To: Public Utilities

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Senator(s) Robertson, Burton, Carmichael, Cuevas, Dawkins, Dearing, Frazier, Furniss, Gollott, Harvey, Hewes, Hyde-Smith, Jackson, Johnson (19th), Jordan, King, Lee, Little, Nunnelee, Scoper, Smith, Stogner, Thames, Tollison, Walden, Chamberlin

SENATE BILL NO. 2445
(As Sent to Governor)

AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL SUBSCRIBERS WHO HAVE GIVEN NOTICE OF THEIR OBJECTION TO SUCH CALLS TO THE PUBLIC SERVICE COMMISSION; TO REQUIRE THE PUBLIC SERVICE COMMISSION TO ESTABLISH A DATABASE TO COLLECT SUCH OBJECTIONS; TO RESTRICT THE USE OF INFORMATION CONTAINED IN THE DATABASE; TO REQUIRE ALL TELEPHONE SOLICITORS TO REGISTER WITH THE PUBLIC SERVICE COMMISSION BEFORE CONDUCTING TELEPHONE SOLICITATIONS AND TO PROVIDE FEES THEREFOR; TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO GRANT CERTAIN LIMITED EXCEPTIONS TO THE PROVISIONS OF THIS ACT AND TO PROMULGATE RULES NECESSARY TO EFFECTUATE THIS ACT; TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; TO GRANT EXEMPTIONS TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. This article shall be known and may be cited as the "Mississippi Telephone Solicitation Act."

SECTION 2. The use of the telephone to make all types of solicitations to consumers is pervasive. This act gives consumers a tool by which to object to telemarketing calls as these communications can amount to a nuisance, an invasion of privacy, and can create a health and safety risk for certain consumers who maintain their phone service primarily for emergency medical situations.

SECTION 3. For the purposes of this article, the following words and terms shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Consumer" means a person to whom is assigned in the State of Mississippi a residential telephone line and corresponding telephone number, who uses the residential line primarily for residential purposes.

(b) "Caller identification service" means a type of telephone service which permits a telephone subscriber to view the
telephone number and name of the person or entity making an
incoming telephone call.

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

(d) "Telephone solicitation" means any voice
communication over the telephone line of a consumer for the
purpose of:

(i) Encouraging the purchase or rental of, or
investment in, property; or

(ii) Soliciting a sale of any consumer goods or
services, or an extension of credit for consumer goods or
services.

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

(f) "Doing business in this state" refers to businesses
which conduct telephone solicitations from any location to
consumers located in this state.

(g) "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, and any services
related to the property.

(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 the consumer, which
relationship is currently existing or was terminated within six
(6) months of the telephone solicitation; however, the act of
purchasing consumer goods or services under an extension of credit
does not create an existing business relationship between the
consumer and the entity extending credit to the consumer for such
purchase. The term does not include the situation wherein the
consumer has merely been subject to a telephone solicitation by or
at the behest of the telephone solicitor within the six (6) months
immediately preceding the contemplated telephone solicitation.

(i) “Charitable organization” means any person or entity holding itself out to be established for any benevolent,
educational, philanthropic, humane, scientific, patriotic, social
welfare or advocacy, public health, environmental or conservation,
civic or other eleemosynary purpose or for the benefit of law
enforcement personnel, firefighters, or any other persons who
protect the public safety, or for any other purpose where a
charitable appeal is the basis of the solicitation.

SECTION 4. (1) Except as otherwise provided pursuant to
Section 5 or 6 of this act, a telephone solicitor may not make or
cause to be made any telephone solicitation to any consumer in
this state unless the telephone solicitor has purchased the
"no-calls" database from the commission or the entity under
contract with the commission.

(2) Except as otherwise provided pursuant to Section 5 or 6
of this act, a telephone solicitor may not make or cause to be
made any telephone solicitation to any consumer in this state who
has given notice to the commission, or the entity under contract
with the commission, of his or her objection to receiving
telephone solicitations.

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

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

SECTION 5. The commission, in its discretion, may allow
telephone solicitors to make telephone solicitations without
requiring them to purchase the "no-calls" database, and regardless
of whether a telephone solicitation may be made to a consumer who
has given notice of his objection to receiving such solicitations,
provided that it adopts a written policy incorporating the
following criteria:

(a) The telephone solicitor must demonstrate to the
commission that its proposed telephone solicitation is reasonably
related to an established business relationship as defined in
Section 3(h), or is being made in response to an invitation or
notice from a consumer which clearly signifies that he is open to
a contact being initiated;

(b) The telephone solicitation is to be made by a
person or entity for the purpose of soliciting a contribution or
donation to a bona fide nonprofit corporation, regardless of
whether consumer goods or services will be provided to the
consumer in return for the contribution or donation; or
The consumer will not be telephoned for a telephone solicitation as defined in Section 3(d), but he will be telephoned for a bona fide religious or charitable purpose, including an invitation to attend an event or a request for a contribution or donation.

