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To: Public Utilities

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2445

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; TO PROVIDE  
11 EXEMPTIONS FROM THE PROVISIONS OF THIS ACT; AND FOR RELATED  
12 PURPOSES.

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

14 **SECTION 1.** This act shall be known and may be cited as the  
15 "Mississippi Telephonic Solicitation Act."

16 **SECTION 2.** The use of the telephone to make all types of  
17 solicitations to consumers is pervasive. This act gives consumers  
18 a tool by which to object to telemarketing calls as these  
19 communications can amount to a nuisance, an invasion of privacy,  
20 and can create a health and safety risk for certain consumers who  
21 maintain their phone service primarily for emergency medical  
22 situations. Notwithstanding any other act or provisions of the  
23 law to the contrary, this act shall control.

24 **SECTION 3.** For the purposes of this act, the following words  
25 and terms shall have the meanings ascribed to them herein:

26 (a) "Consumer" means any person to whom has been  
27 assigned in the State of Mississippi any residential telephone  
28 line and corresponding telephone number, and who uses the  
29 residential line for primarily residential purposes.

30 (b) "Caller Identification Service" means a type of  
31 telephone service which permits telephone subscribers to see the  
32 telephone number and name of incoming telephone calls.



33           (c) "Telephone solicitor" means any person, firm,  
34 entity, organization, partnership, association, corporation,  
35 charitable entity, or a subsidiary or affiliate thereof, who  
36 engages in any type of telephone solicitation on his or her own  
37 behalf or through representatives, independent contractors,  
38 salespersons, agents, automated dialing machines or others.

39           (d) "Telephone solicitation" means any voice  
40 communication over the telephone line for the purpose of  
41 encouraging the purchase or rental of, or investment in property,  
42 or for the purpose of soliciting a sale of any consumer goods or  
43 services.

44           (e) "Commission" means the Mississippi Public Service  
45 Commission.

46           (f) "Doing business in this state" refers to businesses  
47 which conduct telephonic sales calls from a location in the State  
48 of Mississippi or from other states or nations to consumers  
49 located in this state.

50           **SECTION 4.** (1) No telephone solicitor may make or cause to  
51 be made any telephone solicitation to any consumer in this state  
52 unless the telephone solicitor has purchased the "no-calls"  
53 database from the commission or the entity under contract with the  
54 commission.

55           (2) No telephone solicitor may make or cause to be made any  
56 telephone solicitation to any consumer in this state who has given  
57 notice to the commission or the entity under contract with the  
58 commission, of his or her objection to receiving telephone  
59 solicitations.

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



65 commission or by another entity under contract with the  
66 commission.

67 (4) Each local exchange company and each competing local  
68 exchange carrier shall provide written notification on a  
69 semiannual basis to each of its consumers, of the opportunity to  
70 provide notification to the commission or the entity under  
71 contract with the commission, that the consumer objects to  
72 receiving telephone solicitations. The notification shall be  
73 disseminated at the option of the carrier, by television, radio or  
74 newspaper advertisements, written correspondence, bill inserts or  
75 messages, a publication in the consumer information pages of the  
76 local telephone directory, or any other method not expressly  
77 prohibited by the commission.

78 **SECTION 5.** All telephone solicitors shall register with the  
79 commission prior to conducting any telephonic solicitations in the  
80 State of Mississippi.

81 **SECTION 6.** The commission is authorized to promulgate rules  
82 and regulations necessary to effectuate this act, including, but  
83 not limited to, the following:

84 (a) Exemptions of certain telephone solicitors from the  
85 provisions of this act;

86 (b) Methods by which consumers may give notice to the  
87 commission or its contractor of their objection to receive  
88 solicitations or revocation of the notice;

89 (c) Methods by which a notice of objection becomes  
90 effective and the effect of a change of telephone number on the  
91 notice;

92 (d) Methods by which objections and revocations are  
93 collected and added to the database;

94 (e) Methods by which a person or entity desiring to  
95 make telephone solicitation may obtain access to the database as  
96 required to avoid calling the telephone number of consumers  
97 included in the database;



98 (f) The process by which the database is updated and  
99 the frequency of updates;

100 (g) The process by which telephone solicitors must  
101 register with the commission for the purpose of conducting  
102 telephonic solicitations in the state;

103 (h) Establishment of fees to be charged by the  
104 commission or its contractor to telephone solicitors for access to  
105 or for paper or electronic copies of the database on an annual  
106 basis; and

107 (i) All other matters relating to the database that the  
108 commission deems necessary.

109 **SECTION 7.** If any federal agency establishes a single  
110 national database of telephone numbers of consumers who object to  
111 receiving telephone solicitations, the commission shall include  
112 the portion of the single national database that relates to the  
113 State of Mississippi in the database established under this act.

114 **SECTION 8.** Information contained in the database established  
115 pursuant to this act may be used and accessed only for the purpose  
116 of compliance with this act and shall not be otherwise subject to  
117 public inspection or disclosure.

118 **SECTION 9.** All fees collected under the provisions of this  
119 act shall be deposited into a special fund in the State Treasury  
120 to be expended by the commission for the implementation and  
121 administration of this act. At the end of each fiscal year,  
122 unexpended monies remaining in the fund shall not revert to any  
123 other fund of the state, but shall remain available for  
124 appropriations to administer this act. The Legislature shall  
125 annually appropriate from the fund the amount necessary for the  
126 administration of this act to the commission.

