SENATE BILL NO. 2296
(As Passed the Senate)

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 PROVIDE EXEMPTIONS THERETO; 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 TELEPHONIC 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;

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

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

(v) By any licensed securities, commodities or investment broker, dealer or investment adviser, when soliciting within the scope of his or her license, or any licensed associated person of a securities, commodities or investment broker, dealer or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities or investment broker, dealer or investment adviser" means a person subject to license or registration as such by the
Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 USC Section 781, or by an official or agency of this state or of any state of the United States. As used in this section, "licensed associated person of a securities, commodities or investment broker, dealer or investment adviser" means any associated person registered or licensed by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 USC Section 781, or by an official or agency of this state or of any state of the United States;

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

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

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

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

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

3. The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing or manufacturing process.
(ix) By any person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made;

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

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

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

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

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

2. A majority of the seller’s business involves the buyer obtaining such products or services at the seller’s location.

(xiv) By any person or entity which:
1. Has been providing telemarketing sales
   services continuously for at least five (5) years under the same
   ownership and control;

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

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

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

(xvi) By any supervised financial institution or
parent, subsidiary or affiliate thereof. As used in this section,
"supervised financial institution" means any commercial bank,
trust company, savings and loan association, mutual savings bank,
credit union, industrial loan company, consumer finance lender,
commercial finance lender or insurer, provided that the
institution operates a physical office in this state and is
subject to supervision by an official or agency of this state, of
any state, or of the United States. For the purposes of this
exemption, "affiliate" means a person who directly, or indirectly
through one or more intermediaries, controls or is controlled by,
or is under common control with, a supervised financial
institution;

(xvii) By any person who is soliciting on behalf
of any newspaper having a general circulation in the State of
Mississippi.

(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, 2002, 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 Trade 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 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 8:00 p.m. Central Standard Time. 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, 2002.