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To: Public Utilities

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2296

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 PROVIDE EXEMPTIONS THERETO;
4 TO REQUIRE THE PUBLIC SERVICE COMMISSION TO ESTABLISH A DATABASE
5 TO COLLECT SUCH OBJECTIONS; TO RESTRICT THE USE OF INFORMATION
6 CONTAINED IN THE DATABASE; TO REQUIRE ALL TELEPHONE SOLICITORS TO
7 REGISTER WITH THE PUBLIC SERVICE COMMISSION PRIOR TO CONDUCTING
8 TELEPHONIC SOLICITATION AND TO PROVIDE FEES THEREFOR; TO AUTHORIZE
9 THE PUBLIC SERVICE COMMISSION TO PROMULGATE RULES NECESSARY TO
10 EFFECTUATE THIS ACT; TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF
11 THIS ACT; AND FOR 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 (iii) In connection with an existing debt or
48 contract, the payment of which has not been completed at the time
49 of the call;

50 (iv) By any person soliciting for religious,
51 charitable, political or educational purposes. A person
52 soliciting for other noncommercial purposes is exempt only if that
53 person is soliciting for a nonprofit corporation and if that
54 corporation is properly registered as such with the Secretary of
55 State and is included within the exemption of Section 501(c)(3) or
56 (6) of the Internal Revenue Code;

57 (v) By any licensed securities, commodities or
58 investment broker, dealer or investment adviser, when soliciting
59 within the scope of his or her license, or any licensed associated
60 person of a securities, commodities or investment broker, dealer
61 or investment adviser, when soliciting within the scope of his or
62 her license. As used in this section, "licensed securities,
63 commodities or investment broker, dealer or investment adviser"
64 means a person subject to license or registration as such by the



65 Securities and Exchange Commission, by the National Association of
66 Securities Dealers or other self-regulatory organization as
67 defined by the Securities Exchange Act of 1934, 15 USC Section
68 781, or by an official or agency of this state or of any state of
69 the United States. As used in this section, "licensed associated
70 person of a securities, commodities or investment broker, dealer
71 or investment adviser" means any associated person registered or
72 licensed by the National Association of Securities Dealers or
73 other self-regulatory organization as defined by the Securities
74 Exchange Act of 1934, 15 USC Section 781, or by an official or
75 agency of this state or of any state of the United States;

76 (vi) By any licensed insurance broker, agent or
77 producer, customer representative or solicitor when soliciting
78 within the scope of his or her license. As used in this section,
79 "licensed insurance broker, agent or producer, customer
80 representative or solicitor" means any insurance broker, agent or
81 producer, customer representative or solicitor licensed by an
82 official or agency of this state or of any state of the United
83 States;

84 (vii) By any person soliciting the sale of
85 services provided by a cable television system operating under
86 authority of a franchise or permit;

87 (viii) By any business-to-business sale where:

88 1. The commercial telephone seller has been
89 operating continuously for at least three (3) years under the same
90 business name and has at least fifty percent (50%) of its dollar
91 volume consisting of repeat sales to existing businesses;

92 2. The purchaser business intends to resell
93 or offer for purposes of advertisement or as a promotional item
94 the property or goods purchased; or

95 3. The purchaser business intends to use the
96 property or goods purchased in a recycling, reuse, remanufacturing
97 or manufacturing process.



98 (ix) By any person who solicits contracts for the
99 maintenance or repair of goods previously purchased from the
100 person making the solicitation or on whose behalf the solicitation
101 is made;

102 (x) By any telephone company, or affiliate
103 thereof, or its agents, or a business which is regulated by the
104 Mississippi Public Service Commission, or a Federal Communications
105 Commission licensed cellular telephone company or other bona fide
106 radio telecommunication services provider. For the purposes of
107 this exemption, "affiliate" means a person who directly, or
108 indirectly through one or more intermediaries, controls or is
109 controlled by, or is under common control with, a telephone
110 company regulated by the Mississippi Public Service Commission;

