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To: Public Utilities

SENATE BILL NO. 2004  
(As Sent to Governor)

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 77-3-703, MISSISSIPPI  
4 CODE OF 1972, TO PROVIDE THAT CERTAIN POLITICAL CALLS SHALL BE  
5 PROHIBITED; TO AMEND REENACTED SECTION 77-3-711, MISSISSIPPI CODE  
6 OF 1972, TO PROVIDE CLARIFYING LANGUAGE IN REGARDS TO FUNERAL  
7 ESTABLISHMENTS; TO AMEND REENACTED SECTION 77-3-717, MISSISSIPPI  
8 CODE OF 1972, TO REQUIRE THE PUBLIC SERVICE COMMISSION TO MAKE  
9 AVAILABLE THE STATE'S DATABASE TO THE FEDERAL TRADE COMMISSION FOR  
10 INCLUSION IN THE NATIONAL DATABASE; TO AMEND SECTION 77-3-737,  
11 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE  
12 REENACTED SECTIONS; AND FOR RELATED PURPOSES.

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

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

16 77-3-701. This article shall be known and may be cited as  
17 the "Mississippi Telephone Solicitation Act."

18 **SECTION 2.** Section 77-3-703, Mississippi Code of 1972, is  
19 reenacted and amended as follows:

20 77-3-703. (1) The use of the telephone to make all types of  
21 solicitations to consumers is pervasive. This article gives  
22 consumers a tool by which to object to telemarketing calls as  
23 these communications can amount to a nuisance, an invasion of  
24 privacy, and can create a health and safety risk for certain  
25 consumers who maintain their phone service primarily for emergency  
26 medical situations.

27 (2) Any calls made for political purposes shall be governed  
28 by Section 23-15-875.

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

31           77-3-705. For the purposes of this article, the following  
32 words and terms shall have the meanings ascribed in this section  
33 unless the context clearly indicates otherwise:

34           (a) "Consumer" means a person to whom is assigned in  
35 the State of Mississippi a residential telephone line and  
36 corresponding telephone number, who uses the residential line  
37 primarily for residential purposes.

38           (b) "Caller identification service" means a type of  
39 telephone service which permits a telephone subscriber to view the  
40 telephone number and name of the person or entity making an  
41 incoming telephone call.

42           (c) "Telephone solicitor" means any person, firm,  
43 entity, organization, partnership, association, corporation,  
44 charitable entity, or a subsidiary or affiliate thereof, who  
45 engages in any type of telephone solicitation on his or her own  
46 behalf or through representatives, independent contractors,  
47 salespersons, agents, automated dialing systems or machines or  
48 other individuals or systems.

49           (d) "Telephone solicitation" means any voice  
50 communication over the telephone line of a consumer for the  
51 purpose of:

52                   (i) Encouraging the purchase or rental of, or  
53 investment in, property; or

54                   (ii) Soliciting a sale of any consumer goods or  
55 services, or an extension of credit for consumer goods or  
56 services.

57           (e) "Commission" means the Mississippi Public Service  
58 Commission.

59           (f) "Doing business in this state" refers to businesses  
60 which conduct telephone solicitations from any location to  
61 consumers located in this state.

62           (g) "Consumer goods or services" means any real  
63 property or any tangible or intangible personal property which is

64 normally used for personal, family or household purposes,  
65 including, without limitation, any property intended to be  
66 attached to, or installed in, any real property, and any services  
67 related to the property.

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

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

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

92 77-3-707. (1) Except as otherwise provided pursuant to  
93 Section 77-3-709 or 77-3-711, a telephone solicitor may not make  
94 or cause to be made any telephone solicitation to any consumer in  
95 this state unless the telephone solicitor has purchased the

96 "no-calls" database from the commission or the entity under  
97 contract with the commission.

98 (2) Except as otherwise provided pursuant to Section  
99 77-3-709 or 77-3-711, a telephone solicitor may not make or cause  
100 to be made any telephone solicitation to any consumer in this  
101 state who has given notice to the commission, or the entity under  
102 contract with the commission, of his or her objection to receiving  
103 telephone solicitations.

104 (3) The commission, or an entity under contract with the  
105 commission, shall establish and operate a "no-calls" database  
106 composed of a list of telephone numbers of consumers who have  
107 given notice of their objection to receiving telephone  
108 solicitations. The "no-calls" database may be operated by the  
109 commission or by another entity under contract with the  
110 commission.

