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To: Public Utilities

SENATE BILL NO. 2296
(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 PROVIDE EXEMPTIONS THERETO;
4 TO REQUIRE THE PUBLIC SERVICE COMMISSION TO ESTABLISH A DATABASE
5 TO COLLECT SUCH OBJECTIONS; TO RESTRICT THE USE OF INFORMATION
6 CONTAINED IN THE DATABASE; TO REQUIRE ALL TELEPHONE SOLICITORS TO
7 REGISTER WITH THE PUBLIC SERVICE COMMISSION PRIOR TO CONDUCTING
8 TELEPHONIC SOLICITATION AND TO PROVIDE FEES THEREFOR; TO AUTHORIZE
9 THE PUBLIC SERVICE COMMISSION TO PROMULGATE RULES NECESSARY TO
10 EFFECTUATE THIS ACT; TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF
11 THIS ACT; AND FOR RELATED PURPOSES.

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

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

23 **SECTION 3.** For the purposes of this article, the following
24 words 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, but does not include communications:

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

45 (ii) By or on behalf of any person or entity with
46 whom a residential subscriber has a current business relationship;

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

50 (iv) By any person soliciting for religious,
51 charitable, political or educational purposes. A person
52 soliciting for other noncommercial purposes is exempt only if that
53 person is soliciting for a nonprofit corporation and if that
54 corporation is properly registered as such with the Secretary of
55 State and is included within the exemption of Section 501(c)(3) or
56 (6) of the Internal Revenue Code;

57 (v) By any licensed securities, commodities or
58 investment broker, dealer or investment adviser, when soliciting
59 within the scope of his or her license, or any licensed associated
60 person of a securities, commodities or investment broker, dealer
61 or investment adviser, when soliciting within the scope of his or
62 her license. As used in this section, "licensed securities,
63 commodities or investment broker, dealer or investment adviser"
64 means a person subject to license or registration as such by the



65 Securities and Exchange Commission, by the National Association of
66 Securities Dealers or other self-regulatory organization as
67 defined by the Securities Exchange Act of 1934, 15 USC Section
68 781, or by an official or agency of this state or of any state of
69 the United States. As used in this section, "licensed associated
70 person of a securities, commodities or investment broker, dealer
71 or investment adviser" means any associated person registered or
72 licensed by the National Association of Securities Dealers or
73 other self-regulatory organization as defined by the Securities
74 Exchange Act of 1934, 15 USC Section 781, or by an official or
75 agency of this state or of any state of the United States;

76 (vi) By any licensed insurance broker, agent or
77 producer, customer representative or solicitor when soliciting
78 within the scope of his or her license. As used in this section,
79 "licensed insurance broker, agent or producer, customer
80 representative or solicitor" means any insurance broker, agent or
81 producer, customer representative or solicitor licensed by an
82 official or agency of this state or of any state of the United
83 States;

84 (vii) By any person soliciting the sale of
85 services provided by a cable television system operating under
86 authority of a franchise or permit;

87 (viii) By any business-to-business sale where:

88 1. The commercial telephone seller has been
89 operating continuously for at least three (3) years under the same
90 business name and has at least fifty percent (50%) of its dollar
91 volume consisting of repeat sales to existing businesses;

92 2. The purchaser business intends to resell
93 or offer for purposes of advertisement or as a promotional item
94 the property or goods purchased; or

95 3. The purchaser business intends to use the
96 property or goods purchased in a recycling, reuse, remanufacturing
97 or manufacturing process.



98 (ix) By any person who solicits contracts for the
99 maintenance or repair of goods previously purchased from the
100 person making the solicitation or on whose behalf the solicitation
101 is made;

102 (x) By any telephone company, or affiliate
103 thereof, or its agents, or a business which is regulated by the
104 Mississippi Public Service Commission, or a Federal Communications
105 Commission licensed cellular telephone company or other bona fide
106 radio telecommunication services provider. For the purposes of
107 this exemption, "affiliate" means a person who directly, or
108 indirectly through one or more intermediaries, controls or is
109 controlled by, or is under common control with, a telephone
110 company regulated by the Mississippi Public Service Commission;

111 (xi) By any person who is licensed pursuant to
112 Section 73-11-41 et seq., and who is soliciting within the scope
113 of the license;

114 (xii) By any person soliciting business from
115 prospective consumers who have an existing business relationship
116 with or who have previously purchased from the business enterprise
117 for which the solicitor is calling, if the solicitor is operating
118 under the same exact business name;

119 (xiii) By a person who has been operating, for at
120 least one (1) year, a retail business establishment under the same
121 name as that used in connection with telemarketing, and both of
122 the following occur on a continuing basis:

123 1. Either products are displayed and offered
124 for sale or services are offered for sale and provided at the
125 business establishment;

126 2. A majority of the seller's business
127 involves the buyer obtaining such products or services at the
128 seller's location.

