MISSISSIPPI LEGISLATURE

By: Representatives Mayo, Brown, Chism, Harrison, Holloway, Moak, Morris, Nicholson, Simpson, Whittington, Zuber

To: Public Utilities

HOUSE BILL NO. 965

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

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

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

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

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

(a) "Consumer" means any person to whom has been assigned in the State of Mississippi any residential telephone number.
line and corresponding telephone number, and who uses the residential line for primarily residential purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Methods by which objections and revocations are collected and added to the database;
(d) Methods by which a person or entity desiring to 
make telephone solicitations may obtain access to the database as 
required to avoid calling the telephone number of consumers 
included in the database;

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

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

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

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

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

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

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

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

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

SECTION 11. The commission may investigate alleged
violations and initiate proceedings relative to a violation of
this article or any rules and regulations promulgated pursuant to
this article. Such proceedings include, without limitation,
proceedings to issue a cease and desist order, and to issue an
order imposing a civil penalty not to exceed Five Thousand Dollars
($5,000.00) for each violation. The commission shall afford an
opportunity for a fair hearing to the alleged violator or
violators after giving written notice of the time and place for
the hearing. Failure to appear at any such hearing may result in
the commission finding the alleged violator or violators liable by
default. Any telephone solicitor found to have violated this
article, pursuant to a hearing or by default, may be subject to a
civil penalty not to exceed Five Thousand Dollars ($5,000.00) for
each violation to be assessed and collected by the commission.
Each telephonic communication shall constitute a separate
violation.

All penalties collected by the commission shall be deposited
in the special fund created under Section 9 for the administration
of this article.
The commission may issue subpoenas, require the production of relevant documents, administer oaths, conduct hearings and do all things necessary in the course of investigating, determining and adjudicating an alleged violation.

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

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

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

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

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

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

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

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

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

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

(b) Identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation; and
(c) Discontinue the call immediately if at any time during the conversation the person being solicited expresses disinterest in continuing the call or sales presentation.

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

77-3-605. 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.

The application for a certificate of registration shall be accompanied by 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. 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. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. 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. 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. 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. Any person required pursuant to this section 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). Such
SECTION 20. This act shall take effect and be in force from and after July 1, 2001.