

By: Senator(s) King, Dearing

To: Public Utilities

SENATE BILL NO. 2695

1 AN ACT TO REENACT SECTIONS 77-3-701, 77-3-703, 77-3-705,  
 2 77-3-707, 77-3-709, 77-3-711, 77-3-713, 77-3-715, 77-3-717,  
 3 77-3-719, 77-3-721, 77-3-723, 77-3-725, 77-3-727, 77-3-729,  
 4 77-3-731, 77-3-733, 77-3-735 AND 77-3-737, MISSISSIPPI CODE OF  
 5 1972, WHICH CREATE THE MISSISSIPPI TELEPHONE SOLICITATION ACT; TO  
 6 AMEND SECTION 77-3-737, MISSISSIPPI CODE OF 1972, TO EXTEND THE  
 7 DATE OF REPEAL; AND FOR RELATED PURPOSES.

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

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

11 77-3-701. This article shall be known and may be cited as  
 12 the "Mississippi Telephone Solicitation Act."

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

15 77-3-703. (1) The use of the telephone to make all types of  
 16 solicitations to consumers is pervasive. This article gives  
 17 consumers a tool by which to object to telemarketing calls as  
 18 these communications can amount to a nuisance, an invasion of  
 19 privacy, and can create a health and safety risk for certain  
 20 consumers who maintain their phone service primarily for emergency  
 21 medical situations.

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

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

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

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

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

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

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

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

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

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

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

57           (g) "Consumer goods or services" means any real  
58 property or any tangible or intangible personal property which is  
59 normally used for personal, family or household purposes,  
60 including, without limitation, any property intended to be

61 attached to, or installed in, any real property, and any services  
62 related to the property.

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

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

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

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

93           (2) Except as otherwise provided pursuant to Section  
94 77-3-709 or 77-3-711, a telephone solicitor may not make or cause  
95 to be made any telephone solicitation to any consumer in this  
96 state who has given notice to the commission, or the entity under  
97 contract with the commission, of his or her objection to receiving  
98 telephone solicitations.

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

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

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

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

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

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

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

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

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

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

156           77-3-711. The provisions of this article shall not apply to:

157           (a) A person soliciting:

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

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

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

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

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

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

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

190 the purpose of providing or seeking to provide investment or  
191 financial advice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



254 (i) All other matters relating to the database that the  
255 commission deems necessary.

256 **SECTION 9.** Section 77-3-717, Mississippi Code of 1972, is  
257 reenacted as follows:

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

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

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

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

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

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

286           77-3-723. (1) Any person or entity who makes an authorized  
287 telephone solicitation to a consumer in this state shall announce  
288 clearly, at the beginning of each call, his or her name, the  
289 company he or she represents and the purpose of the call. Such  
290 calls may only be made between the hours of 8:00 a.m. and 8:00  
291 p.m. Central Standard Time. No telephone solicitations may be  
292 made on a Sunday. For purposes of this provision, an "authorized  
293 telephone solicitation" means a solicitation that is made: (a) to  
294 a consumer who is not listed on the most current "no-calls"  
295 database; (b) by a telephone solicitor who has been authorized to  
296 make such solicitations under the provisions of Section 77-3-709;  
297 or (c) by a telephone solicitor who is exempt from this article  
298 under the provisions of Section 77-3-711.

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

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

310           77-3-725. The commission may investigate alleged violations  
311 and initiate proceedings relative to a violation of this article  
312 or any rules and regulations promulgated pursuant to this article.  
313 Such proceedings include, without limitation, proceedings to issue  
314 a cease and desist order, and to issue an order imposing a civil  
315 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each  
316 violation. The commission shall afford an opportunity for a fair  
317 hearing to the alleged violator(s) after giving written notice of  
318 the time and place for said hearing. Failure to appear at any

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

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

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

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

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

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

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

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

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

354           77-3-731. The commission is granted personal jurisdiction  
355 over any telephone solicitor, whether a resident or a nonresident,  
356 notwithstanding that telephone solicitors are not deemed to be a  
357 public utility, for the purpose of administering this article.  
358 The commission is granted personal jurisdiction over any  
359 nonresident telephone solicitor, its executor, administrator,  
360 receiver, trustee or any other appointed representative of such  
361 nonresident as to an action or proceeding authorized by this  
362 article or any rules and regulations promulgated pursuant to this  
363 article as authorized by Section 13-3-57, and also upon any  
364 nonresident, his or her executor, administrator, receiver, trustee  
365 or any other appointed representative of such nonresident who has  
366 qualified under the laws of this state to do business herein.  
367 Service of summons and process upon the alleged violator of this  
368 article shall be had or made as is provided by the Mississippi  
369 Rules of Civil Procedure.

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

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

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

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

383           **SECTION 19.** Section 77-3-737, Mississippi Code of 1972, is  
384 reenacted and amended as follows:

385           77-3-737. Sections 77-3-701 through 77-3-737 shall stand  
386 repealed from and after July 1, 2010.

387           **SECTION 20.** This act shall take effect and be in force from  
388 and after July 1, 2006.