

By: Representative Flaggs

To: Public Utilities

HOUSE BILL NO. 2

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 REENACTED SECTION 77-3-717, MISSISSIPPI
4 CODE OF 1972, TO REQUIRE THE PUBLIC SERVICE COMMISSION TO MAKE
5 AVAILABLE THE STATE'S DATABASE TO THE FEDERAL TRADE COMMISSION FOR
6 INCLUSION IN THE NATIONAL DATABASE; TO AMEND SECTION 77-3-737,
7 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE
8 REENACTED SECTIONS; AND FOR RELATED PURPOSES.

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

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

12 77-3-701. This article shall be known and may be cited as
13 the "Mississippi Telephone Solicitation Act."

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

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

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

25 77-3-705. For the purposes of this article, the following
26 words and terms shall have the meanings ascribed in this section
27 unless the context clearly indicates otherwise:

28 (a) "Consumer" means a person to whom is assigned in
29 the State of Mississippi a residential telephone line and

30 corresponding telephone number, who uses the residential line
31 primarily for residential purposes.

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

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

43 (d) "Telephone solicitation" means any voice
44 communication over the telephone line of a consumer for the
45 purpose of:

46 (i) Encouraging the purchase or rental of, or
47 investment in, property; or

48 (ii) Soliciting a sale of any consumer goods or
49 services, or an extension of credit for consumer goods or
50 services.

51 (e) "Commission" means the Mississippi Public Service
52 Commission.

53 (f) "Doing business in this state" refers to businesses
54 which conduct telephone solicitations from any location to
55 consumers located in this state.

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

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

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

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

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

92 (2) Except as otherwise provided pursuant to Section
93 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
94 to be made any telephone solicitation to any consumer in this

95 state who has given notice to the commission, or the entity under
96 contract with the commission, of his or her objection to receiving
97 telephone solicitations.

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

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

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

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

125 (a) The telephone solicitor must demonstrate to the
126 commission that its proposed telephone solicitation is reasonably
127 related to an established business relationship as defined in

128 Section 77-3-705(h), or is being made in response to an invitation
129 or notice from a consumer which clearly signifies that he is open
130 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 commission shall
148 exercise due care in investigating previous conduct of the
149 telephone solicitor seeking such authority. The commission may
150 deny any telephone solicitor the privilege of making telephone
151 solicitations under this section, notwithstanding that any of the
152 criteria set forth in this section have been met.

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

155 77-3-711. The provisions of this article shall not apply to:

156 (a) A person soliciting:

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

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

162 (iii) Without the intent to complete, and who does
163 not complete, the sales presentation during the telephone
164 solicitation, but who completes the sales presentation at a later
165 face-to-face meeting between the person soliciting and the
166 prospective purchaser or consumer.

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

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

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

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

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

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

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

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

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

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

219 77-3-713. All telephone solicitors must register with the
220 commission before conducting any telephone solicitations in the
221 State of Mississippi.

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

224 77-3-715. The commission may promulgate rules and
225 regulations necessary to effectuate this article, including, but
226 not limited to, the following:

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

230 (b) The methods by which a notice of objection becomes
231 effective and the effect of a change of telephone number on the
232 notice;

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

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

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

241 (f) The process by which telephone solicitors must
242 register with the commission for the purpose of conducting
243 telephonic solicitations in the state;

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

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

252 (i) All other matters relating to the database that the
253 commission deems necessary.

254 **SECTION 9.** Section 77-3-717, Mississippi Code of 1972, is
255 reenacted and amended as follows:

256 77-3-717. If the Federal Trade Commission establishes a
257 single national database of telephone numbers of consumers who
258 object to receiving telephone solicitations, the commission must
259 include the portion of the single national database that relates
260 to the State of Mississippi in the database established under this
261 article. Likewise, the commission shall make available the
262 state's database to the Federal Trade Commission for inclusion in
263 the national database.

