

By: Representatives Fillingane, To: Public Utilities  
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Bondurant, Bounds, Capps,  
Carlton, Chism, Denny,  
Ellington, Formby, Gregory, Gunn, Hamilton (109th), Howell, Ishee,  
Lott, Martinson, Masterson, Mayhall, McBride, Mims, Moore, Nicholson,  
Reed, Robinson (84th), Rogers (14th), Rogers (61st), Simpson, Smith  
(59th), Snowden, Staples, Stevens, Turner, Upshaw, Weathersby, Wells-  
Smith, Woods, Zuber

## HOUSE BILL NO. 9

1 AN ACT TO REENACT SECTIONS 77-3-701 THROUGH 77-3-735,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE MISSISSIPPI TELEPHONE  
3 SOLICITATION ACT; TO AMEND REENACTED SECTION 77-3-717, MISSISSIPPI  
4 CODE OF 1972, TO REQUIRE THE PUBLIC SERVICE COMMISSION TO MAKE  
5 AVAILABLE THE STATE'S DATABASE TO THE FEDERAL TRADE COMMISSION FOR  
6 INCLUSION IN THE NATIONAL DATABASE; TO AMEND SECTION 77-3-737,  
7 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE  
8 REENACTED SECTIONS; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 77-3-701, Mississippi Code of 1972, is  
11 reenacted as follows:

12 77-3-701. This article shall be known and may be cited as  
13 the "Mississippi Telephone Solicitation Act."

14 **SECTION 2.** Section 77-3-703, Mississippi Code of 1972, is  
15 reenacted as follows:

16 77-3-703. The use of the telephone to make all types of  
17 solicitations to consumers is pervasive. This article gives  
18 consumers a tool by which to object to telemarketing calls as  
19 these communications can amount to a nuisance, an invasion of  
20 privacy, and can create a health and safety risk for certain  
21 consumers who maintain their phone service primarily for emergency  
22 medical situations.

23 **SECTION 3.** Section 77-3-705, Mississippi Code of 1972, is  
24 reenacted as follows:

25 77-3-705. For the purposes of this article, the following  
26 words and terms shall have the meanings ascribed in this section  
27 unless the context clearly indicates otherwise:

28 (a) "Consumer" means a person to whom is assigned in  
29 the State of Mississippi a residential telephone line and

30 corresponding telephone number, who uses the residential line  
31 primarily for residential purposes.

32 (b) "Caller identification service" means a type of  
33 telephone service which permits a telephone subscriber to view the  
34 telephone number and name of the person or entity making an  
35 incoming telephone call.

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 systems or machines or  
42 other individuals or systems.

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

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

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

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

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

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

62           (h) "Established business relationship" means a prior  
63 or existing relationship formed by a voluntary two-way  
64 communication between a person or entity and a consumer, with or  
65 without an exchange of consideration, on the basis of an inquiry,  
66 application, purchase or transaction by the consumer, which  
67 relationship is currently existing or was terminated within six  
68 (6) months of the telephone solicitation; however, the act of  
69 purchasing consumer goods or services under an extension of credit  
70 does not create an existing business relationship between the  
71 consumer and the entity extending credit to the consumer for such  
72 purchase. The term does not include the situation wherein the  
73 consumer has merely been subject to a telephone solicitation by or  
74 at the behest of the telephone solicitor within the six (6) months  
75 immediately preceding the contemplated telephone solicitation.

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

84           **SECTION 4.** Section 77-3-707, Mississippi Code of 1972, is  
85 reenacted as follows:

86           77-3-707. (1) Except as otherwise provided pursuant to  
87 Section 77-3-709 or 77-3-711, a telephone solicitor may not make  
88 or cause to be made any telephone solicitation to any consumer in  
89 this state unless the telephone solicitor has purchased the  
90 "no-calls" database from the commission or the entity under  
91 contract with the commission.

92           (2) Except as otherwise provided pursuant to Section  
93 77-3-709 or 77-3-711, a telephone solicitor may not make or cause  
94 to be made any telephone solicitation to any consumer in this

95 state who has given notice to the commission, or the entity under  
96 contract with the commission, of his or her objection to receiving  
97 telephone solicitations.

