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AMENDMENT No. 2 PROPOSED TO

Senate Bill NO. 2362

By Senator(s) Minor

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

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

27 SECTION 3. For the purposes of this article, the following
28 words and terms shall have the meanings ascribed to them herein:

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

33 (b) "Caller Identification Service" means a type of

34 telephone service which permits telephone subscribers to see the
35 telephone number and name of incoming telephone calls.

36 (c) "Telephone solicitor" means any person, firm,
37 entity, organization, partnership, association, corporation,
38 charitable entity, or a subsidiary or affiliate thereof, who
39 engages in any type of telephone solicitation on his or her own
40 behalf or through representatives, independent contractors,
41 salespersons, agents, automated dialing machines or 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, but does not include communications:

47 (i) To any residential subscriber with that
48 subscriber's prior express invitation or permission;

49 (ii) By or on behalf of any person or entity with
50 whom a residential subscriber has a prior or existing business
51 relationship;

52 (iii) In connection with an existing debt or
53 contract, the payment of which has not been completed at the time
54 of the call;

55 (iv) By a person or entity licensed by this state
56 to carry out a trade, occupation or profession who is setting or
57 attempting to set an appointment for actions relating to that
58 licensed trade, occupation or profession within the state; or

59 (v) By any company in the business of
60 telecommunications.

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

63 (f) "Doing business in this state" refers to businesses

64 which conduct telephonic sales calls from a location in the State
65 of Mississippi or from other states or nations to consumers
66 located in this state.

67 SECTION 4. (1) Prior to doing business in this state, a
68 telephone solicitor shall access the Telephone Preference Service
69 maintained by the Direct Marketing Association and delete from its
70 list of consumers all Mississippi residents who have registered
71 with the service.

72 (2) No telephone solicitor may make or cause to be made any
73 unsolicited telephone solicitation to any consumer in this state
74 if the consumer's name and telephone number or numbers appear in
75 the then current list of consumers registered with the Telephone
76 Preference Service maintained by the Direct Marketing Association.

77 (3) Any person who obtains the name, residential address or
78 telephone number of any consumer from published telephone
79 directories or from any other source and republishes or compiles
80 such information, electronically or otherwise, and sells or offers
81 to sell such publication or compilation to telephone solicitors
82 for marketing or sales solicitation purposes, shall exclude from
83 any such publication or compilation, and from the database used to
84 prepare such publication or compilation, the name, address and
85 telephone number or numbers of any consumer if the consumer's name
86 and telephone number or numbers appear in the then current list of
87 consumers registered with the Telephone Preference Service
88 maintained by the Direct Marketing Association.

89 SECTION 5. (1) Any person or entity who makes a telephone
90 solicitation to a consumer in this state who is not listed in the
91 then current list of consumers registered with the Telephone
92 Preference Service maintained by the Direct Marketing Association
93 shall, at the beginning of each call, announce clearly his or her

94 name, the company he or she represents and the purpose of the
95 call. Such calls may only be made between the hours of 8:00 a.m.
96 and 9:00 p.m. No telephone solicitation shall be made on a
97 Sunday.

98 (2) No person or entity who makes a telephone solicitation
99 to a consumer in this state may knowingly utilize any method which
100 blocks or otherwise circumvents the use of Caller Identification
101 Service by the consumer.

102 SECTION 6. (1) The commission is authorized to investigate
103 alleged violations of this article and to initiate proceedings
104 relative to a violation of this article. Such proceedings
105 include, without limitation, proceedings to issue a cease and
106 desist order, and to issue an order imposing a civil penalty not
107 to exceed Five Thousand Dollars (\$5,000.00) for each violation.
108 The commission shall afford an opportunity for a fair hearing to
109 the alleged violator(s) after giving written notice of the time
110 and place for said hearing. Failure to appear at any such hearing
111 may result in the commission finding the alleged violator(s)
112 liable by default. Any telephone solicitor found to have violated
113 this article, pursuant to a hearing or by default, may be subject
114 to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00)
115 for each violation to be assessed and collected by the commission.
116 Each telephonic communication shall constitute a separate
117 violation.

