

By: Representatives Reynolds, Moak, Peranich To: Apportionment and
Elections; Public Utilities

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1245

1 AN ACT TO AMEND SECTION 77-3-705, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE CERTAIN POLITICAL CALLS AS TELEPHONE SOLICITATIONS THAT
3 ARE PROHIBITED WHEN CONSUMERS NOTIFY THE PUBLIC SERVICE COMMISSION
4 OF THEIR OBJECTIONS TO RECEIVING SUCH PHONE CALLS; TO AMEND
5 SECTION 77-3-711, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
6 CERTAIN POLITICAL CALLS ARE EXEMPTED FROM THE TELEPHONE
7 SOLICITATION ACT WHEN CERTAIN INFORMATION IS DISCLOSED AT THE
8 COMMENCEMENT OF THE PHONE CALL; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 77-3-705, Mississippi Code of 1972, is
11 amended as follows:

12 77-3-705. For the purposes of this article, the following
13 words and terms shall have the meanings ascribed in this section
14 unless the context clearly indicates otherwise:

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

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

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

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

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

35 (ii) Soliciting a sale of any consumer goods or
36 services, or an extension of credit for consumer goods or
37 services; or

38 (iii) Engaging in the practice of push polling.

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

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

44 (g) "Consumer goods or services" means any real
45 property or any tangible or intangible personal property which is
46 normally used for personal, family or household purposes,
47 including, without limitation, any property intended to be
48 attached to, or installed in, any real property, and any services
49 related to the property.

50 (h) "Established business relationship" means a prior
51 or existing relationship formed by a voluntary two-way
52 communication between a person or entity and a consumer, with or
53 without an exchange of consideration, on the basis of an inquiry,
54 application, purchase or transaction by the consumer, which
55 relationship is currently existing or was terminated within six
56 (6) months of the telephone solicitation; however, the act of
57 purchasing consumer goods or services under an extension of credit
58 does not create an existing business relationship between the
59 consumer and the entity extending credit to the consumer for such
60 purchase. The term does not include the situation wherein the
61 consumer has merely been subject to a telephone solicitation by or

62 at the behest of the telephone solicitor within the six (6) months
63 immediately preceding the contemplated telephone solicitation.

64 (i) "Charitable organization" means any person or
65 entity holding itself out to be established for any benevolent,
66 educational, philanthropic, humane, scientific, patriotic, social
67 welfare or advocacy, public health, environmental or conservation,
68 civic or other eleemosynary purpose or for the benefit of law
69 enforcement personnel, fire fighters, or any other persons who
70 protect the public safety, or for any other purpose where a
71 charitable appeal is the basis of the solicitation.

72 (j) "Push polling" means a telemarketing technique in
73 which telephone calls are made to voters to disseminate political
74 information designed to influence the election of a candidate
75 under the guise of taking a poll to determine how the information
76 may affect a voter's preference for a particular candidate, with
77 the intent to distribute verbal campaign propaganda while
78 purporting to conduct a legitimate public opinion poll.

79 **SECTION 2.** Section 77-3-711, Mississippi Code of 1972, is
80 amended as follows:

81 77-3-711. The provisions of this article shall not apply to:

82 (a) A person soliciting:

83 (i) Who does not make the major sales presentation
84 during the telephone solicitation;

85 (ii) Without the intent to complete or obtain
86 provisional acceptance of a sale during the telephone
87 solicitation; or

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

93 (b) A person who is a licensee under Chapter 35, Title
94 73, Mississippi Code of 1972, who is a resident of the State of

95 Mississippi, and whose telephone solicitation is for the sole
96 purpose of selling, exchanging, purchasing, renting, listing for
97 sale or rent or leasing real estate in connection with his real
98 estate license and not in conjunction with any other offer.

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

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

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

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

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

127 (h) A person calling on behalf of any supervised
128 financial institution or parent, subsidiary or affiliate thereof.
129 As used in this section, "supervised financial institution" means
130 any commercial bank, trust company, savings and loan association,
131 mutual savings bank, credit union, industrial loan company, small
132 loan company, consumer finance lender, commercial finance lender
133 or insurer, provided that the institution has a physical office
134 located in the State of Mississippi and is subject to supervision
135 by an official or agency of the State of Mississippi or of the
136 United States.

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

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

143 (k) Any telephone solicitor who engages in the practice
144 of push polling, as defined in Section 77-3-705 (j), and who at
145 the commencement of the call discloses all of the following
146 information:

147 (i) The caller's name;

148 (ii) The purpose of the phone call;

149 (iii) The name of the individual, business or
150 organization on whose behalf the call is being made;

151 (iv) The identity of any person or group who has
152 directly or indirectly paid for the making of the phone call; and

153 (v) The location from which the call is being
154 made.

155 **SECTION 3.** This act shall take effect and be in force from
156 and after July 1, 2004.