

By: Senator(s) Carter, Younger, Jackson

To: Energy

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2494

1 AN ACT TO AMEND SECTIONS 77-3-705, 77-3-707, 77-3-709,
2 77-3-711, 77-3-713, 77-3-715, 77-3-717, 77-3-721, 77-3-725,
3 77-3-727, 77-3-731, 77-3-733, 77-3-735, 75-24-1, AND 75-24-5,
4 MISSISSIPPI CODE OF 1972, TO TRANSFER ENFORCEMENT OF THE
5 MISSISSIPPI TELEPHONE SOLICITATION ACT TO THE CONSUMER PROTECTION
6 DIVISION OF THE ATTORNEY GENERAL'S OFFICE; AND FOR RELATED
7 PURPOSES.

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

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

11 77-3-705. For the purposes of this article, the following
12 words and terms shall have the meanings ascribed in this section
13 unless the context clearly indicates otherwise:

14 (a) "Consumer" means a person or business that receives
15 a telephone call or text message from a telephone solicitor.

16 (b) "Caller identification service" means a type of
17 telephone service which permits a telephone subscriber to view the
18 telephone number and name of the person or entity making an
19 incoming telephone call or text message.



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

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

30 (i) Encouraging the purchase or rental of, or
31 investment in, property;

32 (ii) Soliciting a sale of any consumer goods or
33 services, or an extension of credit for consumer goods or
34 services;

35 (iii) Soliciting any other item of value,
36 pecuniary or otherwise, regardless of whether a sales presentation
37 is made; or

38 (iv) Soliciting a charitable contribution of money
39 or property.

40 * * *

41 (* * *e) "Doing business in this state" refers to
42 businesses which conduct telephone solicitations from any location
43 to consumers located in this state.



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

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

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



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

72 (* * *i) "Sales presentation" means attempting to
73 obtain something of value, pecuniary or otherwise, regardless of
74 whether consideration is or is expected to be exchanged.

75 **SECTION 2.** Section 77-3-707, Mississippi Code of 1972, is
76 amended as follows:

77 77-3-707. (1) Except as otherwise provided pursuant to
78 Section 77-3-709 or 77-3-711, a telephone solicitor may not make
79 or cause to be made any telephone solicitation to any consumer in
80 this state unless the telephone solicitor has purchased the
81 "no-calls" database from the * * * Attorney General's Office or
82 the entity under contract with the * * * Attorney General's
83 Office.

84 (2) Except as otherwise provided pursuant to Section
85 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
86 to be made any telephone solicitation to any consumer in this
87 state who has given notice to the * * * Attorney General's Office,
88 or the entity under contract with the * * * Attorney General's
89 Office, of his or her objection to receiving telephone
90 solicitations.

91 (3) The * * * Attorney General's Office, or an entity under
92 contract with the * * * Attorney General's Office, shall establish
93 and operate a "no-calls" database composed of a list of telephone



94 numbers of consumers who have given notice of their objection to
95 receiving telephone solicitations. The "no-calls" database may be
96 operated by the * * * Attorney General's Office or by another
97 entity under contract with the * * * Attorney General's Office.

98 (4) Each local exchange company and each competing local
99 exchange carrier shall provide written notification on a
100 semiannual basis to each of its consumers of the opportunity to
101 provide notification to the * * * Attorney General's Office, or
102 the entity under contract with the * * * Attorney General's
103 Office, that the consumer objects to receiving telephone
104 solicitations. The notification must be disseminated at the
105 option of the carrier, by television, radio or newspaper
106 advertisements, written correspondence, bill inserts or messages,
107 a publication in the consumer information pages of the local
108 telephone directory, or any other method not expressly prohibited
109 by the * * * Attorney General's Office.

110 (5) A telephone solicitor may not violate the Caller ID
111 Anti-Spoofing Act in Section 77-3-801 et seq., and if in violation
112 of such act, he shall also be in violation of this article. In
113 addition to any remedies or penalties otherwise provided by law,
114 such telephone solicitor shall be subject to any remedies or
115 penalties available for a violation of this article.

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



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

125 (a) The telephone solicitor must demonstrate to
126 the * * * Attorney General's Office that its proposed telephone
127 solicitation is reasonably related to an established business
128 relationship as defined in Section 77-3-705(h), or is being made
129 in response to an invitation or notice from a consumer which
130 clearly signifies that he is open 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 * * * Attorney
148 General's Office shall exercise due care in investigating previous
149 conduct of the telephone solicitor seeking such authority.
150 The * * * Attorney General's Office may deny any telephone
151 solicitor the privilege of making telephone solicitations under
152 this section, notwithstanding that any of the criteria set forth
153 in this section have been met.

154 **SECTION 4.** Section 77-3-711, Mississippi Code of 1972, is
155 amended 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, a charitable contribution, or
162 the payment of some other item of value, pecuniary or otherwise,
163 during the telephone solicitation; or

164 (iii) Without the intent to complete, and who does
165 not complete, the sales presentation during the telephone
166 solicitation, but who completes the sales presentation at a later



167 face-to-face meeting between the person soliciting and the
168 prospective purchaser or consumer.

