesses engaged in making residential unsolicited telephonic sales calls.

201 Authorization to Issue Rules and Regulations

a. The Attorney General is authorized to issue any necessary rules and regulations in order to carry out the provisions of this Act.

b. If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.

c. If there is any variance between these rules and the statutes regulating to unsolicited residential telephonic sales calls, the statutes shall govern.

202 Enforcement Authority

a. The Attorney General shall investigate any complaints received concerning violations of the Act.

b. If, after investigating any complaint, the Attorney General finds that there has been a violation the Act, the Attorney General may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor.

c. The civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) per violation and shall be deposited in the State General Fund, unallocated.

d. This civil penalty may be recovered in any action brought under the Act by the

Attorney General.

e. The Attorney General may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty.

f. The Attorney General or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

203 Award of Attorney's Fees and Costs

a. In any civil litigation resulting from a transaction involving a violation of the Act, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his reasonable attorney's fees and costs from the nonprevailing party.

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

c. The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

d. Any award of attorney's fees or costs shall become a part of the judgment and subject to execution as the law allows.

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

Chapter 3 Conduct Of Telephone Solicitors

300 Conduct of Telephone Solicitors

Any telephone solicitor who makes an unsolicited telephonic sales call to a residential telephone number shall:

301 Surety Bond Required

An applicant for a certificate of registration shall provide to the Attorney General an original surety bond, issued by a corporate surety licensed to do business, and authorized to transact insurance in Mississippi.

a. A surety bond in the penal sum of Seventy-five Thousand Dollars (\$75,000.00)

with conditions and in a form prescribed by the Attorney General shall accompany the application for a certificate of registration.

b. The bond shall provide for the indemnification of any person suffering loss as the result of any fraud, misrepresentation or violation of Sections 77-3-601 through 77-3-619 by the principal.

c. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this rule.

d. The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the Attorney General, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice.

e. The notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond.

f. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended.

g. Any person required pursuant to the Act to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Seventy-five Thousand Dollars (\$75,000.00).

h. Such deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

302 In Lieu of Surety Bond

a. Any person required by the Act to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Seventy-five Thousand Dollars (\$75,000).

b. Such deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

303 Telephonic Sales Call Contracts

A contract made pursuant to a telephonic sales call is not valid and enforceable against a consumer unless made in compliance with § 77-3-607 (2)-(5) of the Act.

A contract made pursuant to a telephonic sales call shall:

- (i) Be reduced to writing and signed by the consumer.
- (ii) Comply with all other applicable laws and rules
- (iii) Match the description of goods or services as principally used in the telephone solicitations.
- (iv) Contain the name, address, and telephone number of the seller, the total price of the contract and a detailed description of the goods or services being sold.
- (v) Contain, in bold, conspicuous type, immediately preceding the signature, the following statement:

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

- (vi) Include in its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.
- (vii) The provisions of this section do not apply to contractual sales regulated under other sections of the Mississippi statutes and to contractual sales of companies which provide telecommunication services and reach binding agreements by telephone for these services.

304 Consumer's Credit Card Account

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

305 Transactions Not Effected

The provisions of this section do not apply to a transaction:

- a. Made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a retail business establishment which has a fixed permanent location and where consumer goods are displayed or offered for sale on a continuing basis;
- b. In which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within seven (7) days after receipt by the consumer, and the seller will process the refund within thirty (30) days after receipt of the returned merchandise by the consumer;
- c. In which the consumer purchases goods or services after an examination of a television, radio, or print advertisement or a sample, brochure, or catalog of the merchant that contains the name, address and telephone number of the merchant; a description of the goods or services being sold; and any limitations or restrictions that apply to the offer; or

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

306 Telecommunications Companies to Inform Customers of Provisions of Law

Telecommunications companies shall inform their customers of the provisions of the Act. The notification may be made by (a) Annual inserts in the billing statements mailed to customers; and (b) Conspicuous publication of the notice in the consumer information pages of the local telephone directories.

307 Exempt Parties and Transactions

The provisions of the Act *shall not* apply to:

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

b. A person making calls for religious, charitable, political, education or other noncommercial purposes, or a person soliciting for a nonprofit corporation if that corporation is properly registered as such with the Secretary of State and is included within the exemption of Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code.

c. A person soliciting:

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

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

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

d. Any licensed securities, commodities, or investments broker, dealer or investment advisor, when soliciting within the scope of his license. As used in this section, "licensed securities, commodities, or investments broker, dealer or investment advisor" means a person subject to license or registration as such by the Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 781), or by an official or agency of this state or of any state of the United States.

e. Any licensed associated person of a securities, commodities, or investments broker,

dealer or investment advisor, when soliciting within the scope of his license. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer or investment advisor" means any associated person registered or licensed by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 781) or by an official or agency of this state or of any state of the United States.

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

g. A book, video or record club or contractual plan or arrangement:

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

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

(iii) Which provides for the sale of books, records or videos which are not covered under paragraphs (i) or (ii), including continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

t. Any telephone marketing service company which provides telemarketing sales services under contract to sellers and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) of its contracts are performed on behalf of persons exempted from the Act.

308 Burden of Proving Exemption

In any civil proceeding alleging a violation of the Act, the burden of proving an exemption or an exemption from a definition is upon the person claiming it.