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To: Public Utilities

SENATE BILL NO. 2445
(As Sent to Governor)

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 BEFORE CONDUCTING TELEPHONE SOLICITATIONS AND
8 TO PROVIDE FEES THEREFOR; TO AUTHORIZE THE PUBLIC SERVICE
9 COMMISSION TO GRANT CERTAIN LIMITED EXCEPTIONS TO THE PROVISIONS
10 OF THIS ACT AND TO PROMULGATE RULES NECESSARY TO EFFECTUATE THIS
11 ACT; TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; TO
12 GRANT EXEMPTIONS TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
13 PURPOSES.

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

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

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

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

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

31 (b) "Caller identification service" means a type of
32 telephone service which permits a telephone subscriber to view the



33 telephone number and name of the person or entity making an
34 incoming telephone call.

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

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

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

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

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

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

55 (g) "Consumer goods or services" means any real
56 property or any tangible or intangible personal property which is
57 normally used for personal, family or household purposes,
58 including, without limitation, any property intended to be
59 attached to, or installed in, any real property, and any services
60 related to the property.

61 (h) "Established business relationship" means a prior
62 or existing relationship formed by a voluntary two-way
63 communication between a person or entity and a consumer, with or
64 without an exchange of consideration, on the basis of an inquiry,
65 application, purchase or transaction by the consumer, which



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

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

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

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

95 (3) The commission, or an entity under contract with the
96 commission, shall establish and operate a "no-calls" database
97 composed of a list of telephone numbers of consumers who have
98 given notice of their objection to receiving telephone



99 solicitations. The "no-calls" database may be operated by the
100 commission or by another entity under contract with the
101 commission.

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

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

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

126 (b) The telephone solicitation is to be made by a
127 person or entity for the purpose of soliciting a contribution or
128 donation to a bona fide nonprofit corporation, regardless of
129 whether consumer goods or services will be provided to the
130 consumer in return for the contribution or donation; or



131 (c) The consumer will not be telephoned for a telephone
132 solicitation as defined in Section 3(d), but he will be telephoned
133 for a bona fide religious or charitable purpose, including an
134 invitation to attend an event or a request for a contribution or
135 donation.

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

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

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

149 (a) A person soliciting:

150 (i) Who does not make the major sales presentation
151 during the telephone solicitation;

152 (ii) Without the intent to complete or obtain
153 provisional acceptance of a sale during the telephone
154 solicitation; or

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

160 (b) A person who is a licensee under Chapter 35, Title
161 73, Mississippi Code of 1972, who is a resident of the State of
162 Mississippi, and whose telephone solicitation is for the sole
163 purpose of selling, exchanging, purchasing, renting, listing for



164 sale or rent or leasing real estate in connection with his real
165 estate license and not in conjunction with any other offer.

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

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

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

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

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

194 (h) A person calling on behalf of any supervised
195 financial institution or parent, subsidiary or affiliate thereof.
196 As used in this section, "supervised financial institution" means



197 any commercial bank, trust company, savings and loan association,
198 mutual savings bank, credit union, industrial loan company, small
199 loan company, consumer finance lender, commercial finance lender
200 or insurer, provided that the institution has a physical office
201 located in the State of Mississippi and is subject to supervision
202 by an official or agency of the State of Mississippi or of the
203 United States.

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

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

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

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

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

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

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

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

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



230 (f) The process by which telephone solicitors must
231 register with the commission for the purpose of conducting
232 telephonic solicitations in the state;

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

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

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

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

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

253 **SECTION 11.** All fees collected under the provisions of this
254 article shall be deposited into a special fund which is created in
255 the State Treasury to be expended by the commission for the
256 implementation and administration of this article. At the end of
257 each fiscal year, earned interest and unexpended monies remaining
258 in the fund may not revert to any other fund of the state, but
259 shall remain available for appropriations to administer this
260 article. The Legislature shall appropriate annually from the fund
261 the amount necessary for the administration of this article to the
262 commission.



263 **SECTION 12.** (1) Any person or entity who makes an
264 authorized telephone solicitation to a consumer in this state
265 shall announce clearly, at the beginning of each call, his or her
266 name, the company he or she represents and the purpose of the
267 call. Such calls may only be made between the hours of 8:00 a.m.
268 and 8:00 p.m. Central Standard Time. No telephone solicitations
269 may be made on a Sunday. For purposes of this provision, an
270 "authorized telephone solicitation" means a solicitation that is
271 made: (a) to a consumer who is not listed on the most current
272 "no-calls" database; (b) by a telephone solicitor who has been
273 authorized to make such solicitations under the provisions of
274 Section 5 of this act; or (c) by a telephone solicitor who is
275 exempt from this act under the provisions of Section 6 of this
276 act.

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

286 **SECTION 13.** The commission may investigate alleged
287 violations and to initiate proceedings relative to a violation of
288 this article or any rules and regulations promulgated pursuant to
289 this article. Such proceedings include, without limitation,
290 proceedings to issue a cease and desist order, and to issue an
291 order imposing a civil penalty not to exceed Five Thousand Dollars
292 (\$5,000.00) for each violation. The commission shall afford an
293 opportunity for a fair hearing to the alleged violator(s) after
294 giving written notice of the time and place for said hearing.
295 Failure to appear at any such hearing may result in the commission



296 finding the alleged violator(s) liable by default. Any telephone
297 solicitor found to have violated this article, pursuant to a
298 hearing or by default, may be subject to a civil penalty not to
299 exceed Five Thousand Dollars (\$5,000.00) for each violation to be
300 assessed and collected by the commission. Each telephonic
301 communication shall constitute a separate violation.

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

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

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

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

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

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



329 nonresident telephone solicitor, its executor, administrator,
330 receiver, trustee or any other appointed representative of such
331 nonresident as to an action or proceeding authorized by this
332 article or any rules and regulations promulgated pursuant to this
333 article as authorized by Section 13-3-57, and also upon any
334 nonresident, his or her executor, administrator, receiver, trustee
335 or any other appointed representative of such nonresident who has
336 qualified under the laws of this state to do business herein.
337 Service of summons and process upon the alleged violator of this
338 article shall be had or made as is provided by the Mississippi
339 Rules of Civil Procedure.

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

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

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

351 **SECTION 20.** If any section, paragraph, sentence, phrase or
352 any part of this article shall be held invalid or
353 unconstitutional, such holding shall not affect any other section,
354 paragraph, sentence, clause, phrase or part of this article which
355 is not in and of itself invalid or unconstitutional. Moreover, if
356 the application of this article, or any portion of it, to any
357 person or circumstance is held invalid, the invalidity shall not
358 affect the application of this article to other persons or
359 circumstances which can be given effect without the invalid
360 provision or application.



361 **SECTION 21.** The provisions of Sections 1 through 19 of this
362 act shall supercede any other act or provision of law to the
363 contrary, and they shall be codified as a new article within
364 Chapter 3, Title 77, Mississippi Code of 1972.

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

