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To: Public Utilities

SENATE BILL NO. 2362

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 DATABASE TO COLLECT SUCH OBJECTIONS; TO  
5 RESTRICT THE USE OF INFORMATION CONTAINED IN THE DATABASE; TO  
6 REQUIRE ALL TELEPHONE SOLICITORS TO REGISTER WITH THE PUBLIC  
7 SERVICE COMMISSION PRIOR TO CONDUCTING TELEPHONIC SOLICITATION AND  
8 TO PROVIDE FEES THEREFOR; TO AUTHORIZE THE PUBLIC SERVICE  
9 COMMISSION TO PROMULGATE RULES NECESSARY TO EFFECTUATE THIS ACT;  
10 TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR  
11 RELATED PURPOSES.

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

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

15 SECTION 2. The use of the telephone to make all types of  
16 solicitations to consumers is pervasive. This act gives consumers  
17 a tool by which to object to telemarketing calls as these  
18 communications can amount to a nuisance, an invasion of privacy,  
19 and can create a health and safety risk for certain consumers who  
20 maintain their phone service primarily for emergency medical  
21 situations. Notwithstanding any other act or provisions of the  
22 law to the contrary, this article shall control.

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

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

29           (b) "Caller Identification Service" means a type of  
30 telephone service which permits telephone subscribers to see the  
31 telephone number and name of incoming telephone calls.

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

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

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

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

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

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

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

57         SECTION 4. (1) No telephone solicitor may make or cause to  
58 be made any telephone solicitation to any consumer in this state  
59 unless the telephone solicitor has purchased the "no-calls"  
60 database from the commission or the entity under contract with the  
61 commission.

62           (2) No telephone solicitor may make or cause to be made any  
63 telephone solicitation to any consumer in this state who has given  
64 notice to the commission or the entity under contract with the  
65 commission, of his or her objection to receiving telephone  
66 solicitations.

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

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

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

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

91           (a) Methods by which consumers may give notice to the  
92 commission or its contractor of their objection to receive  
93 solicitations or revocation of the notice;

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

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

99           (d) Methods by which a person or entity desiring to  
100 make telephone solicitation may obtain access to the database as  
101 required to avoid calling the telephone number of consumers  
102 included in the database;

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

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

108           (g) Establishment of fees to be charged by the  
109 commission or its contractor to telephone solicitors for access to  
110 or for paper or electronic copies of the database on an annual  
111 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.

124       SECTION 9. All fees collected under the provisions of this  
125 article shall be deposited into a special fund in the State  
126 Treasury to be expended by the commission for the implementation

127 and administration of this article. At the end of each fiscal  
128 year, unexpended monies remaining in the fund shall not revert to  
129 any other fund of the state, but shall remain available for  
130 appropriations to administer this article. The Legislature shall  
131 annually appropriate from the fund the amount necessary for the  
132 administration of this article to the commission.

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

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

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

160 All penalties collected by the commission shall be deposited  
161 in the special fund created herein for the administration of this  
162 article.

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

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

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

177 SECTION 13. It shall be a defense in any action or  
178 proceeding brought under Section 11 or 12 of this act that the  
179 defendant has established and implemented, with due care,  
180 reasonable practices and procedures to effectively prevent  
181 telephone solicitations in violation of this article.

182 SECTION 14. The commission is granted personal jurisdiction  
183 over any telephone solicitor, whether a resident or a nonresident,  
184 and even though they are deemed not to be a public utility, for  
185 the purpose of administering the provisions of this article. The  
186 commission is granted personal jurisdiction over any nonresident  
187 telephone solicitor, its executor, administrator, receiver,  
188 trustee or any other appointed representative of such nonresident  
189 as to an action or proceeding authorized by this article or any  
190 rules and regulations promulgated pursuant to this article as  
191 authorized by Section 13-3-57, and also upon nonresidents, his or  
192 her executor, administrator, receiver, trustee or any other

193 appointed representative of such nonresident who have qualified  
194 under the laws of this state to do business herein. Service of  
195 summons and process upon the alleged violator of this article  
196 shall be had or made as is provided by the Mississippi Rules of  
197 Civil Procedure.

198       SECTION 15. Any party aggrieved by any final order of the  
199 commission pursuant to this article, or any rules and regulations  
200 promulgated pursuant to this article, shall have the right of  
201 appeal to the Chancery Court of Hinds County, Mississippi, First  
202 Judicial District.

203       SECTION 16. No provider of telephonic Caller Identification  
204 Service, local exchange telephone company or long distance company  
205 certificated by the commission may be held liable for violations  
206 of this article committed by other persons or entities.

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

217       SECTION 18. This act shall be codified as a new article  
218 within Chapter 3, Title 77, Mississippi Code of 1972.

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