127 **SECTION 10.** Any person or entity who makes a telephone  
128 solicitation to a consumer in this state who is not listed on the  
129 most current "no-calls" database shall, at the beginning of each  
130 call, announce clearly his or her name, the company he or she



131 represents and the purpose of the call. Such calls may only be  
132 made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard  
133 Time. No telephone solicitation shall be made on a Sunday.

134 No person or entity who makes a telephone solicitation to a  
135 consumer in this state may knowingly utilize any method which  
136 blocks or otherwise circumvents the use of Caller Identification  
137 Service by the consumer.

138 **SECTION 11.** The commission is authorized to investigate  
139 alleged violations and to initiate proceedings relative to a  
140 violation of this act or any rules and regulations promulgated  
141 pursuant to this act. Such proceedings include, without  
142 limitation, proceedings to issue a cease and desist order, and to  
143 issue an order imposing a civil penalty not to exceed Five  
144 Thousand Dollars (\$5,000.00) for each violation. The commission  
145 shall afford an opportunity for a fair hearing to the alleged  
146 violator(s) after giving written notice of the time and place for  
147 said hearing. Failure to appear at any such hearing may result in  
148 the commission finding the alleged violator(s) liable by default.  
149 Any telephone solicitor found to have violated this act, pursuant  
150 to a hearing or by default, may be subject to a civil penalty not  
151 to exceed Five Thousand Dollars (\$5,000.00) for each violation to  
152 be assessed and collected by the commission. Each telephonic  
153 communication shall constitute a separate violation.

154 All penalties collected by the commission shall be deposited  
155 in the special fund created herein for the administration of this  
156 act.

157 The commission may issue subpoenas, require the production of  
158 relevant documents, administer oaths, conduct hearings, and do all  
159 things necessary in the course of investigating, determining and  
160 adjudicating an alleged violation.

161 The remedies, duties, prohibitions and penalties set forth  
162 under this act shall not be exclusive and shall be in addition to  
163 all other causes of action, remedies and penalties provided by



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

166 **SECTION 12.** Any person who has received a telephone  
167 solicitation in violation of this act, or any rules and  
168 regulations promulgated pursuant to this act, may file a complaint  
169 with the commission. The complaint will be processed pursuant to  
170 complaint procedures established by the commission.

171 **SECTION 13.** It shall be a defense in any action or  
172 proceeding brought under Section 11 or 12 of this act that the  
173 defendant has established and implemented, with due care,  
174 reasonable practices and procedures to effectively prevent  
175 telephone solicitations in violation of this act.

176 **SECTION 14.** The commission is granted personal jurisdiction  
177 over any telephone solicitor, whether a resident or a nonresident,  
178 and even though they are deemed not to be a public utility, for  
179 the purpose of administering the provisions of this act. The  
180 commission is granted personal jurisdiction over any nonresident  
181 telephone solicitor, its executor, administrator, receiver,  
182 trustee or any other appointed representative of such nonresident  
183 as to an action or proceeding authorized by this act or any rules  
184 and regulations promulgated pursuant to this act as authorized by  
185 Section 13-3-57, and also upon nonresidents, his or her executor,  
186 administrator, receiver, trustee or any other appointed  
187 representative of such nonresident who have qualified under the  
188 laws of this state to do business herein. Service of summons and  
189 process upon the alleged violator of this act shall be had or made  
190 as is provided by the Mississippi Rules of Civil Procedure.

191 **SECTION 15.** Any party aggrieved by any final order of the  
192 commission pursuant to this act, or any rules and regulations  
193 promulgated pursuant to this act, shall have the right of appeal  
194 to the Chancery Court of Hinds County, Mississippi, First Judicial  
195 District.



196           **SECTION 16.** No provider of telephonic Caller Identification  
197 Service, local exchange telephone company or long distance company  
198 certificated by the commission may be held liable for violations  
199 of this act committed by other persons or entities.

200           **SECTION 17.** The provisions of this act shall not apply to a  
201 person soliciting:

202                   (a) Without the intent to complete or obtain  
203 provisional acceptance of a sale during the telephone  
204 solicitation; or

205                   (b) Who does not make the major sales presentation  
206 during the telephone solicitation; or

207                   (c) Without the intent to complete, and who does not  
208 complete, the sales presentation during the telephone  
209 solicitation, but who completes the sales presentation at a later  
210 face-to-face meeting.

211           **SECTION 18.** If any section, paragraph, sentence, phrase or  
212 any part of this act shall be held invalid or unconstitutional,  
213 such holding shall not affect any other section, paragraph,  
214 sentence, clause, phrase or part of this act which is not in and  
215 of itself invalid or unconstitutional. Moreover, if the  
216 application of this act, or any portion of it, to any person or  
217 circumstance is held invalid, the invalidity shall not affect the  
218 application of this act to other persons or circumstances which  
219 can be given effect without the invalid provision or application.

220           **SECTION 19.** This act shall be codified as a new act within  
221 Chapter 3, Title 77, Mississippi Code of 1972.

222           **SECTION 20.** This act shall take effect and be in force from  
223 and after July 1, 2003.

