HOUSE BILL NO. 794

AN ACT TO AMEND SECTION 77-3-601, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS CONNECTED WITH THE MISSISSIPPI NO-CALL LIST; TO CLARIFY THAT TELEMARKETERS ARE SUBJECT TO THE REGULATIONS AND PENALTIES OF THE MISSISSIPPI NO-CALL LIST; TO ESTABLISH A MISSISSIPPI NO-CALL LIST WHEREBY TELEPHONE CUSTOMERS MAY ELECT NOT TO RECEIVE TELEPHONE CALLS FROM TELEMARKETERS; TO PROVIDE THAT THE OFFICE OF THE ATTORNEY GENERAL SHALL ESTABLISH RULES FOR THE DEVELOPMENT AND MAINTENANCE OF THE NO-CALL LIST AND SHALL ENFORCE THE PROVISIONS OF THE NO-CALL LIST; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 77-3-601, Mississippi Code of 1972, is amended as follows:

As used in this article:

(a) "Telephonic sales call" means a call made by a telephone solicitor to a consumer for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information or an extension of credit for these purposes.

(b) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family or household purposes, including, without limitation, any property intended to be attached to or installed in any real property regardless of whether it is attached or installed, as well as cemetery lots and time-share estates, and any services related to the property.

(c) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

(i) In response to an express request of the person called;
(ii) In connection with an existing debt or contract, payment or performance which has not been completed at the time of the call; or

(iii) To any person with whom the telephone solicitor has an established business relationship.

(d) "Consumer" means an actual or prospective purchaser, lessee or recipient of consumer goods or services.

(e) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(f) "Telephone solicitor" means any natural person, firm, organization, partnership, association, corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call.

(g) "Doing business in this state" refers to businesses who conduct telephonic sales calls from a location in Mississippi or from other states or nations to consumers located in Mississippi.

(h) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by such person or entity, which relationship has not been previously terminated by either party.

(i) "Caller identification service" means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(j) "Mississippi no-call list" means the database of Mississippi residential subscribers that have given notice, in accordance with rules promulgated under Section 3 of this act, of such subscriber's objection to receiving telephone solicitations.
(k) "Conforming consolidated no-call list" means any database that includes telephone numbers of telephone subscribers that do not wish to receive telephone solicitations, if such database has been updated within the prior thirty days to include all of the telephone numbers on the Mississippi no-call list.

(l) "Conforming list broker" means any person or entity that provides lists for the purpose of telephone solicitation, if such lists shall have removed, at a minimum of every thirty days, any phone numbers that are included on the Mississippi no-call list.

(m) "Designated agent" means the party with which the Office of the Attorney General contracts under this act.

(n) "Electronic mail" or "email" means an electronic message that is transmitted between two or more computers or electronic terminals. "Electronic mail" includes electronic messages that are transmitted within or between computer networks.

(o) "Internet" means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled switched data networks.

(p) "Residential subscriber" means a person who has subscribed to residential telephone service with a local exchange provider, as defined in subsection (q) of this section. "Person" also includes any other persons living or residing with such person.

(q) "Local exchange provider" means the telecommunications provider of a local dial tone line and local usage necessary to place or receive a call within an exchange area and any other services or features that may be added by the commission.

(r) "Exchange area" means a geographic area established by the commission, which consists of one or more central offices together with associated facilities which are used in providing basic local exchange service.
(s) "Interexchange provider" means a person who provides telecommunications services between exchange areas.
(t) "Interexchange telecommunications services" means telephone services, not included in basic local exchange service, and which are priced based upon usage.

SECTION 2. (1) (a) No person, entity or telemarketer shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has added his or her telephone number and zip code to the Mississippi no-call list in accordance with rules promulgated under Section 3 of this act.

(b) Any person, entity or telemarketer who makes or causes to be made a telephone solicitation to the telephone line of any residential subscriber in this state shall register in accordance with the provisions of Section 77-3-605.