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

122 (3) The remedies, duties, prohibitions and penalties set
123 forth under this article shall not be exclusive and shall be in

124 addition to all other causes of action, remedies and penalties
125 provided by law, including, but not limited to, the penalties
126 provided by Section 77-1-53.

127 SECTION 7. Any person who has received a telephone
128 solicitation in violation of this article may file a complaint
129 with the commission. The complaint will be processed pursuant to
130 complaint procedures established by the commission.

131 SECTION 8. It shall be a defense in any action or proceeding
132 brought under Section 6 or 7 of this act that the defendant has
133 established and implemented, with due care, reasonable practices
134 and procedures to effectively prevent telephone solicitations in
135 violation of this article.

136 SECTION 9. The commission is granted personal jurisdiction
137 over any telephone solicitor, whether a resident or a nonresident,
138 and even though they are deemed not to be a public utility, for
139 the purpose of administering the provisions of this article. The
140 commission is granted personal jurisdiction over any nonresident
141 telephone solicitor, its executor, administrator, receiver,
142 trustee or any other appointed representative of such nonresident
143 as to an action or proceeding pursuant to this article as
144 authorized by Section 13-3-57, and also upon nonresidents, his or
145 her executor, administrator, receiver, trustee or any other
146 appointed representative of such nonresident who have qualified
147 under the laws of this state to do business herein. Service of
148 summons and process upon the alleged violator of this article
149 shall be had or made as is provided by the Mississippi Rules of
150 Civil Procedure.

151 SECTION 10. Any party aggrieved by any final order of the
152 commission pursuant to this article, or any rules and regulations
153 promulgated pursuant to this article, shall have the right of

154 appeal to the Chancery Court of Hinds County, Mississippi, First
155 Judicial District.

156 SECTION 11. No provider of telephonic Caller Identification
157 Service, local exchange telephone company or long distance company
158 certificated by the commission may be held liable for violations
159 of this article committed by other persons or entities.

160 SECTION 12. If any section, paragraph, sentence, phrase or
161 any part of this article shall be held invalid or
162 unconstitutional, such holding shall not affect any other section,
163 paragraph, sentence, clause, phrase or part of this article which
164 is not in and of itself invalid or unconstitutional. Moreover, if
165 the application of this article, or any portion of it, to any
166 person or circumstance is held invalid, the invalidity shall not
167 affect the application of this article to other persons or
168 circumstances which can be given effect without the invalid
169 provision or application.

170 SECTION 13. This act shall be codified as a new article
171 within Chapter 3, Title 77, Mississippi Code of 1972.

172 SECTION 14. This act shall take effect and be in force from
173 and after July 1, 2001.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO CONSUMERS IF
2 THE CONSUMER'S NAME AND TELEPHONE NUMBER APPEAR IN THE LIST OF
3 CONSUMERS REGISTERED WITH THE TELEPHONE PREFERENCE SERVICE
4 MAINTAINED BY THE DIRECT MARKETING ASSOCIATION; TO PROVIDE THAT
5 ANY PERSON WHO OBTAINS THE NAME, RESIDENTIAL ADDRESS OR TELEPHONE
6 NUMBER OF ANY CONSUMER FROM PUBLISHED TELEPHONE DIRECTORIES SHALL
7 EXCLUDE FROM ANY SUCH PUBLICATION THE NAME, ADDRESS AND TELEPHONE
8 NUMBER OF ANY CONSUMER IF THE CONSUMER'S NAME AND TELEPHONE NUMBER
9 APPEAR IN THE LIST OF CONSUMERS REGISTERED WITH THE TELEPHONE
10 PREFERENCE SERVICE MAINTAINED BY THE DIRECT MARKETING ASSOCIATION;
11 TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO IMPOSE CIVIL
12 PENALTIES FOR VIOLATIONS OF THIS ACT; TO GRANT THE PUBLIC SERVICE
13 COMMISSION PERSONAL JURISDICTION OVER ANY TELEPHONE SOLICITOR FOR
14 THE PURPOSE OF ADMINISTERING THE PROVISIONS OF THIS ARTICLE; AND

15 FOR RELATED PURPOSES.