

By: Ford, McBride

To: Public Utilities

HOUSE BILL NO. 710

1 AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL  
2 SUBSCRIBERS WHO HAVE GIVEN NOTICE OF THEIR OBJECTION TO SUCH CALLS  
3 TO THE PUBLIC SERVICE COMMISSION; TO REQUIRE THE PUBLIC SERVICE  
4 COMMISSION TO ESTABLISH A "NO-CALLS" DATABASE TO COLLECT SUCH  
5 OBJECTIONS; TO RESTRICT THE USE OF INFORMATION CONTAINED IN THE  
6 DATABASE; TO REQUIRE ALL TELEPHONE SOLICITORS TO REGISTER WITH THE  
7 PUBLIC SERVICE COMMISSION BEFORE CONDUCTING TELEPHONIC  
8 SOLICITATIONS AND TO PURCHASE THE "NO-CALLS" DATABASE FROM THE  
9 COMMISSION; TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO  
10 PROMULGATE RULES NECESSARY TO EFFECTUATE THIS ACT; TO PROHIBIT  
11 TELEPHONE SOLICITORS FROM BLOCKING RESIDENTIAL SUBSCRIBERS' USE OF  
12 CALLER IDENTIFICATION SERVICES; TO PROVIDE CIVIL PENALTIES FOR  
13 VIOLATIONS OF THIS ACT; TO BRING FORWARD SECTION 77-3-603,  
14 MISSISSIPPI CODE 1972, WHICH REGULATES THE GENERAL CONDUCT OF  
15 TELEPHONE SOLICITORS; TO BRING FORWARD SECTION 77-3-605,  
16 MISSISSIPPI CODE OF 1972, WHICH REQUIRES TELEPHONE SOLICITORS TO  
17 REGISTER WITH THE ATTORNEY GENERAL'S OFFICE AND TO OBTAIN A SURETY  
18 BOND; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 SECTION 1. This article shall be known and may be cited as  
21 the "Mississippi Telephonic Solicitation Act."

22 SECTION 2. The Legislature finds and declares that the use  
23 of the telephone to make all types of solicitations to consumers  
24 is pervasive. The Legislature further finds that these  
25 communications can amount to a nuisance, an invasion of privacy,  
26 and can create a health and safety risk for certain consumers who  
27 maintain their phone service primarily for emergency medical  
28 situations. The purpose of this act is to give consumers a tool  
29 by which to object to these telemarketing calls.

30           SECTION 3. For the purposes of this article, the following  
31 words and phrases shall have the meanings ascribed in this section  
32 unless the context clearly indicates otherwise:

33           (a) "Consumer" means any person to whom has been  
34 assigned in the State of Mississippi any residential telephone  
35 line and corresponding telephone number.

36           (b) "Caller Identification Service" means a type of  
37 telephone service that permits telephone subscribers to see the  
38 telephone number and name of the person or entity to whom that  
39 telephone number is assigned of incoming telephone calls.

40           (c) "Telephone solicitor" means any person, firm,  
41 entity, organization, partnership, association, corporation,  
42 charitable entity, or a subsidiary or affiliate thereof, who  
43 engages in any type of telephone solicitation on his or her own  
44 behalf or through representatives, independent contractors,  
45 salespersons, agents, automated dialing machines or others.

46           (d) "Telephone solicitation" means any telephonic  
47 communication to a consumer for the purpose of persuading,  
48 enticing, requesting, petitioning or otherwise seeking to induce a  
49 consumer to take some action. Telephone solicitation includes,  
50 but is not limited to, communications with a person where:

51                   (i) A gift, award or prize is offered to a  
52 consumer;

53                   (ii) A telephone call response is invited from the  
54 consumer;

55                   (iii) The salesperson intends to complete a sale  
56 or a consumer is invited to enter into an agreement to purchase  
57 during the course of the telephone call; or

58                   (iv) The communication involves the representation  
59 of a price, quality or availability of consumer goods and  
60 services, and such communication invites a response by telephone

61 or is followed by a call to the consumer by a salesperson.

62 (e) "Commission" means the Mississippi Public Service  
63 Commission.

64 (f) "Doing business in this state" refers to businesses  
65 that conduct telephonic sales calls from a location in the State  
66 of Mississippi or from other states or nations to consumers  
67 located in this state.

68 SECTION 4. (1) No telephone solicitor may make or cause to  
69 be made any telephone solicitation to any consumer in this state  
70 unless the telephone solicitor has purchased the most current  
71 "no-calls" database from the commission.

72 (2) No telephone solicitor may make or cause to be made any  
73 telephone solicitation to any consumer in this state who has given  
74 notice to the commission of his or her objection to receiving  
75 telephone solicitations.