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

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

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

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



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

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

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

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

213 (i) A person calling on behalf of a funeral
214 establishment licensed under Section 73-11-41, cemetery or
215 monument dealer, if the sole purpose of the telephone solicitation



216 relates to services provided by the funeral or death related
217 establishments in the course of its ordinary business.

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

220 **SECTION 5.** Section 77-3-713, Mississippi Code of 1972, is
221 amended as follows:

222 77-3-713. All telephone solicitors must register with
223 the * * * Attorney General's Office before conducting any
224 telephone solicitations in the State of Mississippi.

225 **SECTION 6.** Section 77-3-715, Mississippi Code of 1972, is
226 amended as follows:

227 77-3-715. The * * * Attorney General's Office may promulgate
228 rules and regulations necessary to effectuate this article,
229 including, but not limited to, the following:

230 (a) The methods by which consumers may give notice to
231 the * * * Attorney General's Office or its contractor of their
232 objection to receive solicitations or revocation of the notice;

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

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

238 (d) The methods by which a person or entity desiring to
239 make telephone solicitations may obtain access to the database as



240 required to avoid calling the telephone number of consumers
241 included in the database;

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

244 (f) The process by which telephone solicitors must
245 register with the * * * Attorney General's Office for the purpose
246 of conducting telephonic solicitations in the state;

247 (g) The establishment of fees to be charged by
248 the * * * Attorney General's Office or its contractor to telephone
249 solicitors for access to or for paper or electronic copies of the
250 database on an annual basis;

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

255 (i) All other matters relating to the database that
256 the * * * Attorney General's Office deems necessary.

257 **SECTION 7.** Section 77-3-717, Mississippi Code of 1972, is
258 amended as follows:

259 77-3-717. If the Federal Trade Commission establishes a
260 single national database of telephone numbers of consumers who
261 object to receiving telephone solicitations, the * * * Attorney
262 General's Office must include the portion of the single national
263 database that relates to the State of Mississippi in the database
264 established under this article. Likewise, the * * * Attorney



265 General's Office shall make available the state's database to the
266 Federal Trade Commission for inclusion in the national database.

267 **SECTION 8.** Section 77-3-721, Mississippi Code of 1972, is
268 amended as follows:

269 77-3-721. All fees collected under the provisions of this
270 article shall be deposited into a special fund which is created in
271 the State Treasury to be expended by the * * * Attorney General's
272 Office for the implementation and administration of this article.
273 From and after July 1, 2016, the expenses of this agency shall be
274 defrayed by appropriation from the State General Fund, and all
275 user charges and fees authorized under this article shall be
276 deposited into the State General Fund as authorized by law and as
277 determined by the State Fiscal Officer.

278 This section shall stand repealed on July 1, 2024.

279 **SECTION 9.** Section 77-3-725, Mississippi Code of 1972, is
280 amended as follows:

281 77-3-725. The * * * Attorney General's Office may
282 investigate alleged violations and initiate proceedings relative
283 to a violation of this article or any rules and regulations
284 promulgated pursuant to this article. Such proceedings include,
285 without limitation, proceedings to issue a cease and desist order,
286 and to issue an order imposing a civil penalty not to exceed Ten
287 Thousand Dollars (\$10,000.00) for each violation. The * * *
288 Attorney General's Office shall afford an opportunity for a fair
289 hearing to the alleged violator(s) after giving written notice of



290 the time and place for said hearing. Failure to appear at any
291 such hearing may result in the * * * Attorney General's Office
292 finding the alleged violator(s) liable by default. Any telephone
293 solicitor found to have violated this article, pursuant to a
294 hearing or by default, may be subject to a civil penalty not to
295 exceed Ten Thousand Dollars (\$10,000.00) for each violation to be
296 assessed and collected by the * * * Attorney General's Office.
297 Each telephonic communication shall constitute a separate
298 violation.

299 All penalties collected by the * * * Attorney General's
300 Office shall be deposited in the special fund created under
301 Section 77-3-721 for the administration of this article.

302 The * * * Attorney General's Office may issue subpoenas,
303 require the production of relevant documents, administer oaths,
304 conduct hearings, and do all things necessary in the course of
305 investigating, determining and adjudicating an alleged violation.

306 The remedies, duties, prohibitions and penalties set forth
307 under this article shall not be exclusive and shall be in addition
308 to all other causes of action, remedies and penalties provided by
309 law, including, but not limited to, the penalties provided by
310 Section 77-1-53.

311 **SECTION 10.** Section 77-3-727, Mississippi Code of 1972, is
312 amended as follows:

313 77-3-727. Any person who has received a telephone
314 solicitation in violation of this article, or any rules and



315 regulations promulgated pursuant to this article, may file a
316 complaint with the * * * Consumer Protection Division of the
317 Attorney General's Office. The complaint will be processed
318 pursuant to complaint procedures established by the * * * Consumer
319 Protection Division of the Attorney General's Office.

