

By: Furniss

To: Public Utilities

SENATE BILL NO. 3135

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 DATABASE TO COLLECT SUCH OBJECTIONS; TO
5 RESTRICT THE USE OF INFORMATION CONTAINED IN THE DATABASE; TO
6 REQUIRE ALL TELEPHONE SOLICITORS TO REGISTER WITH THE PUBLIC
7 SERVICE COMMISSION PRIOR TO CONDUCTING TELEPHONIC SOLICITATION AND
8 TO PROVIDE FEES THEREFOR; TO AUTHORIZE THE PUBLIC SERVICE
9 COMMISSION TO PROMULGATE RULES NECESSARY TO EFFECTUATE THIS ACT;
10 TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR
11 RELATED PURPOSES.

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

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

15 SECTION 2. The use of the telephone to make all types of
16 solicitations to consumers is pervasive. This act gives consumers
17 a tool by which to object to telemarketing calls as these
18 communications can amount to a nuisance, an invasion of privacy,
19 and can create a health and safety risk for certain consumers who
20 maintain their phone service primarily for emergency medical
21 situations. Notwithstanding any other act or provisions of the
22 law to the contrary, this article shall control.

23 SECTION 3. For the purposes of this article, the following
24 words and terms shall have the meaning ascribed to them herein:

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

28 (b) "Caller Identification Service" means a type of
29 telephone service which permits telephone subscribers to see the
30 telephone number and name of incoming telephone calls.

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

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

42 (i) A gift, award or prize is offered to a
43 consumer;

44 (ii) A telephone call response is invited from the
45 consumer;

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

49 (iv) The communication involves the representation
50 of a price, quality or availability of consumer goods and
51 services, and such communication invites a response by telephone
52 or is followed by a call to the consumer by a salesperson.

53 (e) "Commission" means the Mississippi Public Service
54 Commission.

55 (f) "Doing business in this state" refers to businesses
56 which conduct telephonic sales calls from a location in the State
57 of Mississippi or from other states or nations to consumers
58 located in this state.

59 SECTION 4. (1) No telephone solicitor may make or cause to
60 be made any telephone solicitation to any consumer in this state
61 unless the telephone solicitor has purchased the most current
62 "no-calls" database from the commission or the entity under
63 contract with the commission.

64 (2) No telephone solicitor may make or cause to be made any
65 telephone solicitation to any consumer in this state who has given
66 notice to the commission or the entity under contract with the
67 commission, of his or her objection to receiving telephone
68 solicitations.

69 (3) The commission, or an entity under contract with the
70 commission, shall establish and operate a "no-calls" database
71 composed of a list of telephone numbers of consumers who have
72 given notice of their objection to receiving telephone
73 solicitations. The "no-calls" database may be operated by the
74 commission or by another entity under contract with the
75 commission.

76 (4) Each local exchange company and each competing local
77 exchange carrier shall provide written notification on a
78 semiannual basis to each of its consumers, beginning July 1, 2000,
79 of the opportunity to provide notification to the commission or
80 the entity under contract with the commission, that the consumer
81 objects to receiving telephone solicitations. The notification
82 shall be disseminated at the option of the carrier, by television,
83 radio or newspaper advertisements, written correspondence, bill
84 inserts or messages, telephone book subscription forms or any
85 other method approved by the commission.

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

89 SECTION 6. The commission is authorized to promulgate rules
90 necessary to effectuate this article, including, but not limited
91 to, the following:

92 (a) Methods by which consumers may give notice to the
93 commission or its contractor of their objection to receive
94 solicitations or revocation of the notice;

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

97 notice;

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

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

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

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

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

113 (h) All other matters relating to the database that the
114 commission deems necessary.

115 SECTION 7. If the Federal Communications Commission
116 establishes a single national database of telephone numbers of
117 consumers who object to receiving telephone solicitations, the
118 commission shall include the portion of the single national
119 database that relates to the State of Mississippi in the database
120 established under this article.

121 SECTION 8. Information contained in the database established
122 pursuant to this article may be used and accessed only for the
123 purpose of compliance with this article and shall not be otherwise
124 subject to public inspection or disclosure.

125 SECTION 9. All fees collected under the provisions of this
126 article shall be deposited into a special fund in the State
127 Treasury to be expended by the commission for the implementation
128 and administration of this article. At the end of each fiscal
129 year, unexpended monies remaining in the fund shall not revert to

130 any other fund of the state, but shall remain available for
131 appropriations to administer this article. The Legislature shall
132 annually appropriate from the fund the amount necessary for the
133 administration of this article to the commission.

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

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

145 SECTION 11. The commission is authorized to investigate
146 alleged violations and to initiate proceedings relative to a
147 violation of this article or any rules and regulations promulgated
148 pursuant to this article. Such proceedings include, without
149 limitation, proceedings to issue a cease and desist order, and to
150 issue an order imposing a civil penalty not to exceed Five
151 Thousand Dollars (\$5,000.00) for each violation. The commission
152 shall afford an opportunity for a fair hearing to the alleged
153 violator(s) after giving written notice of the time and place for
154 said hearing. Failure to appear at any such hearing may result in
155 the commission finding the alleged violator(s) liable by default.

156 Any telephone solicitor found to have violated this article,
157 pursuant to a hearing or by default, may be subject to a civil
158 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each
159 violation to be assessed and collected by the commission. Each
160 telephonic communication shall constitute a separate violation.

161 All penalties collected by the commission shall be deposited
162 in the special fund created herein for the administration of this

163 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 and even though they are deemed not to be a public utility, for
181 the purpose of administering the provisions of this article. The
182 commission is granted personal jurisdiction over any nonresident
183 telephone solicitor, its executor, administrator, receiver,
184 trustee or any other appointed representative of such nonresident
185 as to an action or proceeding authorized by this article or any
186 rules and regulations promulgated pursuant to this article as
187 authorized by Section 13-3-57, and also upon nonresidents, his or
188 her executor, administrator, receiver, trustee or any other
189 appointed representative of such nonresident who have qualified
190 under the laws of this state to do business herein. Service of
191 summons and process upon the alleged violator of this article
192 shall be had or made as is provided by the Mississippi Rules of
193 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 of Hinds County, Mississippi, First
198 Judicial District.

199 SECTION 15. No provider of telephonic Caller Identification
200 Service, local exchange telephone company or long distance company
201 certificated by the commission may be held liable for violations
202 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. This act shall take effect and be in force from
216 and after July 1, 2000.