(2) Any person, entity or telemarketer who makes or causes to be made a telephone solicitation to the telephone line of any residential subscriber in this state shall comply with the disclosure requirements of Section 77-3-603(b).

(3) No person, entity or telemarketer who makes or causes to be made a telephone solicitation to the telephone line of a residential subscriber in this state shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller identification service when that person or entity's service or equipment is capable of allowing the display of the number.

(4) Persons or entities desiring to make telephone solicitations shall update their copies of the Mississippi no-call list, conforming consolidated no-call list, or a list obtained from a conforming list broker within thirty days after the beginning of every calendar quarter, on or after July 1, 2004, or upon the initial availability and accessibility of the Mississippi no-call list, whichever is earlier.
SECTION 3. (1) The Mississippi no-call list program is hereby created for the purpose of establishing a database to use when verifying residential subscribers in this state who have given notice, in accordance with rules promulgated under paragraph (b) of subsection (3) of this section, of such subscribers' objection to receiving telephone solicitations. The program shall be administered by the Office of the Attorney General.

(2) No later than January 1, 2004, the Office of the Attorney General shall contract with a designated agent, which shall maintain the web site and database containing the Mississippi no-call list. If no more than one entity bids on the contract, the Office of the Attorney General may award, at its discretion, such contract.

(3) (a) No later than July 1, 2004, the designated agent, using the designated state Internet web site, shall develop and maintain the Mississippi no-call list database with information provided by residential subscribers.

(b) The Office of the Attorney General shall establish, by rule, guidelines for the designated agent for the development and maintenance of the Mississippi no-call list so the no-call list can easily be accessed by persons or entities desiring to make telephone solicitations, and by state and local law enforcement agencies. No later than April 1, 2004, the Office of the Attorney General shall promulgate rules that:

(i) Specify that there shall be no cost for a residential subscriber to provide notification to the designated agent that such subscriber objects to receiving telephone solicitations;

(ii) Specify that there shall be an annual registration fee of not more than Five Hundred Dollars ($500.00) for persons or entities that wish to make telephone solicitations or otherwise access the database of telephone numbers and zip codes contained in the Mississippi no-call list database. The
Office of the Attorney General shall determine such fee on a sliding scale so that persons or entities with fewer than five (5) employees shall pay no fee. In addition, there shall be no fee charged to conforming list brokers, as defined in Section 1, paragraph (1) of this act. The maximum fee shall be charged only to persons or entities with more than one thousand (1,000) employees. Monies collected from such fees shall cover the direct and indirect costs related to the creation and operation of the Mississippi no-call list. Monies from such fees shall be collected by and paid directly to the designated agent. The Office of the Attorney General shall have the authority to annually adjust the fees below the stated maximum based on revenue history of the fees received by the designated agent. The designated agent shall provide means for on-line registration and credit card payment of fees charged pursuant to this subparagraph (ii). Each such person or entity shall provide a current business name, business address, email address if available, and telephone number when initially registering for the no-call list. This information shall be updated when changes occur;

(iii) Specify that the method by which each residential subscriber may give notice to the designated agent of his or her objection to receiving such solicitations, or may revoke such notice, shall be exclusively by entering the area code, telephone number, and zip code of the subscriber directly into the database via the designated state Internet web site or by using a touch-tone phone to enter the area code, telephone number, and zip code of the subscriber via a designated statewide, toll-free telephone number maintained by the designated agent as a part of the Mississippi no-call list;

(iv) Specify that the date of every notice received in accordance with subparagraph (iii) of this paragraph (b) be recorded and included as part of the information in the no-call list;
(v) Require the designated agent to provide updated information about the Mississippi no-call list program on the designated state web site, subject to supervision by the Office of the Attorney General;

(vi) Prohibit the designated agent or any person or entity collecting information to be transmitted to the designated agent from making any use or distribution of subscriber information contained in the no-call list except as expressly authorized under this section;

