

By: Senator(s) Doty, Jackson (11th), Hill, Branning, Moran, Younger

To: Energy; Accountability, Efficiency, Transparency

SENATE BILL NO. 2821

1 AN ACT TO AMEND SECTION 77-3-705, MISSISSIPPI CODE OF 1972,
2 TO REVISE CERTAIN DEFINITIONS AS USED IN THE MISSISSIPPI TELEPHONE
3 SOLICITATION ACT; TO EXPAND THE DEFINITION OF "TELEPHONE
4 SOLICITATION" TO INCLUDE TEXT MESSAGE COMMUNICATIONS AND THE
5 SOLICITATIONS OF A CHARITABLE CONTRIBUTION; TO AMEND SECTION
6 77-3-711, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
7 AMEND SECTION 77-3-725, MISSISSIPPI CODE OF 1972, TO INCREASE THE
8 CIVIL PENALTIES FOR VIOLATIONS OF THE ACT; TO AMEND SECTION
9 77-3-737, MISSISSIPPI CODE OF 1972, TO REMOVE THE REPEALER ON THE
10 MISSISSIPPI TELEPHONE SOLICITATION ACT; AND FOR RELATED PURPOSES.

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

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

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

17 (a) "Consumer" means * * * a person or business that
18 receives a telephone call or text message from a telephone
19 solicitor.

20 (b) "Caller identification service" means a type of
21 telephone service which permits a telephone subscriber to view the



22 telephone number and name of the person or entity making an
23 incoming telephone call or text message.

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

31 (d) "Telephone solicitation" means any voice or text
32 message communication over the telephone line or cellular network
33 of a consumer for the purpose of:

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

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

39 (iii) Soliciting a charitable contribution of
40 money or property.

41 (e) "Commission" means the Mississippi Public Service
42 Commission.

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



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

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

66 (i) "Charitable organization" means any person or
67 entity holding itself out to be established for any benevolent,
68 educational, philanthropic, humane, scientific, patriotic, social
69 welfare or advocacy, public health, environmental or conservation,
70 civic or other eleemosynary purpose or for the benefit of law



71 enforcement personnel, firefighters, or any other persons who
72 protect the public safety, or for any other purpose where a
73 charitable appeal is the basis of the solicitation.

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

76 77-3-711. The provisions of this article shall not apply to:

77 (a) A person soliciting:

78 (i) Who does not make the major sales presentation
79 during the telephone solicitation;

80 (ii) Without the intent to complete or obtain
81 provisional acceptance of a sale or a charitable contribution
82 during the telephone solicitation; or

83 (iii) Without the intent to complete, and who does
84 not complete, the sales presentation during the telephone
85 solicitation, but who completes the sales presentation at a later
86 face-to-face meeting between the person soliciting and the
87 prospective purchaser or consumer.

88 (b) A person who is a licensee under Chapter 35, Title
89 73, Mississippi Code of 1972, who is a resident of the State of
90 Mississippi, and whose telephone solicitation is for the sole
91 purpose of selling, exchanging, purchasing, renting, listing for
92 sale or rent or leasing real estate in connection with his real
93 estate license and not in conjunction with any other offer.

94 (c) A motor vehicle dealer as that term is defined in
95 Section 63-17-55, who is a resident of the State of Mississippi



96 and who maintains a current motor vehicle dealer's license issued
97 by the Mississippi Motor Vehicle Commission, whose telephone
98 solicitation is for the sole purpose of selling, offering to sell,
99 soliciting or advertising the sale of motor vehicles in connection
100 with his motor vehicle dealer's license and not in conjunction
101 with any other offer.

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

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

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

118 (g) A person calling on behalf of a newspaper of
119 general circulation, whose telephone solicitation is for the sole



120 purpose of soliciting a subscription to the newspaper from, or
121 soliciting the purchase of advertising by, the consumer.

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

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

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

139 **SECTION 3.** Section 77-3-725, Mississippi Code of 1972, is
140 amended as follows:

141 77-3-725. The commission may investigate alleged violations
142 and initiate proceedings relative to a violation of this article
143 or any rules and regulations promulgated pursuant to this article.
144 Such proceedings include, without limitation, proceedings to issue



145 a cease and desist order, and to issue an order imposing a civil
146 penalty not to exceed * * * Seven Thousand Five Hundred Dollars
147 (\$7,500.00) for each violation. The commission shall afford an
148 opportunity for a fair hearing to the alleged violator(s) after
149 giving written notice of the time and place for said hearing.
150 Failure to appear at any such hearing may result in the commission
151 finding the alleged violator(s) liable by default. Any telephone
152 solicitor found to have violated this article, pursuant to a
153 hearing or by default, may be subject to a civil penalty not to
154 exceed * * * Seven Thousand Five Hundred Dollars (\$7,500.00) for
155 each violation to be assessed and collected by the commission.
156 Each telephonic communication shall constitute a separate
157 violation.

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

161 The commission may issue subpoenas, require the production of
162 relevant documents, administer oaths, conduct hearings, and do all
163 things necessary in the course of investigating, determining and
164 adjudicating an alleged violation.

165 The remedies, duties, prohibitions and penalties set forth
166 under this article shall not be exclusive and shall be in addition
167 to all other causes of action, remedies and penalties provided by
168 law, including, but not limited to, the penalties provided by
169 Section 77-1-53.



170 **SECTION 4.** Section 77-3-737, Mississippi Code of 1972, which
171 provides for a repeal date on Sections 77-3-701 through 77-3-737,
172 also known as the Mississippi Telephone Solicitation Act, is
173 hereby repealed.

174 **SECTION 5.** This act shall take effect and be in force from
175 and after July 1, 2019.

