HOUSE BILL NO. 1414

AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL SUBSCRIBERS WHO GIVE 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; 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 a person to whom is assigned in the State of Mississippi a residential telephone line and corresponding telephone number, who uses the residential line for primarily residential purposes.
(b) "Caller Identification Service" means a type of telephone service which 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 voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in property, or for the purpose of soliciting a sale of any consumer goods or services, but does not include communications:

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

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

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

(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) A telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the "no-calls"
database from the commission or the entity under contract with the commission.

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

3. The commission or an entity under contract with 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. The "no-calls" database may be operated by the commission or by another entity under contract with the commission.

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 or the entity under contract with the commission that the consumer objects to receiving telephone solicitations. The notification must be disseminated, at the option of the carrier, by television, radio or newspaper advertisements, written correspondence, bill inserts or messages, a publication in the consumer information pages of the local telephone directory or any other method not prohibited expressly by the commission.

SECTION 5. All telephone solicitors must 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 or its contractor 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 or its contractor 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 must include the portion of the single national database which 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 may not be subject otherwise to public inspection or disclosure.
SECTION 9. A special fund is created in the State Treasury into which all fees collected under this article must 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 may not revert to any other fund of the state, but must 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 8:00 a.m. and 9:00 p.m. No telephone solicitation may be made on a Sunday.

A person or entity who makes a telephone solicitation to a consumer in this state may not utilize knowingly any method that 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 constitutes a separate violation. All penalties collected by the commission must 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 are not exclusive and are 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. It is a defense in any action or proceeding brought under Section 11 or 12 of this act that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this article.

SECTION 14. 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 15. Any party aggrieved by any final order of the
commission pursuant to this article, or any rules and regulations
promulgated pursuant to this article, has the right of appeal to
the Chancery Court of the First Judicial District of Hinds County,
Mississippi.

SECTION 16. 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 17. If any section, paragraph, sentence, phrase or
any part of this article is held invalid or unconstitutional, such
holding does 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 does not affect the
application of this article to other persons or circumstances
which can be given effect without the invalid provision or
application.

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

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