

By: Senator(s) Browning

To: Public Utilities;  
Finance

## SENATE BILL NO. 2130

1 AN ACT TO CREATE THE "MISSISSIPPI TELECOMMUNICATIONS  
2 MARKETING ACT"; TO PROVIDE PROCEDURES FOR CONFIRMATION OF CHANGES  
3 IN SELECTION OF A PRIMARY LONG DISTANCE CARRIER GENERATED BY  
4 TELEMARKETING; TO PRESCRIBE THE CONTENTS OF A LETTER OF AGENCY  
5 WHICH MUST BE OBTAINED FROM A CUSTOMER FOR A PRIMARY LONG DISTANCE  
6 CARRIER CHANGE; TO PROVIDE INVESTIGATION AND REPORTING  
7 REQUIREMENTS; TO PROHIBIT THE FORGERY OR FALSIFICATION OF CUSTOMER  
8 AUTHORIZATION OF A PRIMARY LONG DISTANCE CARRIER CHANGE; TO  
9 PROVIDE PENALTIES FOR WILLFUL VIOLATIONS OF THE ACT; AND FOR  
10 RELATED PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE  
11 OF MISSISSIPPI:

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13 SECTION 1. **Short title.**

14 This act shall be known and may be cited as the "Mississippi  
15 Telecommunications Marketing Act."

16 SECTION 2. **Definitions.**

17 As used in this act, the term:

18 (a) "Commission" means the Mississippi Public Service  
19 Commission.

20 (b) "Local exchange company" means a telecommunications  
21 company authorized to provide local exchange service as described  
22 in this act.

23 (c) "Local exchange services" means services offered  
24 for the transmission and utilization of two-way interactive  
25 communications and associated usage with the local calling area.

26 (d) "Telecommunications company" means any person,  
27 firm, partnership, corporation, association, or municipal, county,  
28 or local governmental entity offering telecommunications services  
29 to the public for hire.

30 (e) "Telecommunications services" means the services  
31 for the transmission of two-way interactive communications to the

32 public for hire. For purposes of illustration, the term  
33 "telecommunications services" includes without limitation local  
34 exchange services and interconnection services.

35 **SECTION 3. Procedures for confirmation of changes in**  
36 **selection of a primary long distance carrier generated by**  
37 **telemarketing.**

38 (1) No telecommunications company shall submit a customer's  
39 local exchange company a change order for the customer's primary  
40 carrier of long distance service which is generated by outbound  
41 telemarketing unless and until the telecommunications company has  
42 obtained the customer's written authorization in a form that meets  
43 the requirements of Section 4 of this act.

44 (2) All letters of agency, recordings or other evidence of  
45 change orders shall be maintained by the soliciting  
46 telecommunications company for at least one (1) year from the date  
47 the customer's service was switched. Failure to maintain such  
48 records shall constitute prima-facie evidence that consent from  
49 the customer was not obtained.

50 (3) Any telecommunications company's telemarketing or direct  
51 mail solicitations or confirmation cards soliciting to change a  
52 customer's primary long distance carrier shall include the  
53 following disclosures:

54 (a) Identification of the telecommunications company  
55 soliciting the change;

56 (b) That the purpose of the call or confirmation card  
57 is to solicit a change of the customer's primary carrier of long  
58 distance service;

59 (c) That the customer's long distance service may not  
60 be changed unless and until the requested change is confirmed in  
61 accordance with this section and Section 5 of this act; and

62 (d) A description of any charge that may be imposed  
63 upon the customer by any party for processing the primary long  
64 distance carrier change.

65 (4) Customer requests for other services, such as travel,  
66 calling card or prepaid calling card services, do not constitute a  
67 change in the long distance carrier.

68 (5) The requirements of this section do not apply to

69 consumer initiated calls.

70 (6) A request for information by a customer shall not be  
71 considered a request for a change of a primary long distance  
72 carrier, and no confirmation card requiring the customer to deny  
73 or cancel a service order may be sent out with any information  
74 package related to a customer's request for information.