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

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

124 77-3-709. The commission, in its discretion, may allow  
125 telephone solicitors to make telephone solicitations without  
126 requiring them to purchase the "no-calls" database, and regardless  
127 of whether a telephone solicitation may be made to a consumer who  
128 has given notice of his objection to receiving such solicitations,

129 provided that it adopts a written policy incorporating the  
130 following criteria:

131 (a) The telephone solicitor must demonstrate to the  
132 commission that its proposed telephone solicitation is reasonably  
133 related to an established business relationship as defined in  
134 Section 77-3-705(h), or is being made in response to an invitation  
135 or notice from a consumer which clearly signifies that he is open  
136 to a contact being initiated;

137 (b) The telephone solicitation is to be made by a  
138 person or entity for the purpose of soliciting a contribution or  
139 donation to a bona fide nonprofit corporation, regardless of  
140 whether consumer goods or services will be provided to the  
141 consumer in return for the contribution or donation; or

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

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

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

159 **SECTION 6.** Section 77-3-711, Mississippi Code of 1972, is  
160 reenacted and amended as follows:

161           77-3-711. The provisions of this article shall not apply to:

162           (a) A person soliciting:

163                   (i) Who does not make the major sales presentation  
164 during the telephone solicitation;

165                   (ii) Without the intent to complete or obtain  
166 provisional acceptance of a sale during the telephone  
167 solicitation; or

168                   (iii) Without the intent to complete, and who does  
169 not complete, the sales presentation during the telephone  
170 solicitation, but who completes the sales presentation at a later  
171 face-to-face meeting between the person soliciting and the  
172 prospective purchaser or consumer.

173           (b) A person who is a licensee under Chapter 35, Title  
174 73, Mississippi Code of 1972, who is a resident of the State of  
175 Mississippi, and whose telephone solicitation is for the sole  
176 purpose of selling, exchanging, purchasing, renting, listing for  
177 sale or rent or leasing real estate in connection with his real  
178 estate license and not in conjunction with any other offer.

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

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

191           (e) A broker-dealer, agent, or investment advisor  
192 registered under Chapter 71, Title 75, Mississippi Code of 1972,  
193 whose telephone solicitation is for the sole purpose of effecting

194 or attempting to effect the purchase or sale of securities or has  
195 the purpose of providing or seeking to provide investment or  
196 financial advice.

197 (f) A person calling on behalf of a charitable  
198 organization which is registered under Chapter 11, Title 79,  
199 Mississippi Code of 1972, whose telephone solicitation is for the  
200 sole purpose of soliciting for the charitable organization and who  
201 receives no compensation for his activities on behalf of the  
202 organization.

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

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

217 (i) A person calling on behalf of a funeral  
218 establishment licensed under Section 73-11-41, cemetery or  
219 monument dealer, if the sole purpose of the telephone solicitation  
220 relates to services provided by the funeral or death related  
221 establishments in the course of its ordinary business.

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

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

226           77-3-713. All telephone solicitors must register with the  
227 commission before conducting any telephone solicitations in the  
228 State of Mississippi.

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

231           77-3-715. The commission may promulgate rules and  
232 regulations necessary to effectuate this article, including, but  
233 not limited to, the following:

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

237           (b) The methods by which a notice of objection becomes  
238 effective and the effect of a change of telephone number on the  
239 notice;

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

242           (d) The methods by which a person or entity desiring to  
243 make telephone solicitations may obtain access to the database as  
244 required to avoid calling the telephone number of consumers  
245 included in the database;

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

248           (f) The process by which telephone solicitors must  
249 register with the commission for the purpose of conducting  
250 telephonic solicitations in the state;

251           (g) The establishment of fees to be charged by the  
252 commission or its contractor to telephone solicitors for access to  
253 or for paper or electronic copies of the database on an annual  
254 basis;

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



259 (i) All other matters relating to the database that the  
260 commission deems necessary.

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

263 77-3-717. If the Federal Trade Commission establishes a  
264 single national database of telephone numbers of consumers who  
265 object to receiving telephone solicitations, the commission must  
266 include the portion of the single national database that relates  
267 to the State of Mississippi in the database established under this  
268 article. Likewise, the commission shall make available the  
269 state's database to the Federal Trade Commission for inclusion in  
270 the national database.

