

By: Representative Holland

To: Public Utilities

HOUSE BILL NO. 678

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; TO AMEND REENACTED SECTION
 6 77-3-705, MISSISSIPPI CODE OF 1972, TO EXPAND THE DEFINITION OF A
 7 "CONSUMER" UNDER THE MISSISSIPPI TELEPHONE SOLICITATION ACT TO
 8 INCLUDE SOLICITATION CALLS MADE TO ANY PERSON WHO POSSESSES A
 9 WIRELESS TELEPHONE WITH A MISSISSIPPI AREA CODE AND TO INCLUDE
 10 SOLICITATION CALLS MADE TO ANY PERSONS WHO IS ASSIGNED A BUSINESS
 11 TELEPHONE NUMBER; TO PROVIDE A DEFINITION FOR THE TERM "WIRELESS
 12 TELEPHONE"; AND FOR RELATED PURPOSES.

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

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

16 77-3-701. This article shall be known and may be cited as
 17 the "Mississippi Telephone Solicitation Act."

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

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

27 **SECTION 3.** Section 77-3-705, Mississippi Code of 1972, is
 28 reenacted and amended as follows:

29 77-3-705. For the purposes of this article, the following
 30 words and terms shall have the meanings ascribed in this section
 31 unless the context clearly indicates otherwise:

32 (a) "Consumer" means the following:

33 (i) Any person who is assigned in the State of
34 Mississippi a residential or business telephone line and
35 corresponding telephone number, and who uses the telephone line
36 primarily for residential or business purposes; or

37 (ii) Any person who possesses a wireless telephone
38 with a Mississippi area code assigned to it, and who uses the
39 wireless telephone primarily for residential or business purposes.

40 (b) "Caller identification service" means a type of
41 telephone service which permits a telephone subscriber to view the
42 telephone number and name of the person or entity making an
43 incoming telephone call.

44 (c) "Telephone solicitor" means any person, firm,
45 entity, organization, partnership, association, corporation,
46 charitable entity, or a subsidiary or affiliate thereof, who
47 engages in any type of telephone solicitation on his or her own
48 behalf or through representatives, independent contractors,
49 salespersons, agents, automated dialing systems or machines or
50 other individuals or systems.

51 (d) "Telephone solicitation" means any voice
52 communication over the telephone line of a consumer or to the
53 wireless telephone of a consumer for the purpose of:

54 (i) Encouraging the purchase or rental of, or
55 investment in, property; or

56 (ii) Soliciting a sale of any consumer goods or
57 services, or an extension of credit for consumer goods or
58 services.

59 (e) "Commission" means the Mississippi Public Service
60 Commission.

61 (f) "Doing business in this state" refers to businesses
62 which conduct telephone solicitations from any location to
63 consumers located in this state.

64 (g) "Consumer goods or services" means any real
65 property or any tangible or intangible personal property which is

66 normally used for personal, family or household purposes,
67 including, without limitation, any property intended to be
68 attached to, or installed in, any real property, and any services
69 related to the property.

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

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

92 (j) "Wireless telephone" means any hand-held phone with
93 a built-in antenna which is also known as a cell, mobile or
94 personal communications service (PCS) phone.

95 **SECTION 4.** Section 77-3-707, Mississippi Code of 1972, is
96 reenacted and amended as follows:

97 77-3-707. (1) Except as otherwise provided pursuant to
98 Section 77-3-709 or 77-3-711 * * *, a telephone solicitor may not

99 make or cause to be made any telephone solicitation to any
100 consumer in this state unless the telephone solicitor has
101 purchased the "no-calls" database from the commission or the
102 entity under contract with the commission.

103 (2) Except as otherwise provided pursuant to Section
104 77-3-709 or 77-3-711 * * *, a telephone solicitor may not make or
105 cause to be made any telephone solicitation to any consumer in
106 this state who has given notice to the commission, or the entity
107 under contract with the commission, of his or her objection to
108 receiving telephone solicitations.

