

By: Senator(s) Chamberlin, Burton

To: Public Utilities

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 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, 2002.

