

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.