109 (3) The commission, or an entity under contract with the
110 commission, shall establish and operate a "no-calls" database
111 composed of a list of telephone numbers of consumers who have
112 given notice of their objection to receiving telephone
113 solicitations. The "no-calls" database may be operated by the
114 commission or by another entity under contract with the
115 commission.

116 (4) Each local exchange company and each competing local
117 exchange carrier shall provide written notification on a
118 semiannual basis to each of its consumers of the opportunity to
119 provide notification to the commission or the entity under
120 contract with the commission, that the consumer objects to
121 receiving telephone solicitations. The notification must be
122 disseminated at the option of the carrier, by television, radio or
123 newspaper advertisements, written correspondence, bill inserts or
124 messages, a publication in the consumer information pages of the
125 local telephone directory, or any other method not expressly
126 prohibited by the commission.

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

129 77-3-709. The commission, in its discretion, may allow
130 telephone solicitors to make telephone solicitations without
131 requiring them to purchase the "no-calls" database, and regardless

132 of whether a telephone solicitation may be made to a consumer who
133 has given notice of his objection to receiving such solicitations,
134 provided that it adopts a written policy incorporating the
135 following criteria:

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

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

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

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

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

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

166 77-3-711. The provisions of this article shall not apply to:

167 (a) A person soliciting:

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

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

173 (iii) Without the intent to complete, and who does
174 not complete, the sales presentation during the telephone
175 solicitation, but who completes the sales presentation at a later
176 face-to-face meeting between the person soliciting and the
177 prospective purchaser or consumer.

178 (b) A person who is a licensee under Chapter 35, Title
179 73, Mississippi Code of 1972, who is a resident of the State of
180 Mississippi, and whose telephone solicitation is for the sole
181 purpose of selling, exchanging, purchasing, renting, listing for
182 sale or rent or leasing real estate in connection with his real
183 estate license and not in conjunction with any other offer.

184 (c) A motor vehicle dealer as that term is defined in
185 Section 63-17-55, who is a resident of the State of Mississippi
186 and who maintains a current motor vehicle dealer's license issued
187 by the Mississippi Motor Vehicle Commission, whose telephone
188 solicitation is for the sole purpose of selling, offering to sell,
189 soliciting or advertising the sale of motor vehicles in connection
190 with his motor vehicle dealer's license and not in conjunction
191 with any other offer.

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

196 (e) A broker-dealer, agent, or investment advisor
197 registered under Chapter 71, Title 75, Mississippi Code of 1972,
198 whose telephone solicitation is for the sole purpose of effecting
199 or attempting to effect the purchase or sale of securities or has
200 the purpose of providing or seeking to provide investment or
201 financial advice.

202 (f) A person calling on behalf of a charitable
203 organization which is registered under Chapter 11, Title 79,
204 Mississippi Code of 1972, whose telephone solicitation is for the
205 sole purpose of soliciting for the charitable organization and who
206 receives no compensation for his activities on behalf of the
207 organization.

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

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

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

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

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

230 77-3-713. All telephone solicitors must register with the
231 commission before conducting any telephone solicitations in the
232 State of Mississippi.

233 **SECTION 8.** Section 77-3-715, Mississippi Code of 1972, is
234 reenacted and amended as follows:

235 77-3-715. The commission may promulgate rules and
236 regulations necessary to effectuate this article, including, but
237 not limited to, the following:

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

241 (b) The methods by which a notice of objection becomes
242 effective and the effect of a change of telephone number on the
243 notice;

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

246 (d) The methods by which a person or entity desiring to
247 make telephone solicitations may obtain access to the database as
248 required to avoid calling the telephone number of consumers
249 included in the database;

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

252 (f) The process by which telephone solicitors must
253 register with the commission for the purpose of conducting
254 telephonic solicitations in the state;

255 (g) The establishment of fees to be charged by the
256 commission or its contractor to telephone solicitors for access to
257 or for paper or electronic copies of the database on an annual
258 basis;

259 (h) The establishment of a written policy which clearly
260 articulates the circumstances under which the commission, in its

261 discretion, may allow exceptions to the provisions of this article
262 pursuant to Section 77-3-703 * * *; and

263 (i) All other matters relating to the database that the
264 commission deems necessary.

