

By: Representative Barnett (116th)

To: Public Utilities

HOUSE BILL NO. 1414

1 AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL
 2 SUBSCRIBERS WHO GIVE NOTICE OF THEIR OBJECTION TO SUCH CALLS TO
 3 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; AND FOR RELATED PURPOSES.

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

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

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

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

28 (a) "Consumer" means a person to whom is assigned in
 29 the State of Mississippi a residential telephone line and
 30 corresponding telephone number, who uses the residential line for
 31 primarily residential purposes.

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

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

42 (d) "Telephone solicitation" means any voice
43 communication over a telephone line for the purpose of encouraging
44 the purchase or rental of, or investment in property, or for the
45 purpose of soliciting a sale of any consumer goods or services,
46 but does not include communications:

47 (i) To any residential subscriber with that
48 subscriber's prior invitation or permission;

49 (ii) By or on behalf of any person or entity with
50 whom a residential subscriber has a current business relationship;
51 or

52 (iii) In connection with an existing debt or
53 contract, the payment of which has not been completed at the time
54 of the call.

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

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

61 SECTION 4. (1) A telephone solicitor may not make or cause
62 to be made any telephone solicitation to any consumer in this
63 state unless the telephone solicitor has purchased the "no-calls"

64 database from the commission or the entity under contract with the
65 commission.

66 (2) A telephone solicitor may not make or cause to be made
67 any telephone solicitation to any consumer in this state who has
68 given notice to the commission or the entity under contract with
69 the commission of his or her objection to receiving telephone
70 solicitations.

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

78 (4) Each local exchange company and each competing local
79 exchange carrier shall provide written notification on a
80 semiannual basis to each of its consumers, beginning on July 1,
81 2001, of the opportunity to provide notification to the commission
82 or the entity under contract with the commission that the consumer
83 objects to receiving telephone solicitations. The notification
84 must be disseminated, at the option of the carrier, by television,
85 radio or newspaper advertisements, written correspondence, bill
86 inserts or messages, a publication in the consumer information
87 pages of the local telephone directory or any other method not
88 prohibited expressly by the commission.

89 SECTION 5. All telephone solicitors must register with the
90 commission before conducting any telephonic solicitations in the
91 State of Mississippi.

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

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

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

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

103 (d) Methods by which a person or entity desiring to
104 make telephone solicitations may obtain access to the database as
105 required to avoid calling the telephone number of consumers
106 included in the database;

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

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

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

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

118 SECTION 7. If the Federal Communications Commission
119 establishes a single national database of telephone numbers of
120 consumers who object to receiving telephone solicitations, the
121 commission must include the portion of the single national
122 database which relates to the State of Mississippi in the database
123 established under this article.

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

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

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

144 A person or entity who makes a telephone solicitation to a
145 consumer in this state may not utilize knowingly any method that
146 blocks or otherwise circumvents the use of Caller Identification
147 Service by the consumer.

148 SECTION 11. The commission may investigate alleged
149 violations and initiate proceedings relative to a violation of
150 this article or any rules and regulations promulgated pursuant to
151 this article. Such proceedings include, without limitation,
152 proceedings to issue a cease and desist order, and to issue an
153 order imposing a civil penalty not to exceed Five Thousand Dollars
154 (\$5,000.00) for each violation. The commission shall afford an
155 opportunity for a fair hearing to the alleged violator or
156 violators after giving written notice of the time and place for
157 the hearing. Failure to appear at any such hearing may result in
158 the commission finding the alleged violator or violators liable by
159 default. Any telephone solicitor found to have violated this
160 article, pursuant to a hearing or by default, may be subject to a

161 civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for
162 each violation to be assessed and collected by the commission.
163 Each telephonic communication constitutes a separate violation.

164 All penalties collected by the commission must be deposited
165 in the special fund created under Section 9 for the administration
166 of this article.

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

171 The remedies, duties, prohibitions and penalties set forth
172 under this article are not exclusive and are in addition to all
173 other causes of action, remedies and penalties provided by law,
174 including, but not limited to, the penalties provided by Section
175 77-1-53.

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

181 SECTION 13. It is a defense in any action or proceeding
182 brought under Section 11 or 12 of this act that the defendant has
183 established and implemented, with due care, reasonable practices
184 and procedures to effectively prevent telephone solicitations in
185 violation of this article.

186 SECTION 14. The commission is granted personal jurisdiction
187 over any telephone solicitor, whether a resident or a nonresident,
188 notwithstanding that telephone solicitors are not deemed to be a
189 public utility, for the purpose of administering this article.
190 The commission is granted personal jurisdiction over any
191 nonresident telephone solicitor, its executor, administrator,
192 receiver, trustee or any other appointed representative of such
193 nonresident as to an action or proceeding authorized by this

194 article or any rules and regulations promulgated pursuant to this
195 article as authorized by Section 13-3-57, and also upon any
196 nonresident, his or her executor, administrator, receiver, trustee
197 or any other appointed representative of such nonresident who has
198 qualified under the laws of this state to do business in
199 Mississippi. Service of summons and process upon the alleged
200 violator of this article shall be had or made in the manner
201 provided by the Mississippi Rules of Civil Procedure.

202 SECTION 15. Any party aggrieved by any final order of the
203 commission pursuant to this article, or any rules and regulations
204 promulgated pursuant to this article, has the right of appeal to
205 the Chancery Court of the First Judicial District of Hinds County,
206 Mississippi.

207 SECTION 16. A provider of telephonic Caller Identification
208 Service, local exchange telephone company or long distance company
209 certificated by the commission may not be held liable for
210 violations of this article committed by other persons or entities.

211 SECTION 17. If any section, paragraph, sentence, phrase or
212 any part of this article is held invalid or unconstitutional, such
213 holding does not affect any other section, paragraph, sentence,
214 clause, phrase or part of this article which is not in and of
215 itself invalid or unconstitutional. Moreover, if the application
216 of this article, or any portion of it, to any person or
217 circumstance is held invalid, the invalidity does not affect the
218 application of this article to other persons or circumstances
219 which can be given effect without the invalid provision or
220 application.

221 SECTION 18. Sections 1 through 17 of this act shall be
222 codified as a new article within Chapter 3, Title 77, Mississippi
223 Code of 1972.

224 SECTION 19. This act shall take effect and be in force from
225 and after July 1, 2001.