129 (xiv) By any person or entity which:



130 1. Has been providing telemarketing sales
131 services continuously for at least five (5) years under the same
132 ownership and control;

133 2. Derives seventy-five percent (75%) of its
134 gross telemarketing sales revenues from contracts with persons
135 exempted in this section; and

136 3. Is soliciting on behalf of persons
137 exempted in this section.

138 (xv) By any person who is a licensed real estate
139 salesperson or broker pursuant to Section 73-35-1 et seq. and who
140 is soliciting within the scope of the article;

141 (xvi) By any supervised financial institution or
142 parent, subsidiary or affiliate thereof. As used in this section,
143 "supervised financial institution" means any commercial bank,
144 trust company, savings and loan association, mutual savings bank,
145 credit union, industrial loan company, consumer finance lender,
146 commercial finance lender or insurer, provided that the
147 institution operates a physical office in this state and is
148 subject to supervision by an official or agency of this state, of
149 any state, or of the United States. For the purposes of this
150 exemption, "affiliate" means a person who directly, or indirectly
151 through one or more intermediaries, controls or is controlled by,
152 or is under common control with, a supervised financial
153 institution;

154 (xvii) By any person who is soliciting on behalf
155 of any newspaper having a general circulation in the State of
156 Mississippi.

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

159 (f) "Doing business in this state" refers to businesses
160 which conduct telephonic sales calls from a location in the State
161 of Mississippi or from other states or nations to consumers
162 located in this state.



163 **SECTION 4.** (1) No telephone solicitor may make or cause to
164 be made any telephone solicitation to any consumer in this state
165 unless the telephone solicitor has purchased the "no-calls"
166 database from the commission or the entity under contract with the
167 commission.

168 (2) No telephone solicitor may make or cause to be made any
169 telephone solicitation to any consumer in this state who has given
170 notice to the commission or the entity under contract with the
171 commission, of his or her objection to receiving telephone
172 solicitations.

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

180 (4) Each local exchange company and each competing local
181 exchange carrier shall provide written notification on a
182 semiannual basis to each of its consumers, beginning July 1, 2002,
183 of the opportunity to provide notification to the commission or
184 the entity under contract with the commission, that the consumer
185 objects to receiving telephone solicitations. The notification
186 shall be disseminated at the option of the carrier, by television,
187 radio or newspaper advertisements, written correspondence, bill
188 inserts or messages, a publication in the consumer information
189 pages of the local telephone directory, or any other method not
190 expressly prohibited by the commission.

191 **SECTION 5.** All telephone solicitors shall register with the
192 commission prior to conducting any telephonic solicitations in the
193 State of Mississippi.



194 **SECTION 6.** The commission is authorized to promulgate rules
195 necessary to effectuate this article, including, but not limited
196 to, the following:

197 (a) Methods by which consumers may give notice to the
198 commission or its contractor of their objection to receive
199 solicitations or revocation of the notice;

200 (b) Methods by which a notice of objection becomes
201 effective and the effect of a change of telephone number on the
202 notice;

203 (c) Methods by which objections and revocations are
204 collected and added to the database;

205 (d) Methods by which a person or entity desiring to
206 make telephone solicitation may obtain access to the database as
207 required to avoid calling the telephone number of consumers
208 included in the database;

209 (e) The process by which the database is updated, and
210 the frequency of updates;

211 (f) The process by which telephone solicitors must
212 register with the commission for the purpose of conducting
213 telephonic solicitations in the state;

214 (g) Establishment of fees to be charged by the
215 commission or its contractor to telephone solicitors for access to
216 or for paper or electronic copies of the database on an annual
217 basis; and

218 (h) All other matters relating to the database that the
219 commission deems necessary.

220 **SECTION 7.** If the Federal Trade Commission establishes a
221 single national database of telephone numbers of consumers who
222 object to receiving telephone solicitations, the commission shall
223 include the portion of the single national database that relates
224 to the State of Mississippi in the database established under this
225 article.



226 **SECTION 8.** Information contained in the database established
227 pursuant to this article may be used and accessed only for the
228 purpose of compliance with this article and shall not be otherwise
229 subject to public inspection or disclosure.

