To: Public Utilities

MISSISSIPPI LEGISLATURE                     REGULAR SESSION 2001
By: Senator(s) Robertson, Gollott, Williamson, Hyde-Smith, King, Chaney, Burton, Tollison, Farris, Dearing, Walls, Jordan, Furniss, Chamberlin, Smith, Little, Dawkins, Hewes, Carmichael, Browning, Lee, Cuevas, Johnson (19th), Stogner, Canon, Harden, Gordon

SENATE BILL NO. 2362

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 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 PRIOR TO CONDUCTING TELEGPHONIC SOLICITATION AND TO PROVIDE FEES THEREFOR; TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO PROMULGATE RULES NECESSARY TO EFFECTUATE THIS ACT; 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 use of the telephone to make all types of solicitations to consumers is pervasive. This act gives consumers a tool by which to object to telemarketing calls as 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. Notwithstanding any other act or provisions of the law to the contrary, this article shall control.

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

(a) "Consumer" means any person to whom has been assigned in the State of Mississippi any residential telephone 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 which permits telephone subscribers to see the telephone number and name 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 the 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 express 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 which 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 "no-calls" database from the commission or the entity under contract with 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 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 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 shall 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 expressly prohibited by the commission.

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

SECTION 6. The commission is authorized to 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 receive 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 solicitation 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 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.

SECTION 9. All fees collected under the provisions of this article shall be deposited into a special fund in the State Treasury to be expended by the commission for the implementation of...
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
annually appropriate 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, at the beginning of each
call, announce clearly 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 shall be made on a Sunday.

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

SECTION 11. The commission is authorized to investigate
alleged violations and to 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(s) after giving written notice of the time and place for
said hearing. Failure to appear at any such hearing may result in
the commission finding the alleged violator(s) 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 herein 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. It shall be 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, and even though they are deemed not to be a public utility, for the purpose of administering the provisions of 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 nonresidents, his or her executor, administrator, receiver, trustee or any other
appointed representative of such nonresident who have qualified under the laws of this state to do business herein. Service of summons and process upon the alleged violator of this article shall be had or made as is 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, shall have the right of appeal to the Chancery Court of Hinds County, Mississippi, First Judicial District.

SECTION 16. No provider of telephonic Caller Identification Service, local exchange telephone company or long distance company certificated by the commission may 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 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 18. This act shall be codified as a new article within Chapter 3, Title 77, Mississippi Code of 1972.

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