75 SECTION 4. **Contents of letter of agency.**

76 (1) A telecommunications company relying on a written  
77 authorization from a customer for a primary long distance carrier  
78 change must obtain a letter of agency as specified in this  
79 section. Any letter of agency that does not conform with this  
80 section is invalid.

81 (2) The letter of agency shall be a separate document, or an  
82 easily separable document containing only the authorizing language  
83 described in subsection (5) of this section, having the sole  
84 purpose of authorizing a telecommunications company to initiate a  
85 primary long distance carrier change. The letter of agency must  
86 be signed and dated by the subscriber to the telephone line or  
87 lines requesting the primary long distance carrier change.

88 (3) The letter of agency shall not be combined with  
89 inducements of any kind on the same document.

90 (4) Notwithstanding subsections (2) and (3) of this section,  
91 the letter of agency may be combined with checks that contain only  
92 the required letter of agency language prescribed in subsection  
93 (5) of this section and the necessary information to make the  
94 check a negotiable instrument. The letter of agency check shall  
95 not contain any promotional language or material. The letter of  
96 agency check shall contain, on the front of the check in easily  
97 readable, boldface type at least as large and as dark as any other  
98 on the front of the check, a notice that the customer is  
99 authorizing a primary long distance carrier change by signing the  
100 check. The letter of agency language also shall be placed near  
101 the signature line on the back of the check.

102 (5) At a minimum, the letter of agency must be printed in a  
103 type of a size and readability equal to at least 12-point New  
104 Roman font and must contain clear and unambiguous language that  
105 confirms:

106 (a) The customer's billing name and address and each  
107 telephone number to be covered by the primary long distance  
108 carrier change order;

109 (b) The decision to change the customer's primary long  
110 distance service from the current telecommunications company to  
111 the prospective telecommunications company;

112 (c) That the customer designates the telecommunications  
113 company to act as the customer's agent for the primary long  
114 distance carrier change;

115 (d) That the customer understands that any primary long  
116 distance carrier selection the customer chooses may involve a  
117 charge to the customer for changing the customer's primary carrier  
118 and could involve a charge for changing back to the original  
119 primary carrier.

120 (6) Letters of agency shall not suggest or require that a  
121 customer take some action in order to retain the customer's  
122 current telecommunications company.

123 (7) If any portion of a letter of agency is translated into  
124 another language, then all portions of the letter of agency must  
125 be translated into that language. Every letter of agency must be  
126 translated into the same language as any promotional materials,  
127 oral descriptions or instructions provided with the letter of  
128 agency.

129 **SECTION 5. Investigation and reporting requirements.**

130 (1) A customer shall first report any unwanted, unauthorized  
131 change of the customer's primary long distance carrier to the  
132 customer's current primary long distance carrier or the  
133 commission; and, thereafter, such carrier shall investigate this  
134 complaint along with the soliciting long distance carrier in order

135 to determine if the change was authorized in accordance with the  
136 procedures specified in Section 3 and 4 of this act. If the  
137 customer's current primary long distance carrier and the  
138 soliciting long distance carrier have exhausted all means of  
139 making a determination regarding authorization of such change,  
140 then they may employ the assistance of the commission in resolving  
141 the complaint.

142 (2) If the soliciting carrier subscribes to an expedited  
143 primary interexchange carrier switchback service, no investigation  
144 will be conducted by the customer's current primary local exchange  
145 carrier unless the customer specifically requests that an  
146 investigation be conducted. In these situations, the customer  
147 shall be switched back promptly to the former primary long  
148 distance carrier at no charge to the customer, consistent with  
149 this act.

150 (3) All local exchange companies shall maintain monthly  
151 records of the number of unauthorized changes and expedited  
152 switchbacks of a customer's primary long distance service carrier  
153 and shall report such data to the commission on a quarterly basis  
154 within forty-five (45) days following the end of the quarter.

155 (4) Nothing in this section shall be construed to require a  
156 customer reporting any unwanted, unauthorized change to exhaust  
157 any administrative remedy or remedies that such customer may have  
158 available by law before filing an action under the provisions of  
159 Section 9 of this act.