230 **SECTION 9.** All fees collected under the provisions of this
231 article shall be deposited into a special fund in the State
232 Treasury to be expended by the commission for the implementation
233 and administration of this article. At the end of each fiscal
234 year, unexpended monies remaining in the fund shall not revert to
235 any other fund of the state, but shall remain available for
236 appropriations to administer this article. The Legislature shall
237 annually appropriate from the fund the amount necessary for the
238 administration of this article to the commission.

239 **SECTION 10.** Any person or entity who makes a telephone
240 solicitation to a consumer in this state who is not listed on the
241 most current "no-calls" database shall, at the beginning of each
242 call, announce clearly his or her name, the company he or she
243 represents and the purpose of the call. Such calls may only be
244 made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard
245 Time. No telephone solicitation shall be made on a Sunday.

246 No person or entity who makes a telephone solicitation to a
247 consumer in this state may knowingly utilize any method which
248 blocks or otherwise circumvents the use of Caller Identification
249 Service by the consumer.

250 **SECTION 11.** The commission is authorized to investigate
251 alleged violations and to initiate proceedings relative to a
252 violation of this article or any rules and regulations promulgated
253 pursuant to this article. Such proceedings include, without
254 limitation, proceedings to issue a cease and desist order, and to
255 issue an order imposing a civil penalty not to exceed Five
256 Thousand Dollars (\$5,000.00) for each violation. The commission
257 shall afford an opportunity for a fair hearing to the alleged
258 violator(s) after giving written notice of the time and place for



259 said hearing. Failure to appear at any such hearing may result in
260 the commission finding the alleged violator(s) liable by default.
261 Any telephone solicitor found to have violated this article,
262 pursuant to a hearing or by default, may be subject to a civil
263 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each
264 violation to be assessed and collected by the commission. Each
265 telephonic communication shall constitute a separate violation.

266 All penalties collected by the commission shall be deposited
267 in the special fund created herein for the administration of this
268 article.

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

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

278 **SECTION 12.** Any person who has received a telephone
279 solicitation in violation of this article, or any rules and
280 regulations promulgated pursuant to this article, may file a
281 complaint with the commission. The complaint will be processed
282 pursuant to complaint procedures established by the commission.

283 **SECTION 13.** It shall be a defense in any action or
284 proceeding brought under Section 11 or 12 of this act that the
285 defendant has established and implemented, with due care,
286 reasonable practices and procedures to effectively prevent
287 telephone solicitations in violation of this article.

288 **SECTION 14.** The commission is granted personal jurisdiction
289 over any telephone solicitor, whether a resident or a nonresident,
290 and even though they are deemed not to be a public utility, for
291 the purpose of administering the provisions of this article. The



292 commission is granted personal jurisdiction over any nonresident
293 telephone solicitor, its executor, administrator, receiver,
294 trustee or any other appointed representative of such nonresident
295 as to an action or proceeding authorized by this article or any
296 rules and regulations promulgated pursuant to this article as
297 authorized by Section 13-3-57, and also upon nonresidents, his or
298 her executor, administrator, receiver, trustee or any other
299 appointed representative of such nonresident who have qualified
300 under the laws of this state to do business herein. Service of
301 summons and process upon the alleged violator of this article
302 shall be had or made as is provided by the Mississippi Rules of
303 Civil Procedure.

304 **SECTION 15.** Any party aggrieved by any final order of the
305 commission pursuant to this article, or any rules and regulations
306 promulgated pursuant to this article, shall have the right of
307 appeal to the Chancery Court of Hinds County, Mississippi, First
308 Judicial District.

309 **SECTION 16.** No provider of telephonic Caller Identification
310 Service, local exchange telephone company or long distance company
311 certificated by the commission may be held liable for violations
312 of this article committed by other persons or entities.

313 **SECTION 17.** If any section, paragraph, sentence, phrase or
314 any part of this article shall be held invalid or
315 unconstitutional, such holding shall not affect any other section,
316 paragraph, sentence, clause, phrase or part of this article which
317 is not in and of itself invalid or unconstitutional. Moreover, if
318 the application of this article, or any portion of it, to any
319 person or circumstance is held invalid, the invalidity shall not
320 affect the application of this article to other persons or
321 circumstances which can be given effect without the invalid
322 provision or application.

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



325 **SECTION 19.** This act shall take effect and be in force from
326 and after July 1, 2002.