76 (3) The commission shall establish and operate a "no-calls"  
77 database composed of a list of telephone numbers of consumers who  
78 have given notice of their objection to receiving telephone  
79 solicitations.

80 (4) Each local exchange company and each competing local  
81 exchange carrier shall provide written notification on a  
82 semiannual basis to each of its consumers, beginning on July 1,  
83 2000, of the opportunity to provide notification to the commission  
84 that the consumer objects to receiving telephone solicitations.

85 SECTION 5. All telephone solicitors shall register with the  
86 commission before conducting any telephonic solicitations in the  
87 State of Mississippi.

88 SECTION 6. The commission may promulgate rules necessary to

89 effectuate this article, including, but not limited to, the  
90 following:

91 (a) Methods by which consumers may give notice to the  
92 commission of their objection to receiving solicitations or  
93 revocation of the notice;

94 (b) Methods by which a notice of objection becomes  
95 effective and the effect of a change of telephone number on the  
96 notice;

97 (c) Methods by which objections and revocations are  
98 collected and added to the database;

99 (d) Methods by which a person or entity desiring to  
100 make telephone solicitations may obtain access to the database as  
101 required to avoid calling the telephone number of consumers  
102 included in the database;

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

105 (f) The process by which telephone solicitors must  
106 register with the commission for the purpose of conducting  
107 telephonic solicitations in the state;

108 (g) Establishment of fees to be charged by the  
109 commission to telephone solicitors for access to or for paper or  
110 electronic copies of the database on an annual basis; and

111 (h) All other matters relating to the database that the  
112 commission deems necessary.

113 SECTION 7. If the Federal Communications Commission  
114 establishes a single national database of telephone numbers of  
115 consumers who object to receiving telephone solicitations, the  
116 commission shall include the portion of the single national

117 database that relates to the State of Mississippi in the database  
118 established under this article.

119 SECTION 8. Information contained in the database established  
120 pursuant to this article may be used and accessed only for the  
121 purpose of compliance with this article and shall not be otherwise  
122 subject to public inspection or disclosure. Such information  
123 shall be exempt from the Mississippi Public Records Act of 1983.

124 SECTION 9. A special fund is created in the State Treasury  
125 into which all fees collected under this article shall be  
126 deposited to be expended by the commission for the implementation  
127 and administration of this article. At the end of each fiscal  
128 year, unexpended monies remaining in the fund shall not revert to  
129 any other fund of the state, but shall remain available for  
130 appropriations to administer this article. The Legislature shall  
131 appropriate annually from the fund the amount necessary for the  
132 administration of this article to the commission.

133 SECTION 10. Any person or entity who makes a telephone  
134 solicitation to a consumer in this state who is not listed on the  
135 most current "no-calls" database shall, at the beginning of each  
136 call, announce clearly his or her name, the company he or she  
137 represents and the purpose of the call. Such calls may only be  
138 made between the hours of 9:00 a.m. and 8:00 p.m. No telephone  
139 solicitation shall be made on a Sunday.

140 No person or entity who makes a telephone solicitation to a  
141 consumer in this state may utilize any method which blocks or  
142 otherwise circumvents the use of Caller Identification Service by  
143 the consumer.

144 SECTION 11. The commission may investigate alleged

145 violations and initiate proceedings relative to a violation of  
146 this article or any rules and regulations promulgated pursuant to  
147 this article. Such proceedings include, without limitation,  
148 proceedings to issue a cease and desist order, and to issue an  
149 order imposing a civil penalty not to exceed Five Thousand Dollars  
150 (\$5,000.00) for each violation. The commission shall afford an  
151 opportunity for a fair hearing to the alleged violator or  
152 violators after giving written notice of the time and place for  
153 the hearing. Failure to appear at any such hearing may result in  
154 the commission finding the alleged violator or violators liable by  
155 default. Any telephone solicitor found to have violated this  
156 article, pursuant to a hearing or by default, may be subject to a  
157 civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for  
158 each violation to be assessed and collected by the commission.  
159 Each telephonic communication shall constitute a separate  
160 violation.

161 All penalties collected by the commission shall be deposited  
162 in the special fund created under Section 9 for the administration  
163 of this article.

164 The commission may issue subpoenas, require the production of  
165 relevant documents, administer oaths, conduct hearings and do all  
166 things necessary in the course of investigating, determining and  
167 adjudicating an alleged violation.

168 The remedies, duties, prohibitions and penalties set forth  
169 under this article shall not be exclusive and shall be in addition  
170 to all other causes of action, remedies and penalties provided by  
171 law, including, but not limited to, the penalties provided by  
172 Section 77-1-53.

