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To: Public Utilities

SENATE BILL NO. 2445
(As Passed the Senate)

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. No



33 telephone solicitor may block their identification from a Caller
34 Identification Service.

35 (c) "Telephone solicitor" means any person, firm,
36 entity, organization, partnership, association, corporation,
37 charitable entity, or a subsidiary or affiliate thereof, whose
38 primary purpose is to engage in any type of telephone solicitation
39 on his or her own behalf or through representatives, independent
40 contractors, salespersons, agents, automated dialing machines or
41 others.

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

47 (e) "Commission" means the Mississippi Public Service
48 Commission.

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

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

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

63 (3) The commission, or an entity under contract with the
64 commission, shall establish and operate a "no-calls" database
65 composed of a list of telephone numbers of consumers who have



66 given notice of their objection to receiving telephone
67 solicitations. The "no-calls" database may be operated by the
68 commission or by another entity under contract with the
69 commission.

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

81 **SECTION 5.** All telephone solicitors shall register with the
82 commission prior to conducting any telephonic solicitations in the
83 State of Mississippi.

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

87 (a) Exemptions of certain telephone solicitors from the
88 provisions of this act;

89 (b) Methods by which consumers may give notice to the
90 commission or its contractor of their objection to receive
91 solicitations or revocation of the notice;

92 (c) Methods by which a notice of objection becomes
93 effective and the effect of a change of telephone number on the
94 notice;

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

97 (e) Methods by which a person or entity desiring to
98 make telephone solicitation may obtain access to the database as



99 required to avoid calling the telephone number of consumers
100 included in the database;

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

103 (g) The process by which telephone solicitors must
104 register with the commission for the purpose of conducting
105 telephonic solicitations in the state;

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

110 (i) All other matters relating to the database that the
111 commission deems necessary.

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

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

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

130 **SECTION 10.** Any person or entity who makes a telephone
131 solicitation to a consumer in this state who is not listed on the



132 most current "no-calls" database shall, at the beginning of each
133 call, announce clearly his or her name, the company he or she
134 represents and the purpose of the call. Such calls may only be
135 made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard
136 Time. No telephone solicitation shall be made on a Sunday.

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

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

157 All penalties collected by the commission shall be deposited
158 in the special fund created herein for the administration of this
159 act.

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



164 The remedies, duties, prohibitions and penalties set forth
165 under this act shall not be exclusive and shall be in addition to
166 all other causes of action, remedies and penalties provided by
167 law, including, but not limited to, the penalties provided by
168 Section 77-1-53.

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

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

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

194 **SECTION 15.** Any party aggrieved by any final order of the
195 commission pursuant to this act, or any rules and regulations
196 promulgated pursuant to this act, shall have the right of appeal



197 to the Chancery Court of Hinds County, Mississippi, First Judicial
198 District.

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

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

205 (a) Without the intent to complete or obtain
206 provisional acceptance of a sale during the telephone
207 solicitation; or

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

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

214 The provisions of this act shall not apply to any telephone
215 solicitor who solicits a consumer with whom he has an existing
216 business relationship.

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

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

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