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

267 77-3-717. If the Federal Trade Commission establishes a
268 single national database of telephone numbers of consumers who
269 object to receiving telephone solicitations, the commission must
270 include the portion of the single national database that relates
271 to the State of Mississippi in the database established under this
272 article.

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

275 77-3-719. Information contained in the database established
276 under this article may be used and accessed only for the purpose
277 of compliance with this article and shall not be otherwise subject
278 to public inspection or disclosure.

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

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

291 **SECTION 12.** Section 77-3-723, Mississippi Code of 1972, is
292 reenacted and amended as follows:

293 77-3-723. (1) Any person or entity who makes an authorized
294 telephone solicitation to a consumer in this state shall announce
295 clearly, at the beginning of each call, his or her name, the
296 company he or she represents and the purpose of the call. Such
297 calls may only be made between the hours of 8:00 a.m. and 8:00
298 p.m. Central Standard Time. No telephone solicitations may be
299 made on a Sunday. For purposes of this provision, an "authorized
300 telephone solicitation" means a solicitation that is made: (a) to
301 a consumer who is not listed on the most current "no-calls"
302 database; (b) by a telephone solicitor who has been authorized to
303 make such solicitations under the provisions of Section
304 77-3-709 * * *; or (c) by a telephone solicitor who is exempt from
305 this article under the provisions of Section 77-3-711 * * *.

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

315 **SECTION 13.** Section 77-3-725, Mississippi Code of 1972, is
316 reenacted and amended as follows:

317 77-3-725. The commission may investigate alleged violations
318 and * * * initiate proceedings relative to a violation of this
319 article or any rules and regulations promulgated pursuant to this
320 article. Such proceedings include, without limitation,
321 proceedings to issue a cease and desist order, and to issue an
322 order imposing a civil penalty not to exceed Five Thousand Dollars
323 (\$5,000.00) for each violation. The commission shall afford an
324 opportunity for a fair hearing to the alleged violator(s) after
325 giving written notice of the time and place for said hearing.

326 Failure to appear at any such hearing may result in the commission
327 finding the alleged violator(s) liable by default. Any telephone
328 solicitor found to have violated this article, pursuant to a
329 hearing or by default, may be subject to a civil penalty not to
330 exceed Five Thousand Dollars (\$5,000.00) for each violation to be
331 assessed and collected by the commission. Each telephonic
332 communication shall constitute a separate violation.

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

336 The commission may issue subpoenas, require the production of
337 relevant documents, administer oaths, conduct hearings, and do all
338 things necessary in the course of investigating, determining and
339 adjudicating an alleged violation.

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

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

347 77-3-727. Any person who has received a telephone
348 solicitation in violation of this article, or any rules and
349 regulations promulgated pursuant to this article, may file a
350 complaint with the commission. The complaint will be processed
351 pursuant to complaint procedures established by the commission.

352 **SECTION 15.** Section 77-3-729, Mississippi Code of 1972, is
353 reenacted and amended as follows:

354 77-3-729. It shall be a defense in any action or proceeding
355 brought under Section 77-3-725 or 77-3-727 * * * that the
356 defendant has established and implemented, with due care,
357 reasonable practices and procedures to effectively prevent
358 telephone solicitations in violation of this article.

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

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

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

379 77-3-733. Any party aggrieved by any final order of the
380 commission pursuant to this article, or any rules and regulations
381 promulgated pursuant to this article, shall have the right of
382 appeal to the Chancery Court of Hinds County, Mississippi, First
383 Judicial District.

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

386 77-3-735. No provider of telephonic caller identification
387 service, local exchange telephone company or long distance company
388 certificated by the commission may be held liable for violations
389 of this article committed by other persons or entities.

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

392 77-3-737. Sections 77-3-701 through 77-3-737 shall stand
393 repealed from and after July 1, 2007.

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