In all cases, the telephone solicitor must demonstrate that it will not use an automated dialing system or a method that will block or otherwise circumvent the consumer’s use of a caller identification service.

In making its determination of whether to allow a telephone solicitation to be made under the policy which will include the limitations set forth in this section, the commission shall exercise due care in investigating previous conduct of the telephone solicitor seeking such authority. The commission may deny any telephone solicitor the privilege of making telephone solicitations under this section, notwithstanding that any of the criteria set forth in this section have been met.

**SECTION 6.** The provisions of this act shall not apply to:

(a) A person soliciting:

(1) Who does not make the major sales presentation during the telephone solicitation;

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

(3) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later face-to-face meeting between the person soliciting and the prospective purchaser or consumer.

(b) A person who is a licensee under Chapter 35, Title 73, Mississippi Code of 1972, who is a resident of the State of Mississippi, and whose telephone solicitation is for the sole purpose of selling, exchanging, purchasing, renting, listing for
sale or rent or leasing real estate in connection with his real
estate license and not in conjunction with any other offer.

(c) A motor vehicle dealer as that term is defined in
Section 63-17-55, who is a resident of the State of Mississippi
and who maintains a current motor vehicle dealer's license issued
by the Mississippi Motor Vehicle Commission, whose telephone
solicitation is for the sole purpose of selling, offering to sell,
soliciting or advertising the sale of motor vehicles in connection
with his motor vehicle dealer's license and not in conjunction
with any other offer.

(d) An agent as that term is defined in Section 83-17-1
whose telephone solicitation is for the sole purpose of
soliciting, consulting, advising, or adjusting in the business of
insurance.

(e) A broker-dealer, agent, or investment advisor
registered under Chapter 71, Title 75, Mississippi Code of 1972,
whose telephone solicitation is for the sole purpose of effecting
or attempting to effect the purchase or sale of securities or has
the purpose of providing or seeking to provide investment or
financial advice.

(f) A person calling on behalf of a charitable
organization which is registered under Chapter 11, Title 79,
Mississippi Code of 1972, whose telephone solicitation is for the
sole purpose of soliciting for the charitable organization and who
receives no compensation for his activities on behalf of the
organization.

(g) A person calling on behalf of a newspaper of
general circulation, whose telephone solicitation is for the sole
purpose of soliciting a subscription to the newspaper from, or
soliciting the purchase of advertising by, the consumer.

(h) A person calling on behalf of any supervised
financial institution or parent, subsidiary or affiliate thereof.

As used in this section, "supervised financial institution" means
any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, small loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution has a physical office located in the State of Mississippi and is subject to supervision by an official or agency of the State of Mississippi or of the United States.

(i) A person calling on behalf of a funeral establishment licensed under Section 73-11-41, if the sole purpose of the telephone solicitation relates to services provided by the funeral establishment in the course of its ordinary business.

(j) Any telephone solicitor who solicits a consumer with whom he has an established business relationship.

SECTION 7. All telephone solicitors must register with the commission before conducting any telephone solicitations in the State of Mississippi.

SECTION 8. The commission may promulgate rules and regulations necessary to effectuate this article, including, but not limited to, the following:

(a) The methods by which consumers may give notice to the commission or its contractor of their objection to receive solicitations or revocation of the notice;

(b) The methods by which a notice of objection becomes effective and the effect of a change of telephone number on the notice;

(c) The methods by which objections and revocations are collected and added to the database;

(d) The methods by which a person or entity desiring to make telephone solicitations may obtain access to the database as required to avoid calling the telephone number of consumers included in the database;

(e) The process by which the database is updated, and the frequency of updates;
(f) The process by which telephone solicitors must register with the commission for the purpose of conducting telephonic solicitations in the state;

(g) The establishment of fees to be charged by the commission or its contractor to telephone solicitors for access to or for paper or electronic copies of the database on an annual basis;

(h) The establishment of a written policy which clearly articulates the circumstances under which the commission, in its discretion, may allow exceptions to the provisions of this article pursuant to Section 5 of this act; and

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

SECTION 9. If the Federal Trade Commission establishes a single national database of telephone numbers of consumers who object to receiving telephone solicitations, the commission must include the portion of the single national database that relates to the State of Mississippi in the database established under this article.

SECTION 10. Information contained in the database established under this article may be used and accessed only for the purpose of compliance with this article and shall not be otherwise subject to public inspection or disclosure.