98 (3) The commission, or an entity under contract with the  
99 commission, shall establish and operate a "no-calls" database  
100 composed of a list of telephone numbers of consumers who have  
101 given notice of their objection to receiving telephone  
102 solicitations. The "no-calls" database may be operated by the  
103 commission or by another entity under contract with the  
104 commission.

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

116 **SECTION 5.** Section 77-3-709, Mississippi Code of 1972, is  
117 reenacted as follows:

118 77-3-709. The commission, in its discretion, may allow  
119 telephone solicitors to make telephone solicitations without  
120 requiring them to purchase the "no-calls" database, and regardless  
121 of whether a telephone solicitation may be made to a consumer who  
122 has given notice of his objection to receiving such solicitations,  
123 provided that it adopts a written policy incorporating the  
124 following criteria:

125 (a) The telephone solicitor must demonstrate to the  
126 commission that its proposed telephone solicitation is reasonably  
127 related to an established business relationship as defined in

128 Section 77-3-705(h), or is being made in response to an invitation  
129 or notice from a consumer which clearly signifies that he is open  
130 to a contact being initiated;

131 (b) The telephone solicitation is to be made by a  
132 person or entity for the purpose of soliciting a contribution or  
133 donation to a bona fide nonprofit corporation, regardless of  
134 whether consumer goods or services will be provided to the  
135 consumer in return for the contribution or donation; or

136 (c) The consumer will not be telephoned for a telephone  
137 solicitation as defined in Section 77-3-705(d), but he will be  
138 telephoned for a bona fide religious or charitable purpose,  
139 including an invitation to attend an event or a request for a  
140 contribution or donation.

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

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

153 **SECTION 6.** Section 77-3-711, Mississippi Code of 1972, is  
154 reenacted as follows:

155 77-3-711. The provisions of this article shall not apply to:

156 (a) A person soliciting:

157 (i) Who does not make the major sales presentation  
158 during the telephone solicitation;

159                   (ii) Without the intent to complete or obtain  
160 provisional acceptance of a sale during the telephone  
161 solicitation; or

162                   (iii) Without the intent to complete, and who does  
163 not complete, the sales presentation during the telephone  
164 solicitation, but who completes the sales presentation at a later  
165 face-to-face meeting between the person soliciting and the  
166 prospective purchaser or consumer.

167                   (b) A person who is a licensee under Chapter 35, Title  
168 73, Mississippi Code of 1972, who is a resident of the State of  
169 Mississippi, and whose telephone solicitation is for the sole  
170 purpose of selling, exchanging, purchasing, renting, listing for  
171 sale or rent or leasing real estate in connection with his real  
172 estate license and not in conjunction with any other offer.

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

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

185                   (e) A broker-dealer, agent, or investment advisor  
186 registered under Chapter 71, Title 75, Mississippi Code of 1972,  
187 whose telephone solicitation is for the sole purpose of effecting  
188 or attempting to effect the purchase or sale of securities or has  
189 the purpose of providing or seeking to provide investment or  
190 financial advice.

191 (f) A person calling on behalf of a charitable  
192 organization which is registered under Chapter 11, Title 79,  
193 Mississippi Code of 1972, whose telephone solicitation is for the  
194 sole purpose of soliciting for the charitable organization and who  
195 receives no compensation for his activities on behalf of the  
196 organization.

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

201 (h) A person calling on behalf of any supervised  
202 financial institution or parent, subsidiary or affiliate thereof.  
203 As used in this section, "supervised financial institution" means  
204 any commercial bank, trust company, savings and loan association,  
205 mutual savings bank, credit union, industrial loan company, small  
206 loan company, consumer finance lender, commercial finance lender  
207 or insurer, provided that the institution has a physical office  
208 located in the State of Mississippi and is subject to supervision  
209 by an official or agency of the State of Mississippi or of the  
210 United States.

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

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

217 **SECTION 7.** Section 77-3-713, Mississippi Code of 1972, is  
218 reenacted as follows:

219 77-3-713. All telephone solicitors must register with the  
220 commission before conducting any telephone solicitations in the  
221 State of Mississippi.