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

273 77-3-719. Information contained in the database established  
274 under this article may be used and accessed only for the purpose  
275 of compliance with this article and shall not be otherwise subject  
276 to public inspection or disclosure.

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

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

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

291           77-3-723. (1) Any person or entity who makes an authorized  
292 telephone solicitation to a consumer in this state shall announce  
293 clearly, at the beginning of each call, his or her name, the  
294 company he or she represents and the purpose of the call. Such  
295 calls may only be made between the hours of 8:00 a.m. and 8:00  
296 p.m. Central Standard Time. No telephone solicitations may be  
297 made on a Sunday. For purposes of this provision, an "authorized  
298 telephone solicitation" means a solicitation that is made: (a) to  
299 a consumer who is not listed on the most current "no-calls"  
300 database; (b) by a telephone solicitor who has been authorized to  
301 make such solicitations under the provisions of Section 77-3-709;  
302 or (c) by a telephone solicitor who is exempt from this article  
303 under the provisions of Section 77-3-711.

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

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

315           77-3-725. The commission may investigate alleged violations  
316 and initiate proceedings relative to a violation of this article  
317 or any rules and regulations promulgated pursuant to this article.  
318 Such proceedings include, without limitation, proceedings to issue  
319 a cease and desist order, and to issue an order imposing a civil  
320 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each  
321 violation. The commission shall afford an opportunity for a fair  
322 hearing to the alleged violator(s) after giving written notice of  
323 the time and place for said hearing. Failure to appear at any

324 such hearing may result in the commission finding the alleged  
325 violator(s) liable by default. Any telephone solicitor found to  
326 have violated this article, pursuant to a hearing or by default,  
327 may be subject to a civil penalty not to exceed Five Thousand  
328 Dollars (\$5,000.00) for each violation to be assessed and  
329 collected by the commission. Each telephonic communication shall  
330 constitute a separate violation.

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

334 The commission may issue subpoenas, require the production of  
335 relevant documents, administer oaths, conduct hearings, and do all  
336 things necessary in the course of investigating, determining and  
337 adjudicating an alleged violation.

338 The remedies, duties, prohibitions and penalties set forth  
339 under this article shall not be exclusive and shall be in addition  
340 to all other causes of action, remedies and penalties provided by  
341 law, including, but not limited to, the penalties provided by  
342 Section 77-1-53.

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

345 77-3-727. Any person who has received a telephone  
346 solicitation in violation of this article, or any rules and  
347 regulations promulgated pursuant to this article, may file a  
348 complaint with the commission. The complaint will be processed  
349 pursuant to complaint procedures established by the commission.

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

352 77-3-729. It shall be a defense in any action or proceeding  
353 brought under Section 77-3-725 or 77-3-727 that the defendant has  
354 established and implemented, with due care, reasonable practices  
355 and procedures to effectively prevent telephone solicitations in  
356 violation of this article.

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

359           77-3-731. The commission is granted personal jurisdiction  
360 over any telephone solicitor, whether a resident or a nonresident,  
361 notwithstanding that telephone solicitors are not deemed to be a  
362 public utility, for the purpose of administering this article.  
363 The commission is granted personal jurisdiction over any  
364 nonresident telephone solicitor, its executor, administrator,  
365 receiver, trustee or any other appointed representative of such  
366 nonresident as to an action or proceeding authorized by this  
367 article or any rules and regulations promulgated pursuant to this  
368 article as authorized by Section 13-3-57, and also upon any  
369 nonresident, his or her executor, administrator, receiver, trustee  
370 or any other appointed representative of such nonresident who has  
371 qualified under the laws of this state to do business herein.  
372 Service of summons and process upon the alleged violator of this  
373 article shall be had or made as is provided by the Mississippi  
374 Rules of Civil Procedure.

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

377           77-3-733. Any party aggrieved by any final order of the  
378 commission pursuant to this article, or any rules and regulations  
379 promulgated pursuant to this article, shall have the right of  
380 appeal to the Chancery Court of Hinds County, Mississippi, First  
381 Judicial District.

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

384           77-3-735. No provider of telephonic caller identification  
385 service, local exchange telephone company or long distance company  
386 certificated by the commission may be held liable for violations  
387 of this article committed by other persons or entities.

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

390           77-3-737. Sections 77-3-701 through 77-3-737 shall stand  
391 repealed from and after July 1, 2006.

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