

By: Senator(s) Chamberlin, Dawkins

To: Public Utilities

SENATE BILL NO. 2329

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 business-to-business sale where:

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

62 2. The purchaser business intends to resell  
63 or offer for purposes of advertisement or as a promotional item  
64 the property or goods purchased; or



65                   3. The purchaser business intends to use the  
66 property or goods purchased in a recycling, reuse, remanufacturing  
67 or manufacturing process.

68                   (vi) By any person soliciting business from  
69 prospective consumers who have previously purchased from the  
70 business enterprise for which the solicitor is calling, if the  
71 solicitor is operating under the same exact business name;

72                   (vii) By any person who is soliciting on behalf of  
73 any newspaper having a general circulation in the State of  
74 Mississippi.

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

77                   (f) "Doing business in this state" refers to businesses  
78 which conduct telephonic sales calls from a location in the State  
79 of Mississippi or from other states or nations to consumers  
80 located in this state.

81                   **SECTION 4.** (1) No telephone solicitor may make or cause to  
82 be made any telephone solicitation to any consumer in this state  
83 unless the telephone solicitor has purchased the "no-calls"  
84 database from the commission or the entity under contract with the  
85 commission.

86                   (2) No telephone solicitor may make or cause to be made any  
87 telephone solicitation to any consumer in this state who has given  
88 notice to the commission or the entity under contract with the  
89 commission, of his or her objection to receiving telephone  
90 solicitations.

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



98           (4) Each local exchange company and each competing local  
99 exchange carrier shall provide written notification on a  
100 semiannual basis to each of its consumers, beginning July 1, 2003,  
101 of the opportunity to provide notification to the commission or  
102 the entity under contract with the commission, that the consumer  
103 objects to receiving telephone solicitations. The notification  
104 shall be disseminated at the option of the carrier, by television,  
105 radio or newspaper advertisements, written correspondence, bill  
106 inserts or messages, a publication in the consumer information  
107 pages of the local telephone directory, or any other method not  
108 expressly prohibited by the commission.

109           **SECTION 5.** All telephone solicitors shall register with the  
110 commission prior to conducting any telephonic solicitations in the  
111 State of Mississippi.

112           **SECTION 6.** The commission is authorized to promulgate rules  
113 necessary to effectuate this article, including, but not limited  
114 to, the following:

115                   (a) Methods by which consumers may give notice to the  
116 commission or its contractor of their objection to receive  
117 solicitations or revocation of the notice;

118                   (b) Methods by which a notice of objection becomes  
119 effective and the effect of a change of telephone number on the  
120 notice;

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

123                   (d) Methods by which a person or entity desiring to  
124 make telephone solicitation may obtain access to the database as  
125 required to avoid calling the telephone number of consumers  
126 included in the database;

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



129 (f) The process by which telephone solicitors must  
130 register with the commission for the purpose of conducting  
131 telephonic solicitations in the state;

132 (g) Establishment of fees to be charged by the  
133 commission or its contractor to telephone solicitors for access to  
134 or for paper or electronic copies of the database on an annual  
135 basis; and

136 (h) All other matters relating to the database that the  
137 commission deems necessary.

138 **SECTION 7.** If the Federal Trade Commission establishes a  
139 single national database of telephone numbers of consumers who  
140 object to receiving telephone solicitations, the commission shall  
141 include the portion of the single national database that relates  
142 to the State of Mississippi in the database established under this  
143 article.

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

148 **SECTION 9.** All fees collected under the provisions of this  
149 article shall be deposited into a special fund in the State  
150 Treasury to be expended by the commission for the implementation  
151 and administration of this article. At the end of each fiscal  
152 year, unexpended monies remaining in the fund shall not revert to  
153 any other fund of the state, but shall remain available for  
154 appropriations to administer this article. The Legislature shall  
155 annually appropriate from the fund the amount necessary for the  
156 administration of this article to the commission.

157 **SECTION 10.** Any person or entity who makes a telephone  
158 solicitation to a consumer in this state who is not listed on the  
159 most current "no-calls" database shall, at the beginning of each  
160 call, announce clearly his or her name, the company he or she  
161 represents and the purpose of the call. Such calls may only be



162 made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard  
163 Time. No telephone solicitation shall be made on a Sunday.

164 No person or entity who makes a telephone solicitation to a  
165 consumer in this state may knowingly utilize any method which  
166 blocks or otherwise circumvents the use of Caller Identification  
167 Service by the consumer.

168 **SECTION 11.** The commission is authorized to investigate  
169 alleged violations and to initiate proceedings relative to a  
170 violation of this article or any rules and regulations promulgated  
171 pursuant to this article. Such proceedings include, without  
172 limitation, proceedings to issue a cease and desist order, and to  
173 issue an order imposing a civil penalty not to exceed Five  
174 Thousand Dollars (\$5,000.00) for each violation. The commission  
175 shall afford an opportunity for a fair hearing to the alleged  
176 violator(s) after giving written notice of the time and place for  
177 said hearing. Failure to appear at any such hearing may result in  
178 the commission finding the alleged violator(s) liable by default.  
179 Any telephone solicitor found to have violated this article,  
180 pursuant to a hearing or by default, may be subject to a civil  
181 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each  
182 violation to be assessed and collected by the commission. Each  
183 telephonic communication shall constitute a separate violation.

184 All penalties collected by the commission shall be deposited  
185 in the special fund created herein for the administration of this  
186 article.

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

191 The remedies, duties, prohibitions and penalties set forth  
192 under this article shall not be exclusive and shall be in addition  
193 to all other causes of action, remedies and penalties provided by



194 law, including, but not limited to, the penalties provided by  
195 Section 77-1-53.

196 **SECTION 12.** Any person who has received a telephone  
197 solicitation in violation of this article, or any rules and  
198 regulations promulgated pursuant to this article, may file a  
199 complaint with the commission. The complaint will be processed  
200 pursuant to complaint procedures established by the commission.

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

206 **SECTION 14.** The commission is granted personal jurisdiction  
207 over any telephone solicitor, whether a resident or a nonresident,  
208 and even though they are deemed not to be a public utility, for  
209 the purpose of administering the provisions of this article. The  
210 commission is granted personal jurisdiction over any nonresident  
211 telephone solicitor, its executor, administrator, receiver,  
212 trustee or any other appointed representative of such nonresident  
213 as to an action or proceeding authorized by this article or any  
214 rules and regulations promulgated pursuant to this article as  
215 authorized by Section 13-3-57, and also upon nonresidents, his or  
216 her executor, administrator, receiver, trustee or any other  
217 appointed representative of such nonresident who have qualified  
218 under the laws of this state to do business herein. Service of  
219 summons and process upon the alleged violator of this article  
220 shall be had or made as is provided by the Mississippi Rules of  
221 Civil Procedure.

222 **SECTION 15.** Any party aggrieved by any final order of the  
223 commission pursuant to this article, or any rules and regulations  
224 promulgated pursuant to this article, shall have the right of  
225 appeal to "The Chancery Court of the First Judicial District of  
226 Hinds County, Mississippi."



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

231           **SECTION 17.** If any section, paragraph, sentence, phrase or  
232 any part of this article shall be held invalid or  
233 unconstitutional, such holding shall not affect any other section,  
234 paragraph, sentence, clause, phrase or part of this article which  
235 is not in and of itself invalid or unconstitutional. Moreover, if  
236 the application of this article, or any portion of it, to any  
237 person or circumstance is held invalid, the invalidity shall not  
238 affect the application of this article to other persons or  
239 circumstances which can be given effect without the invalid  
240 provision or application.

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

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