222 **SECTION 8.** Section 77-3-715, Mississippi Code of 1972, is  
223 reenacted as follows:

224           77-3-715. The commission may promulgate rules and  
225 regulations necessary to effectuate this article, including, but  
226 not limited to, the following:

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

230           (b) The methods by which a notice of objection becomes  
231 effective and the effect of a change of telephone number on the  
232 notice;

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

235           (d) The methods by which a person or entity desiring to  
236 make telephone solicitations may obtain access to the database as  
237 required to avoid calling the telephone number of consumers  
238 included in the database;

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

241           (f) The process by which telephone solicitors must  
242 register with the commission for the purpose of conducting  
243 telephonic solicitations in the state;

244           (g) The establishment of fees to be charged by the  
245 commission or its contractor to telephone solicitors for access to  
246 or for paper or electronic copies of the database on an annual  
247 basis;

248           (h) The establishment of a written policy which clearly  
249 articulates the circumstances under which the commission, in its  
250 discretion, may allow exceptions to the provisions of this article  
251 pursuant to Section 77-3-703; and

252           (i) All other matters relating to the database that the  
253 commission deems necessary.

254           **SECTION 9.** Section 77-3-717, Mississippi Code of 1972, is  
255 reenacted and amended as follows:

256           77-3-717. If the Federal Trade Commission establishes a  
257 single national database of telephone numbers of consumers who  
258 object to receiving telephone solicitations, the commission must  
259 include the portion of the single national database that relates  
260 to the State of Mississippi in the database established under this  
261 article. Likewise, the commission shall make available the  
262 state's database to the Federal Trade Commission for inclusion in  
263 the national database.

264           **SECTION 10.** Section 77-3-719, Mississippi Code of 1972, is  
265 reenacted as follows:

266           77-3-719. Information contained in the database established  
267 under this article may be used and accessed only for the purpose  
268 of compliance with this article and shall not be otherwise subject  
269 to public inspection or disclosure.

270           **SECTION 11.** Section 77-3-721, Mississippi Code of 1972, is  
271 reenacted as follows:

272           77-3-721. All fees collected under the provisions of this  
273 article shall be deposited into a special fund which is created in  
274 the State Treasury to be expended by the commission for the  
275 implementation and administration of this article. At the end of  
276 each fiscal year, earned interest and unexpended monies remaining  
277 in the fund may not revert to any other fund of the state, but  
278 shall remain available for appropriations to administer this  
279 article. The Legislature shall appropriate annually from the fund  
280 the amount necessary for the administration of this article to the  
281 commission.

282           **SECTION 12.** Section 77-3-723, Mississippi Code of 1972, is  
283 reenacted as follows:

284           77-3-723. (1) Any person or entity who makes an authorized  
285 telephone solicitation to a consumer in this state shall announce  
286 clearly, at the beginning of each call, his or her name, the  
287 company he or she represents and the purpose of the call. Such  
288 calls may only be made between the hours of 8:00 a.m. and 8:00

289 p.m. Central Standard Time. No telephone solicitations may be  
290 made on a Sunday. For purposes of this provision, an "authorized  
291 telephone solicitation" means a solicitation that is made: (a) to  
292 a consumer who is not listed on the most current "no-calls"  
293 database; (b) by a telephone solicitor who has been authorized to  
294 make such solicitations under the provisions of Section 77-3-709;  
295 or (c) by a telephone solicitor who is exempt from this article  
296 under the provisions of Section 77-3-711.

297 (2) A person or entity who makes a telephone solicitation to  
298 a consumer in this state may not utilize knowingly any method that  
299 blocks or otherwise circumvents the consumer's use of a caller  
300 identification service, nor may the person or entity use an  
301 automated dialing system or any like system that uses a recorded  
302 voice message to communicate with the consumer unless the person  
303 or entity has an established business relationship with the  
304 consumer and uses the recorded voice message to inform the  
305 consumer about a new product or service.