SECTION 11. All fees collected under the provisions of this article shall be deposited into a special fund which is created in the State Treasury to be expended by the commission for the implementation and administration of this article. At the end of each fiscal year, earned interest and unexpended monies remaining in the fund may not revert to any other fund of the state, but shall remain available for appropriations to administer this article. The Legislature shall appropriate annually from the fund the amount necessary for the administration of this article to the commission.
SECTION 12. (1) Any person or entity who makes an authorized telephone solicitation to a consumer in this state shall announce clearly, at the beginning of each call, his or her name, the company he or she represents and the purpose of the call. Such calls may only be made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard Time. No telephone solicitations may be made on a Sunday. For purposes of this provision, an "authorized telephone solicitation" means a solicitation that is made: (a) to a consumer who is not listed on the most current "no-calls" database; (b) by a telephone solicitor who has been authorized to make such solicitations under the provisions of Section 5 of this act; or (c) by a telephone solicitor who is exempt from this act under the provisions of Section 6 of this act.

(2) A person or entity who makes a telephone solicitation to a consumer in this state may not utilize knowingly any method that blocks or otherwise circumvents the consumer's use of a caller identification service, nor may the person or entity use an automated dialing system or any like system that uses a recorded voice message to communicate with the consumer unless the person or entity has an established business relationship with the consumer and uses the recorded voice message to inform the consumer about a new product or service.

SECTION 13. The commission may investigate alleged violations and to initiate proceedings relative to a violation of this article or any rules and regulations promulgated pursuant to this article. Such proceedings include, without limitation, proceedings to issue a cease and desist order, and to issue an order imposing a civil penalty not to exceed Five Thousand Dollars ($5,000.00) for each violation. The commission shall afford an opportunity for a fair hearing to the alleged violator(s) after giving written notice of the time and place for said hearing. Failure to appear at any such hearing may result in the commission
finding the alleged violator(s) liable by default. Any telephone
solicitor found to have violated this article, pursuant to a
hearing or by default, may be subject to a civil penalty not to
exceed Five Thousand Dollars ($5,000.00) for each violation to be
assessed and collected by the commission. Each telephonic
communication shall constitute a separate violation.

All penalties collected by the commission shall be deposited
in the special fund created under Section 11 for the
administration of this article.

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

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

SECTION 14. Any person who has received a telephone
solicitation in violation of this article, or any rules and
regulations promulgated pursuant to this article, may file a
complaint with the commission. The complaint will be processed
pursuant to complaint procedures established by the commission.

SECTION 15. It shall be a defense in any action or
proceeding brought under Section 13 or 14 of this act that the
defendant has established and implemented, with due care,
reasonable practices and procedures to effectively prevent
telephone solicitations in violation of this article.

SECTION 16. The commission is granted personal jurisdiction
over any telephone solicitor, whether a resident or a nonresident,
notwithstanding that telephone solicitors are not deemed to be a
public utility, for the purpose of administering this article.

The commission is granted personal jurisdiction over any
nonresident telephone solicitor, its executor, administrator, receiver, trustee or any other appointed representative of such nonresident as to an action or proceeding authorized by this article or any rules and regulations promulgated pursuant to this article as authorized by Section 13-3-57, and also upon any nonresident, his or her executor, administrator, receiver, trustee or any other appointed representative of such nonresident who has qualified under the laws of this state to do business herein.

Service of summons and process upon the alleged violator of this article shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

SECTION 17. Any party aggrieved by any final order of the commission pursuant to this article, or any rules and regulations promulgated pursuant to this article, shall have the right of appeal to the Chancery Court of Hinds County, Mississippi, First Judicial District.

SECTION 18. No provider of telephonic caller identification service, local exchange telephone company or long distance company certificated by the commission may be held liable for violations of this article committed by other persons or entities.

SECTION 19. Sections 1 through 18 of this act shall stand repealed from and after July 1, 2005.

SECTION 20. If any section, paragraph, sentence, phrase or any part of this article shall be held invalid or unconstitutional, such holding shall not affect any other section, paragraph, sentence, clause, phrase or part of this article which is not in and of itself invalid or unconstitutional. Moreover, if the application of this article, or any portion of it, to any person or circumstance is held invalid, the invalidity shall not affect the application of this article to other persons or circumstances which can be given effect without the invalid provision or application.
SECTION 21. The provisions of Sections 1 through 19 of this act shall supersede any other act or provision of law to the contrary, and they shall be codified as a new article within Chapter 3, Title 77, Mississippi Code of 1972.

SECTION 22. This act shall take effect and be in force from and after July 1, 2003.