

By: Representatives Mayo, Brown, Chism,
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To: Public Utilities

HOUSE BILL NO. 965

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, and who uses the
36 residential line for primarily residential purposes.

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

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

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

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

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

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

59 (iv) The communication involves the representation
60 of a price, quality or availability of consumer goods and
61 services, and such communication invites a response by telephone
62 or is followed by a call to the consumer by a salesperson.

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

65 (f) "Doing business in this state" refers to businesses
66 that conduct telephonic sales calls from a location in the State



67 of Mississippi or from other states or nations to consumers
68 located in this state.

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

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

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

81 (4) Each local exchange company and each competing local
82 exchange carrier shall provide written notification on a
83 semiannual basis to each of its consumers, beginning on July 1,
84 2001, of the opportunity to provide notification to the commission
85 that the consumer objects to receiving telephone solicitations.

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

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

92 (a) Methods by which consumers may give notice to the
93 commission of their objection to receiving solicitations or
94 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 solicitations 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 to telephone solicitors for access to or for paper or
111 electronic copies of the database on an annual basis; and

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

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

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

125 SECTION 9. A special fund is created in the State Treasury
126 into which all fees collected under this article shall be
127 deposited 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 appropriate annually 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 announce clearly, at the
137 beginning of each call, 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 may investigate alleged
146 violations and initiate proceedings relative to a violation of
147 this article or any rules and regulations promulgated pursuant to
148 this article. Such proceedings include, without limitation,
149 proceedings to issue a cease and desist order, and to issue an
150 order imposing a civil penalty not to exceed Five Thousand Dollars
151 (\$5,000.00) for each violation. The commission shall afford an
152 opportunity for a fair hearing to the alleged violator or
153 violators after giving written notice of the time and place for
154 the hearing. Failure to appear at any such hearing may result in
155 the commission finding the alleged violator or violators liable by
156 default. Any telephone solicitor found to have violated this
157 article, pursuant to a hearing or by default, may be subject to a
158 civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for
159 each violation to be assessed and collected by the commission.
160 Each telephonic communication shall constitute a separate
161 violation.

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



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

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

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

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

195 SECTION 14. Any party aggrieved by any final order of the
196 commission pursuant to this article, or any rules and regulations
197 promulgated pursuant to this article, shall have the right of



198 appeal to the Chancery Court the First Judicial District of Hinds
199 County, Mississippi.

200 SECTION 15. A provider of telephonic Caller Identification
201 Service, local exchange telephone company or long distance company
202 certificated by the commission may not be held liable for
203 violations of this article committed by other persons or entities.

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

214 SECTION 17. Sections 1 through 16 of this act shall be
215 codified as a new article within Chapter 3, Title 77, Mississippi
216 Code of 1972.

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

219 77-3-603. Any telephone solicitor who makes an unsolicited
220 telephonic sales call to a residential telephone number shall:

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

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



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

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

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

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



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

265 SECTION 20. This act shall take effect and be in force from
266 and after July 1, 2001.

