

By: Senator(s) Robertson

To: Public Utilities

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; AND FOR
 11 RELATED PURPOSES.

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

13 **SECTION 1.** This act shall be known and may be cited as the
 14 "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 act shall control.

23 **SECTION 3.** For the purposes of this act, the following words
 24 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.

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

108 **SECTION 7.** If the Federal Trade Commission establishes a
109 single national database of telephone numbers of consumers who
110 object to receiving telephone solicitations, the commission shall
111 include the portion of the single national database that relates
112 to the State of Mississippi in the database established under this
113 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.** If any section, paragraph, sentence, phrase or
201 any part of this act shall be held invalid or unconstitutional,
202 such holding shall not affect any other section, paragraph,
203 sentence, clause, phrase or part of this act which is not in and
204 of itself invalid or unconstitutional. Moreover, if the
205 application of this act, or any portion of it, to any person or
206 circumstance is held invalid, the invalidity shall not affect the
207 application of this act to other persons or circumstances which
208 can be given effect without the invalid provision or application.

209 **SECTION 18.** This act shall be codified as a new act within
210 Chapter 3, Title 77, Mississippi Code of 1972.

211 **SECTION 19.** This act shall take effect and be in force from
212 and after July 1, 2003.