(vii) Specify the methods by which additions, deletions, changes, and modifications shall be made to the Mississippi no-call list database and how updates of the database shall be made available to persons or entities desiring such updates. Such methods shall include provisions to remove from the Mississippi no-call list, on at least an annual basis, any telephone number that has been disconnected or reassigned;

(viii) Require the designated agent to maintain an automated, on-line complaint system for residential subscribers to report suspected violations over the Internet web site. The automated, on-line complaint system shall have the capability to collect, sort, and report suspected violations to the appropriate state enforcement agency electronically for enforcement purposes;

(ix) Specify that the no-call list shall be available on-line at the Mississippi no-call list web site to a person or entity desiring to make telephone solicitations if the person or entity has registered in accordance with the provisions of subparagraph (ii) of this paragraph (b). The list shall be available in a text or other compatible format, at the discretion of the Office of the Attorney General, but shall allow telephone solicitors to select and sort by specific zip codes and telephone area codes. Telephone solicitors and conforming list brokers shall not receive additional compensation for distributing the
Mississippi no-call list, but are encouraged to freely distribute
the Mississippi no-call list at no cost;

(x) Specify such other matters relating to the
database as the Office of the Attorney General deems necessary or
desirable.

(c) If the appropriate federal agency establishes a
single national database of telephone numbers of residential
subscribers who object to receiving telephone solicitations, the
designated agent shall include that portion of such single
national database that relates to Mississippi in the Mississippi
no-call list established under this section.

(4) The state shall not be liable to any person for
gathering, managing, or using information in the Mississippi
no-call list database pursuant to this section and for enforcing
the provisions of this section.

(5) The designated agent shall not be liable to any person
for performing its duties under this section unless, and only to
the extent that the designated agent commits a willful and wanton
act or omission.

(6) Beginning no later than July 1, 2004, the designated
agent shall update the database, on an ongoing basis, with
information provided by residential subscribers and local exchange
providers.

(7) No person shall place the telephone number of another
person on the Mississippi no-call list without the authorization
of the person to whom the number is assigned.

(8) Beginning no later than January 1, 2005, the Office of
the Attorney General shall submit a report to the joint budget
committee every six months. This report shall include fee
revenues received in the previous six months, expenditures for
administration of the program for the previous six months,
projections of fee revenues for the next twelve months, and
projections of expenditures for administration of the program for
the next twelve months. Expenditures for administration of the program include the expenditures of the designated agent and expenditures of the Office of the Attorney General.

(9) No telemarketer shall use a designated agent's no-call list for any purpose other than to remove residential telephone subscribers from telephone sales call lists.

(10) Each local exchange telephone company, competitive local exchange telephone company, interexchange provider, Internet service provider that provides telephone service and affiliated companies providing telecommunications billing service shall clearly notify its residential telephone subscribers in this state of their ability to contact the designated agent which accepts individual names, telephone numbers and zip codes of persons who do not wish to receive telephone solicitation calls. The method of notification shall include, but not be limited to, placing the notice in billing statements mailed to subscribers and publication of notice in the consumer information pages of a local telephone directory of general circulation. The notification shall specify the methods by which subscribers may place their names on the Mississippi no-call list and how often renewal is necessary.

(11) Any person, entity or telemarketer who makes or causes to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has not added his or her telephone number and zip code to the Mississippi no-call list shall comply with the rules promulgated in Sections 77-3-603, 77-3-607 and 77-3-609.

(12) Any person, entity or telemarketer who makes or causes to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has added his or her telephone number and zip code to the Mississippi no-call list is subject to Sections 77-3-611, 77-3-615 and 77-3-617.

SECTION 4. Section 2 of this act shall be codified in Title 77, Chapter 3, Article 13, Mississippi Code of 1972.
SECTION 5. Section 3 of this act shall be codified in Title 77, Chapter 3, Mississippi Code of 1972.

SECTION 6. This act shall take effect and be in force from and after July 1, 2003.