320 **SECTION 11.** Section 77-3-731, Mississippi Code of 1972, is
321 amended as follows:

322 77-3-731. The * * * Attorney General's Office is granted
323 personal jurisdiction over any telephone solicitor, whether a
324 resident or a nonresident, notwithstanding that telephone
325 solicitors are not deemed to be a public utility, for the purpose
326 of administering this article. The * * * Attorney General's
327 Office is granted personal jurisdiction over any nonresident
328 telephone solicitor, its executor, administrator, receiver,
329 trustee or any other appointed representative of such nonresident
330 as to an action or proceeding authorized by this article or any
331 rules and regulations promulgated pursuant to this article as
332 authorized by Section 13-3-57, and also upon any nonresident, his
333 or her executor, administrator, receiver, trustee or any other
334 appointed representative of such nonresident who has qualified
335 under the laws of this state to do business herein. Service of
336 summons and process upon the alleged violator of this article
337 shall be had or made as is provided by the Mississippi Rules of
338 Civil Procedure.



339 **SECTION 12.** Section 77-3-733, Mississippi Code of 1972, is
340 amended as follows:

341 77-3-733. Any party aggrieved by any final order of
342 the * * * Attorney General's Office pursuant to this article, or
343 any rules and regulations promulgated pursuant to this article,
344 shall have the right of appeal to the Chancery Court of Hinds
345 County, Mississippi, First Judicial District.

346 **SECTION 13.** Section 77-3-735, Mississippi Code of 1972, is
347 amended as follows:

348 77-3-735. No provider of telephonic caller identification
349 service, local exchange telephone company or long distance company
350 certificated by the * * * Attorney General's Office may be held
351 liable for violations of this article committed by other persons
352 or entities.

353 **SECTION 14.** Section 75-24-1, Mississippi Code of 1972, is
354 amended as follows:

355 75-24-1. There is hereby created and established within the
356 Office of the Attorney General an "Office of Consumer Protection,"
357 which shall be charged with the administration of this chapter.
358 The Attorney General is hereby authorized and empowered to employ
359 the necessary personnel to carry out the provisions of this
360 chapter and of the Mississippi Telephone Solicitation Act.

361 **SECTION 15.** Section 75-24-5, Mississippi Code of 1972, is
362 amended as follows:



363 75-24-5. (1) Unfair methods of competition affecting
364 commerce and unfair or deceptive trade practices in or affecting
365 commerce are prohibited. Action may be brought under Section
366 75-24-5(1) only under the provisions of Section 75-24-9.

367 (2) Without limiting the scope of subsection (1) of this
368 section, the following unfair methods of competition and unfair or
369 deceptive trade practices or acts in the conduct of any trade or
370 commerce are hereby prohibited:

371 (a) Passing off goods or services as those of another;

372 (b) Misrepresentation of the source, sponsorship,
373 approval, or certification of goods or services;

374 (c) Misrepresentation of affiliation, connection, or
375 association with, or certification by another;

376 (d) Misrepresentation of designations of geographic
377 origin in connection with goods or services;

378 (e) Representing that goods or services have
379 sponsorship, approval, characteristics, ingredients, uses,
380 benefits, or quantities that they do not have or that a person has
381 a sponsorship, approval, status, affiliation, or connection that
382 he does not have;

383 (f) Representing that goods are original or new if they
384 are reconditioned, reclaimed, used, or secondhand;

385 (g) Representing that goods or services are of a
386 particular standard, quality, or grade, or that goods are of a
387 particular style or model, if they are of another;



388 (h) Disparaging the goods, services, or business of
389 another by false or misleading representation of fact;

390 (i) Advertising goods or services with intent not to
391 sell them as advertised;

392 (j) Advertising goods or services with intent not to
393 supply reasonably expectable public demand, unless the
394 advertisement discloses a limitation of quantity;

395 (k) Misrepresentations of fact concerning the reasons
396 for, existence of, or amounts of price reductions;

397 (l) Advertising by or on behalf of any licensed or
398 regulated health care professional which does not specifically
399 describe the license or qualifications of the licensed or
400 regulated health care professional;

401 (m) A telephonic solicitation in violation of Section
402 77-3-705 et seq.;

403 (* * *n) Charging an increased premium for reinstating
404 a motor vehicle insurance policy that was cancelled or suspended
405 by the insured solely for the reason that he was transferred out
406 of this state while serving in the United States Armed Forces or
407 on active duty in the National Guard or United States Armed Forces
408 Reserve. It is also an unfair practice for an insurer to charge
409 an increased premium for a new motor vehicle insurance policy if
410 the applicant for coverage or his covered dependents were
411 previously insured with a different insurer and canceled that
412 policy solely for the reason that he was transferred out of this



413 state while serving in the United States Armed Forces or on active
414 duty in the National Guard or United States Armed Forces Reserve.
415 For purposes of determining premiums, an insurer shall consider
416 such persons as having maintained continuous coverage. The
417 provisions of this paragraph (* * *n) shall apply only to such
418 instances when the insured does not drive the vehicle during the
419 period of cancellation or suspension of his policy.

420 **SECTION 16.** This act shall take effect and be in force from
421 and after July 1, 2023, and shall stand repealed on June 30, 2023.