111 (xi) By any person who is licensed pursuant to
112 Section 73-11-41 et seq., and who is soliciting within the scope
113 of the license;

114 (xii) By any person soliciting business from
115 prospective consumers who have an existing business relationship
116 with or who have previously purchased from the business enterprise
117 for which the solicitor is calling, if the solicitor is operating
118 under the same exact business name;

119 (xiii) By a person who has been operating, for at
120 least one (1) year, a retail business establishment under the same
121 name as that used in connection with telemarketing, and both of
122 the following occur on a continuing basis:

123 1. Either products are displayed and offered
124 for sale or services are offered for sale and provided at the
125 business establishment;

126 2. A majority of the seller's business
127 involves the buyer obtaining such products or services at the
128 seller's location.

129 (xiv) By any person or entity which:



130 1. Has been providing telemarketing sales
131 services continuously for at least five (5) years under the same
132 ownership and control;

133 2. Derives seventy-five percent (75%) of its
134 gross telemarketing sales revenues from contracts with persons
135 exempted in this section; and

136 3. Is soliciting on behalf of persons
137 exempted in this section.

138 (xv) By any person who is a licensed real estate
139 salesperson or broker pursuant to Section 73-35-1 et seq. and who
140 is soliciting within the scope of the article;

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

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

147 **SECTION 4.** (1) No telephone solicitor may make or cause to
148 be made any telephone solicitation to any consumer in this state
149 unless the telephone solicitor has purchased the "no-calls"
150 database from the commission or the entity under contract with the
151 commission.

152 (2) No telephone solicitor may make or cause to be made any
153 telephone solicitation to any consumer in this state who has given
154 notice to the commission or the entity under contract with the
155 commission, of his or her objection to receiving telephone
156 solicitations.

157 (3) The commission, or an entity under contract with the
158 commission, shall establish and operate a "no-calls" database
159 composed of a list of telephone numbers of consumers who have
160 given notice of their objection to receiving telephone
161 solicitations. The "no-calls" database may be operated by the



162 commission or by another entity under contract with the
163 commission.

164 (4) Each local exchange company and each competing local
165 exchange carrier shall provide written notification on a
166 semiannual basis to each of its consumers, beginning July 1, 2002,
167 of the opportunity to provide notification to the commission or
168 the entity under contract with the commission, that the consumer
169 objects to receiving telephone solicitations. The notification
170 shall be disseminated at the option of the carrier, by television,
171 radio or newspaper advertisements, written correspondence, bill
172 inserts or messages, a publication in the consumer information
173 pages of the local telephone directory, or any other method not
174 expressly prohibited by the commission.

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

178 **SECTION 6.** The commission is authorized to promulgate rules
179 necessary to effectuate this article, including, but not limited
180 to, the following:

181 (a) Methods by which consumers may give notice to the
182 commission or its contractor of their objection to receive
183 solicitations or revocation of the notice;

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

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

189 (d) Methods by which a person or entity desiring to
190 make telephone solicitation may obtain access to the database as
191 required to avoid calling the telephone number of consumers
192 included in the database;

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



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

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

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

204 **SECTION 7.** If the Federal Trade Commission establishes a
205 single national database of telephone numbers of consumers who
206 object to receiving telephone solicitations, the commission shall
207 include the portion of the single national database that relates
208 to the State of Mississippi in the database established under this
209 article.

210 **SECTION 8.** Information contained in the database established
211 pursuant to this article may be used and accessed only for the
212 purpose of compliance with this article and shall not be otherwise
213 subject to public inspection or disclosure.

214 **SECTION 9.** All fees collected under the provisions of this
215 article shall be deposited into a special fund in the State
216 Treasury to be expended by the commission for the implementation
217 and administration of this article. At the end of each fiscal
218 year, unexpended monies remaining in the fund shall not revert to
219 any other fund of the state, but shall remain available for
220 appropriations to administer this article. The Legislature shall
221 annually appropriate from the fund the amount necessary for the
222 administration of this article to the commission.