160 **SECTION 6. Forgery or falsification prohibited.**

161 Any employee, representative or agent of a telecommunications  
162 company who forges a customer's signature on a letter of agency or  
163 otherwise falsifies evidence of customer authorization of a change  
164 of a primary long distance carrier shall be guilty of a  
165 misdemeanor. Each instance of such forgery or falsification shall  
166 be a separate offense.

167 **SECTION 7. Penalty for willful violation.**

168 Any willful violation of this act is subject to enforcement  
169 as provided in Sections 77-1-53, 77-3-81 and 77-3-83. Continued  
170 willful violations of this act may also constitute grounds for  
171 revocation of a telecommunications company's authority or  
172 certificate to provide service in Mississippi. Notwithstanding  
173 anything to the contrary contained elsewhere in this act, any  
174 other activity or conduct engaged in during the course of changing  
175 a customer's primary long distance carrier which is intended to  
176 mislead, deceive, confuse or perpetrate a fraud or unfair or  
177 deceptive act or practice shall constitute cause, within the  
178 discretion of the commission, to invoke the penalties or  
179 revocation, or both, described in this section.

180 **SECTION 8. Factual findings by Public Service Commission.**

181 If, after a hearing on a complaint, the commission shall  
182 determine that the complainant's selection of a primary long  
183 distance carrier was switched in violation of this act, the  
184 commission may make factual findings regarding the amount of  
185 damages suffered by the complainant as a result of the  
186 unauthorized switch. Such damages shall be calculated as the  
187 amount of the difference between the charges for the unauthorized  
188 and the authorized service from the date of the unauthorized  
189 switch in the complainant's service.

190 **SECTION 9. Cause of action for damages.**

191 In the event that the remedies provided by Section 5 of this  
192 act fail to restore a person or entity to that person's or  
193 entity's selected primary carrier of long distance service and  
194 fail to reimburse the person or entity for the difference between  
195 the charges for the unauthorized and the authorized service,  
196 within ninety (90) days of the person's or entity's report of an  
197 unwanted, unauthorized change of a primary long distance carrier  
198 to the carriers or the commission as provided in Section 5 of this  
199 act, then such person or entity whose primary carrier of long  
200 distance service has been switched in violation of this act may

201 bring an action to recover damages from the telecommunications  
202 company responsible for the violation. Notwithstanding Section  
203 77-3-85 or any other provision of law to the contrary, such action  
204 may be brought in any county of this state in which the  
205 telecommunications company transacts business within twenty-four  
206 (24) months of the date of the unauthorized switch of a primary  
207 carrier; provided, however, that the running of the statute of  
208 limitations shall be tolled during the ninety-day period during  
209 which the matter is under investigation pursuant to Section 5 of  
210 this act. Such action shall proceed in all respects like other  
211 civil suits for damages, except that on the trial of such suits  
212 any findings of the commission made pursuant to Section 8 of this  
213 act shall be prima-facie evidence of the facts stated therein, and  
214 damages shall be calculated as three (3) times the amount of the  
215 difference between the charges for the unauthorized and the  
216 authorized service from the date of the unauthorized switch in the  
217 complainant's service. A prevailing plaintiff shall be awarded  
218 reasonable attorneys' fees and expenses of litigation incurred in  
219 connection with an action brought under this section.

220 SECTION 10. **Construction.**

221 (1) Nothing in this act shall be construed to limit or  
222 repeal the application of any state or federal law or regulation  
223 regarding telemarketing. In addition, nothing in this act shall  
224 be construed to limit the application of any such law or  
225 regulation to telecommunications companies which engage in  
226 telemarketing.

227 (2) Nothing in this act shall prohibit a telecommunications  
228 company from recovering the cost of conducting investigations and  
229 reporting unauthorized changes of a customer's primary long  
230 distance carrier through tariffed charges or through rates filed  
231 with the commission which are applicable to the carrier making  
232 such an unauthorized charge.

233 SECTION 11. This act shall take effect and be in force from

234 and after July 1, 1999.