

By: Representative Warren

To: Public Utilities

HOUSE BILL NO. 538

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 SECTION 77-3-737, MISSISSIPPI CODE OF
4 1972, TO EXTEND THE DATE OF REPEAL ON THOSE REENACTED SECTIONS
5 FROM JULY 1, 2005, TO JULY 1, 2007; AND FOR RELATED PURPOSES.

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

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

9 77-3-701. This article shall be known and may be cited as
10 the "Mississippi Telephone Solicitation Act."

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

13 77-3-703. The use of the telephone to make all types of
14 solicitations to consumers is pervasive. This article gives
15 consumers a tool by which to object to telemarketing calls as
16 these communications can amount to a nuisance, an invasion of
17 privacy, and can create a health and safety risk for certain
18 consumers who maintain their phone service primarily for emergency
19 medical situations.

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

22 77-3-705. For the purposes of this article, the following
23 words and terms shall have the meanings ascribed in this section
24 unless the context clearly indicates otherwise:

25 (a) "Consumer" means a person to whom is assigned in
26 the State of Mississippi a residential telephone line and
27 corresponding telephone number, who uses the residential line
28 primarily for residential purposes.

29 (b) "Caller identification service" means a type of
30 telephone service which permits a telephone subscriber to view the
31 telephone number and name of the person or entity making an
32 incoming telephone call.

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

40 (d) "Telephone solicitation" means any voice
41 communication over the telephone line of a consumer for the
42 purpose of:

43 (i) Encouraging the purchase or rental of, or
44 investment in, property; or

45 (ii) Soliciting a sale of any consumer goods or
46 services, or an extension of credit for consumer goods or
47 services.

48 (e) "Commission" means the Mississippi Public Service
49 Commission.

50 (f) "Doing business in this state" refers to businesses
51 which conduct telephone solicitations from any location to
52 consumers located in this state.

53 (g) "Consumer goods or services" means any real
54 property or any tangible or intangible personal property which is
55 normally used for personal, family or household purposes,
56 including, without limitation, any property intended to be
57 attached to, or installed in, any real property, and any services
58 related to the property.

59 (h) "Established business relationship" means a prior
60 or existing relationship formed by a voluntary two-way
61 communication between a person or entity and a consumer, with or

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

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

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

83 77-3-707. (1) Except as otherwise provided pursuant to
84 Section 77-3-709 or 77-3-711, a telephone solicitor may not make
85 or cause to be made any telephone solicitation to any consumer in
86 this state unless the telephone solicitor has purchased the
87 "no-calls" database from the commission or the entity under
88 contract with the commission.

89 (2) Except as otherwise provided pursuant to Section
90 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
91 to be made any telephone solicitation to any consumer in this
92 state who has given notice to the commission, or the entity under
93 contract with the commission, of his or her objection to receiving
94 telephone solicitations.

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

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

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

115 77-3-709. The commission, in its discretion, may allow
116 telephone solicitors to make telephone solicitations without
117 requiring them to purchase the "no-calls" database, and regardless
118 of whether a telephone solicitation may be made to a consumer who
119 has given notice of his objection to receiving such solicitations,
120 provided that it adopts a written policy incorporating the
121 following criteria:

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

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

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

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

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

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

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

(a) A person soliciting:

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

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

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone

161 solicitation, but who completes the sales presentation at a later
162 face-to-face meeting between the person soliciting and the
163 prospective purchaser or consumer.

164 (b) A person who is a licensee under Chapter 35, Title
165 73, Mississippi Code of 1972, who is a resident of the State of
166 Mississippi, and whose telephone solicitation is for the sole
167 purpose of selling, exchanging, purchasing, renting, listing for
168 sale or rent or leasing real estate in connection with his real
169 estate license and not in conjunction with any other offer.

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

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

182 (e) A broker-dealer, agent, or investment advisor
183 registered under Chapter 71, Title 75, Mississippi Code of 1972,
184 whose telephone solicitation is for the sole purpose of effecting
185 or attempting to effect the purchase or sale of securities or has
186 the purpose of providing or seeking to provide investment or
187 financial advice.

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

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

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

(i) A person calling on behalf of a funeral establishment licensed under Section 73-11-41, if the sole purpose of the telephone solicitation relates to services provided by the funeral establishment in the course of its ordinary business.