306 **SECTION 13.** Section 77-3-725, Mississippi Code of 1972, is  
307 reenacted as follows:

308 77-3-725. The commission may investigate alleged violations  
309 and initiate proceedings relative to a violation of this article  
310 or any rules and regulations promulgated pursuant to this article.  
311 Such proceedings include, without limitation, proceedings to issue  
312 a cease and desist order, and to issue an order imposing a civil  
313 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each  
314 violation. The commission shall afford an opportunity for a fair  
315 hearing to the alleged violator(s) after giving written notice of  
316 the time and place for said hearing. Failure to appear at any  
317 such hearing may result in the commission finding the alleged  
318 violator(s) liable by default. Any telephone solicitor found to  
319 have violated this article, pursuant to a hearing or by default,  
320 may be subject to a civil penalty not to exceed Five Thousand  
321 Dollars (\$5,000.00) for each violation to be assessed and

322 collected by the commission. Each telephonic communication shall  
323 constitute a separate violation.

324 All penalties collected by the commission shall be deposited  
325 in the special fund created under Section 77-3-721 for the  
326 administration of this article.

327 The commission may issue subpoenas, require the production of  
328 relevant documents, administer oaths, conduct hearings, and do all  
329 things necessary in the course of investigating, determining and  
330 adjudicating an alleged violation.

331 The remedies, duties, prohibitions and penalties set forth  
332 under this article shall not be exclusive and shall be in addition  
333 to all other causes of action, remedies and penalties provided by  
334 law, including, but not limited to, the penalties provided by  
335 Section 77-1-53.

336 **SECTION 14.** Section 77-3-727, Mississippi Code of 1972, is  
337 reenacted as follows:

338 77-3-727. Any person who has received a telephone  
339 solicitation in violation of this article, or any rules and  
340 regulations promulgated pursuant to this article, may file a  
341 complaint with the commission. The complaint will be processed  
342 pursuant to complaint procedures established by the commission.

343 **SECTION 15.** Section 77-3-729, Mississippi Code of 1972, is  
344 reenacted as follows:

345 77-3-729. It shall be a defense in any action or proceeding  
346 brought under Section 77-3-725 or 77-3-727 that the defendant has  
347 established and implemented, with due care, reasonable practices  
348 and procedures to effectively prevent telephone solicitations in  
349 violation of this article.

350 **SECTION 16.** Section 77-3-731, Mississippi Code of 1972, is  
351 reenacted as follows:

352 77-3-731. The commission is granted personal jurisdiction  
353 over any telephone solicitor, whether a resident or a nonresident,  
354 notwithstanding that telephone solicitors are not deemed to be a

355 public utility, for the purpose of administering this article.  
356 The commission is granted personal jurisdiction over any  
357 nonresident telephone solicitor, its executor, administrator,  
358 receiver, trustee or any other appointed representative of such  
359 nonresident as to an action or proceeding authorized by this  
360 article or any rules and regulations promulgated pursuant to this  
361 article as authorized by Section 13-3-57, and also upon any  
362 nonresident, his or her executor, administrator, receiver, trustee  
363 or any other appointed representative of such nonresident who has  
364 qualified under the laws of this state to do business herein.  
365 Service of summons and process upon the alleged violator of this  
366 article shall be had or made as is provided by the Mississippi  
367 Rules of Civil Procedure.

368       **SECTION 17.** Section 77-3-733, Mississippi Code of 1972, is  
369 reenacted as follows:

370       77-3-733. Any party aggrieved by any final order of the  
371 commission pursuant to this article, or any rules and regulations  
372 promulgated pursuant to this article, shall have the right of  
373 appeal to the Chancery Court of Hinds County, Mississippi, First  
374 Judicial District.

375       **SECTION 18.** Section 77-3-735, Mississippi Code of 1972, is  
376 reenacted as follows:

377       77-3-735. No provider of telephonic caller identification  
378 service, local exchange telephone company or long distance company  
379 certificated by the commission may be held liable for violations  
380 of this article committed by other persons or entities.

381       **SECTION 19.** Section 77-3-737, Mississippi Code of 1972, is  
382 amended as follows:

383       77-3-737. Sections 77-3-701 through 77-3-737 shall stand  
384 repealed from and after July 1, 2008.

385       **SECTION 20.** This act shall take effect and be in force from  
386 and after July 1, 2005.