173        SECTION 12. Any person who has received a telephone  
174 solicitation in violation of this article or any rules and  
175 regulations promulgated pursuant to this article may file a  
176 complaint with the commission. The complaint will be processed  
177 pursuant to complaint procedures established by the commission.

178        SECTION 13. The commission is granted personal jurisdiction  
179 over any telephone solicitor, whether a resident or a nonresident,  
180 notwithstanding that telephone solicitors are not deemed to be a  
181 public utility, for the purpose of administering this article.  
182 The commission is granted personal jurisdiction over any  
183 nonresident telephone solicitor, its executor, administrator,  
184 receiver, trustee or any other appointed representative of such  
185 nonresident as to an action or proceeding authorized by this  
186 article or any rules and regulations promulgated pursuant to this  
187 article as authorized by Section 13-3-57, and also upon any  
188 nonresident, his or her executor, administrator, receiver, trustee  
189 or any other appointed representative of such nonresident who has  
190 qualified under the laws of this state to do business in  
191 Mississippi. Service of summons and process upon the alleged  
192 violator of this article shall be had or made in the manner  
193 provided by the Mississippi Rules of Civil Procedure.

194        SECTION 14. Any party aggrieved by any final order of the  
195 commission pursuant to this article, or any rules and regulations  
196 promulgated pursuant to this article, shall have the right of  
197 appeal to the Chancery Court the First Judicial District of Hinds  
198 County, Mississippi.

199        SECTION 15. A provider of telephonic Caller Identification  
200 Service, local exchange telephone company or long distance company

201 certificated by the commission may not be held liable for  
202 violations of this article committed by other persons or entities.

203       SECTION 16. If any section, paragraph, sentence, phrase or  
204 any part of this article shall be held invalid or  
205 unconstitutional, such holding shall not affect any other section,  
206 paragraph, sentence, clause, phrase or part of this article which  
207 is not in and of itself invalid or unconstitutional. Moreover, if  
208 the application of this article, or any portion of it, to any  
209 person or circumstance is held invalid, the invalidity shall not  
210 affect the application of this article to other persons or  
211 circumstances which can be given effect without the invalid  
212 provision or application.

213       SECTION 17. This act shall be codified as a new article  
214 within Chapter 3, Title 77, Mississippi Code of 1972.

215       SECTION 18. Section 77-3-603, Mississippi Code of 1972, is  
216 brought forward as follows:

217       77-3-603. Any telephone solicitor who makes an unsolicited  
218 telephonic sales call to a residential telephone number shall:

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

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

227           (c) Discontinue the call immediately if at any time  
228 during the conversation the person being solicited expresses

229 disinterest in continuing the call or sales presentation.

230 SECTION 19. Section 77-3-605, Mississippi Code of 1972, is  
231 brought forward as follows:

232 77-3-605. Any telephone solicitor shall apply for a  
233 certificate of registration from the Office of the Attorney  
234 General as a condition for doing business in this state. The  
235 certificate of registration shall be in a form as prescribed by  
236 the Attorney General.

237 The application for a certificate of registration shall be  
238 accompanied by a surety bond in the penal sum of Seventy-five  
239 Thousand Dollars (\$75,000.00) with conditions and in a form  
240 prescribed by the Attorney General. The bond shall provide for  
241 the indemnification of any person suffering loss as the result of  
242 any fraud, misrepresentation or violation of Sections 77-3-601  
243 through 77-3-619 by the principal. The term of the bond shall be  
244 continuous, but it shall be subject to cancellation by the surety  
245 in the manner described in this section. The surety may terminate  
246 the bond upon giving a sixty-day written notice to the principal  
247 and to the Attorney General, but the liability of the surety for  
248 acts of the principal and its agents shall continue during the  
249 sixty (60) days of cancellation notice. The notice does not  
250 absolve the surety from liability which accrues before the  
251 cancellation becomes final but which is discovered after that date  
252 and which may have arisen at any time during the term of the bond.  
253 Unless the bond is replaced by that of another surety before the  
254 expiration of the sixty (60) days' notice of cancellation, the  
255 certificate of registration shall be suspended. Any person  
256 required pursuant to this section to file a bond with an

257 application for a certificate of registration may file, in lieu  
258 thereof, cash, a certificate of deposit, or government bonds in  
259 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such  
260 deposit is subject to the same terms and conditions as are  
261 provided for in the surety bond required herein. Any interest or  
262 earnings on such deposits are payable to the depositor.

263 SECTION 20. This act shall take effect and be in force from  
264 and after July 1, 2000.