223 **SECTION 10.** Any person or entity who makes a telephone
224 solicitation to a consumer in this state who is not listed on the
225 most current "no-calls" database shall, at the beginning of each
226 call, announce clearly his or her name, the company he or she
227 represents and the purpose of the call. Such calls may only be



228 made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard
229 Time. No telephone solicitation shall be made on a Sunday.

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

234 **SECTION 11.** The commission is authorized to investigate
235 alleged violations and to initiate proceedings relative to a
236 violation of this article or any rules and regulations promulgated
237 pursuant to this article. Such proceedings include, without
238 limitation, proceedings to issue a cease and desist order, and to
239 issue an order imposing a civil penalty not to exceed Five
240 Thousand Dollars (\$5,000.00) for each violation. The commission
241 shall afford an opportunity for a fair hearing to the alleged
242 violator(s) after giving written notice of the time and place for
243 said hearing. Failure to appear at any such hearing may result in
244 the commission finding the alleged violator(s) liable by default.
245 Any telephone solicitor found to have violated this article,
246 pursuant to a hearing or by default, may be subject to a civil
247 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each
248 violation to be assessed and collected by the commission. Each
249 telephonic communication shall constitute a separate violation.

250 All penalties collected by the commission shall be deposited
251 in the special fund created herein for the administration of this
252 article.

253 The commission may issue subpoenas, require the production of
254 relevant documents, administer oaths, conduct hearings, and do all
255 things necessary in the course of investigating, determining and
256 adjudicating an alleged violation.

257 The remedies, duties, prohibitions and penalties set forth
258 under this article shall not be exclusive and shall be in addition
259 to all other causes of action, remedies and penalties provided by



260 law, including, but not limited to, the penalties provided by
261 Section 77-1-53.

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

267 **SECTION 13.** It shall be a defense in any action or
268 proceeding brought under Section 11 or 12 of this act that the
269 defendant has established and implemented, with due care,
270 reasonable practices and procedures to effectively prevent
271 telephone solicitations in violation of this article.

272 **SECTION 14.** The commission is granted personal jurisdiction
273 over any telephone solicitor, whether a resident or a nonresident,
274 and even though they are deemed not to be a public utility, for
275 the purpose of administering the provisions of this article. The
276 commission is granted personal jurisdiction over any nonresident
277 telephone solicitor, its executor, administrator, receiver,
278 trustee or any other appointed representative of such nonresident
279 as to an action or proceeding authorized by this article or any
280 rules and regulations promulgated pursuant to this article as
281 authorized by Section 13-3-57, and also upon nonresidents, his or
282 her executor, administrator, receiver, trustee or any other
283 appointed representative of such nonresident who have qualified
284 under the laws of this state to do business herein. Service of
285 summons and process upon the alleged violator of this article
286 shall be had or made as is provided by the Mississippi Rules of
287 Civil Procedure.

288 **SECTION 15.** Any party aggrieved by any final order of the
289 commission pursuant to this article, or any rules and regulations
290 promulgated pursuant to this article, shall have the right of
291 appeal to the Chancery Court of Hinds County, Mississippi, First
292 Judicial District.



293 **SECTION 16.** No provider of telephonic Caller Identification
294 Service, local exchange telephone company or long distance company
295 certificated by the commission may be held liable for violations
296 of this article committed by other persons or entities.

297 **SECTION 17.** If any section, paragraph, sentence, phrase or
298 any part of this article shall be held invalid or
299 unconstitutional, such holding shall not affect any other section,
300 paragraph, sentence, clause, phrase or part of this article which
301 is not in and of itself invalid or unconstitutional. Moreover, if
302 the application of this article, or any portion of it, to any
303 person or circumstance is held invalid, the invalidity shall not
304 affect the application of this article to other persons or
305 circumstances which can be given effect without the invalid
306 provision or application.

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

309 **SECTION 19.** This act shall take effect and be in force from
310 and after July 1, 2002.