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

266 77-3-719. Information contained in the database established
267 under this article may be used and accessed only for the purpose
268 of compliance with this article and shall not be otherwise subject
269 to public inspection or disclosure.

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

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

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

284 77-3-723. (1) Any person or entity who makes an authorized
285 telephone solicitation to a consumer in this state shall announce
286 clearly, at the beginning of each call, his or her name, the
287 company he or she represents and the purpose of the call. Such
288 calls may only be made between the hours of 8:00 a.m. and 8:00

289 p.m. Central Standard Time. No telephone solicitations may be
290 made on a Sunday. For purposes of this provision, an "authorized
291 telephone solicitation" means a solicitation that is made: (a) to
292 a consumer who is not listed on the most current "no-calls"
293 database; (b) by a telephone solicitor who has been authorized to
294 make such solicitations under the provisions of Section 77-3-709;
295 or (c) by a telephone solicitor who is exempt from this article
296 under the provisions of Section 77-3-711.

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

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

308 77-3-725. The commission may investigate alleged violations
309 and initiate proceedings relative to a violation of this article
310 or any rules and regulations promulgated pursuant to this article.
311 Such proceedings include, without limitation, proceedings to issue
312 a cease and desist order, and to issue an order imposing a civil
313 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each
314 violation. The commission shall afford an opportunity for a fair
315 hearing to the alleged violator(s) after giving written notice of
316 the time and place for said hearing. Failure to appear at any
317 such hearing may result in the commission finding the alleged
318 violator(s) liable by default. Any telephone solicitor found to
319 have violated this article, pursuant to a hearing or by default,
320 may be subject to a civil penalty not to exceed Five Thousand
321 Dollars (\$5,000.00) for each violation to be assessed and

322 collected by the commission. Each telephonic communication shall
323 constitute a separate violation.

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

327 The commission may issue subpoenas, require the production of
328 relevant documents, administer oaths, conduct hearings, and do all
329 things necessary in the course of investigating, determining and
330 adjudicating an alleged violation.

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

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

338 77-3-727. Any person who has received a telephone
339 solicitation in violation of this article, or any rules and
340 regulations promulgated pursuant to this article, may file a
341 complaint with the commission. The complaint will be processed
342 pursuant to complaint procedures established by the commission.

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

345 77-3-729. It shall be a defense in any action or proceeding
346 brought under Section 77-3-725 or 77-3-727 that the defendant has
347 established and implemented, with due care, reasonable practices
348 and procedures to effectively prevent telephone solicitations in
349 violation of this article.

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

352 77-3-731. The commission is granted personal jurisdiction
353 over any telephone solicitor, whether a resident or a nonresident,
354 notwithstanding that telephone solicitors are not deemed to be a

355 public utility, for the purpose of administering this article.
356 The commission is granted personal jurisdiction over any
357 nonresident telephone solicitor, its executor, administrator,
358 receiver, trustee or any other appointed representative of such
359 nonresident as to an action or proceeding authorized by this
360 article or any rules and regulations promulgated pursuant to this
361 article as authorized by Section 13-3-57, and also upon any
362 nonresident, his or her executor, administrator, receiver, trustee
363 or any other appointed representative of such nonresident who has
364 qualified under the laws of this state to do business herein.
365 Service of summons and process upon the alleged violator of this
366 article shall be had or made as is provided by the Mississippi
367 Rules of Civil Procedure.

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

370 77-3-733. Any party aggrieved by any final order of the
371 commission pursuant to this article, or any rules and regulations
372 promulgated pursuant to this article, shall have the right of
373 appeal to the Chancery Court of Hinds County, Mississippi, First
374 Judicial District.

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

377 77-3-735. No provider of telephonic caller identification
378 service, local exchange telephone company or long distance company
379 certificated by the commission may be held liable for violations
380 of this article committed by other persons or entities.

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

383 77-3-737. Sections 77-3-701 through 77-3-737 shall stand
384 repealed from and after July 1, 2008.

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