

By: Representative Pierce

To: Public Utilities

HOUSE BILL NO. 794

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

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

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

13 As used in this article:

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

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

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

29 (i) In response to an express request of the
 30 person called;



31 (ii) In connection with an existing debt or
32 contract, payment or performance which has not been completed at
33 the time of the call; or

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

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

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

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

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

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

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

59 (j) "Mississippi no-call list" means the database of
60 Mississippi residential subscribers that have given notice, in
61 accordance with rules promulgated under Section 3 of this act, of
62 such subscriber's objection to receiving telephone solicitations.



63 (k) "Conforming consolidated no-call list" means any
64 database that includes telephone numbers of telephone subscribers
65 that do not wish to receive telephone solicitations, if such
66 database has been updated within the prior thirty days to include
67 all of the telephone numbers on the Mississippi no-call list.

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

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

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

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

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

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

92 (r) "Exchange area" means a geographic area established
93 by the commission, which consists of one or more central offices
94 together with associated facilities which are used in providing
95 basic local exchange service.



96 (s) "Interexchange provider" means a person who
97 provides telecommunications services between exchange areas.

98 (t) "Interexchange telecommunications services" means
99 telephone services, not included in basic local exchange service,
100 and which are priced based upon usage.

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

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

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

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

121 (4) Persons or entities desiring to make telephone
122 solicitations shall update their copies of the Mississippi no-call
123 list, conforming consolidated no-call list, or a list obtained
124 from a conforming list broker within thirty days after the
125 beginning of every calendar quarter, on or after July 1, 2004, or
126 upon the initial availability and accessibility of the Mississippi
127 no-call list, whichever is earlier.



128 **SECTION 3.** (1) The Mississippi no-call list program is
129 hereby created for the purpose of establishing a database to use
130 when verifying residential subscribers in this state who have
131 given notice, in accordance with rules promulgated under paragraph
132 (b) of subsection (3) of this section, of such subscribers'
133 objection to receiving telephone solicitations. The program shall
134 be administered by the Office of the Attorney General.

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

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

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

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

156 (ii) Specify that there shall be an annual
157 registration fee of not more than Five Hundred Dollars (\$500.00)
158 for persons or entities that wish to make telephone solicitations
159 or otherwise access the database of telephone numbers and zip
160 codes contained in the Mississippi no-call list database. The



161 Office of the Attorney General shall determine such fee on a
162 sliding scale so that persons or entities with fewer than five (5)
163 employees shall pay no fee. In addition, there shall be no fee
164 charged to conforming list brokers, as defined in Section 1,
165 paragraph (1) of this act. The maximum fee shall be charged only
166 to persons or entities with more than one thousand (1,000)
167 employees. Monies collected from such fees shall cover the direct
168 and indirect costs related to the creation and operation of the
169 Mississippi no-call list. Monies from such fees shall be
170 collected by and paid directly to the designated agent. The
171 Office of the Attorney General shall have the authority to
172 annually adjust the fees below the stated maximum based on revenue
173 history of the fees received by the designated agent. The
174 designated agent shall provide means for on-line registration and
175 credit card payment of fees charged pursuant to this subparagraph
176 (ii). Each such person or entity shall provide a current business
177 name, business address, email address if available, and telephone
178 number when initially registering for the no-call list. This
179 information shall be updated when changes occur;

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

190 (iv) Specify that the date of every notice
191 received in accordance with subparagraph (iii) of this paragraph
192 (b) be recorded and included as part of the information in the
193 no-call list;



194 (v) Require the designated agent to provide
195 updated information about the Mississippi no-call list program on
196 the designated state web site, subject to supervision by the
197 Office of the Attorney General;

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

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

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

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



226 Mississippi no-call list, but are encouraged to freely distribute
227 the Mississippi no-call list at no cost;

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

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

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

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

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

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

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



259 the next twelve months. Expenditures for administration of the
260 program include the expenditures of the designated agent and
261 expenditures of the Office of the Attorney General.

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

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

279 (11) Any person, entity or telemarketer who makes or causes
280 to be made any telephone solicitation to the telephone line of any
281 residential subscriber in this state who has not added his or her
282 telephone number and zip code to the Mississippi no-call list
283 shall comply with the rules promulgated in Sections 77-3-603,
284 77-3-607 and 77-3-609.

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

290 **SECTION 4.** Section 2 of this act shall be codified in Title
291 77, Chapter 3, Article 13, Mississippi Code of 1972.



292 **SECTION 5.** Section 3 of this act shall be codified in Title
293 77, Chapter 3, Mississippi Code of 1972.

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