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

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

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

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

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

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

227 (b) The methods by which a notice of objection becomes
228 effective and the effect of a change of telephone number on the
229 notice;

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

232 (d) The methods by which a person or entity desiring to
233 make telephone solicitations may obtain access to the database as
234 required to avoid calling the telephone number of consumers
235 included in the database;

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

238 (f) The process by which telephone solicitors must
239 register with the commission for the purpose of conducting
240 telephonic solicitations in the state;

241 (g) The establishment of fees to be charged by the
242 commission or its contractor to telephone solicitors for access to
243 or for paper or electronic copies of the database on an annual
244 basis;

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

249 (i) All other matters relating to the database that the
250 commission deems necessary.

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

253 77-3-717. If the Federal Trade Commission establishes a
254 single national database of telephone numbers of consumers who
255 object to receiving telephone solicitations, the commission must
256 include the portion of the single national database that relates
257 to the State of Mississippi in the database established under this
258 article.

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

261 77-3-719. Information contained in the database established
262 under this article may be used and accessed only for the purpose
263 of compliance with this article and shall not be otherwise subject
264 to public inspection or disclosure.

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

267 77-3-721. All fees collected under the provisions of this
268 article shall be deposited into a special fund which is created in
269 the State Treasury to be expended by the commission for the
270 implementation and administration of this article. At the end of
271 each fiscal year, earned interest and unexpended monies remaining
272 in the fund may not revert to any other fund of the state, but
273 shall remain available for appropriations to administer this
274 article. The Legislature shall appropriate annually from the fund
275 the amount necessary for the administration of this article to the
276 commission.

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

279 77-3-723. (1) Any person or entity who makes an authorized
280 telephone solicitation to a consumer in this state shall announce
281 clearly, at the beginning of each call, his or her name, the
282 company he or she represents and the purpose of the call. Such
283 calls may only be made between the hours of 8:00 a.m. and 8:00
284 p.m. Central Standard Time. No telephone solicitations may be
285 made on a Sunday. For purposes of this provision, an "authorized
286 telephone solicitation" means a solicitation that is made: (a) to
287 a consumer who is not listed on the most current "no-calls"
288 database; (b) by a telephone solicitor who has been authorized to
289 make such solicitations under the provisions of Section 77-3-709;
290 or (c) by a telephone solicitor who is exempt from this article
291 under the provisions of Section 77-3-711.

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

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

77-3-725. The commission may investigate alleged violations and initiate proceedings relative to a violation of this article or any rules and regulations promulgated pursuant to this article. Such proceedings include, without limitation, proceedings to issue a cease and desist order, and to issue an order imposing a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each violation. The commission shall afford an opportunity for a fair hearing to the alleged violator(s) after giving written notice of the time and place for said hearing. Failure to appear at any such hearing may result in the commission finding the alleged violator(s) liable by default. Any telephone solicitor found to have violated this article, pursuant to a hearing or by default, may be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each violation to be assessed and collected by the commission. Each telephonic communication shall constitute a separate violation.

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

The commission may issue subpoenas, require the production of relevant documents, administer oaths, conduct hearings, and do all

things necessary in the course of investigating, determining and adjudicating an alleged violation.

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

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

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

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

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

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

77-3-731. The commission is granted personal jurisdiction over any telephone solicitor, whether a resident or a nonresident, notwithstanding that telephone solicitors are not deemed to be a public utility, for the purpose of administering this article. The commission is granted personal jurisdiction over any nonresident telephone solicitor, its executor, administrator, receiver, trustee or any other appointed representative of such nonresident as to an action or proceeding authorized by this article or any rules and regulations promulgated pursuant to this article as authorized by Section 13-3-57, and also upon any

357 nonresident, his or her executor, administrator, receiver, trustee
358 or any other appointed representative of such nonresident who has
359 qualified under the laws of this state to do business herein.
360 Service of summons and process upon the alleged violator of this
361 article shall be had or made as is provided by the Mississippi
362 Rules of Civil Procedure.

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

365 77-3-733. Any party aggrieved by any final order of the
366 commission pursuant to this article, or any rules and regulations
367 promulgated pursuant to this article, shall have the right of
368 appeal to the Chancery Court of Hinds County, Mississippi, First
369 Judicial District.

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

372 77-3-735. No provider of telephonic caller identification
373 service, local exchange telephone company or long distance company
374 certificated by the commission may be held liable for violations
375 of this article committed by other persons or entities.

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

378 77-3-737. Sections 77-3-701 through 77-3-737 shall stand
379 repealed from and after July 1, 2007.

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