

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

To: Energy; Accountability, Efficiency, Transparency

SENATE BILL NO. 2821
(As Sent to Governor)

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

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

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

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

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

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



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

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

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

36 (i) Encouraging the purchase or rental of, or
37 investment in, property; * * *

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

41 (iii) Soliciting any other item of value,
42 pecuniary or otherwise, regardless of whether a sales presentation
43 is made; or

44 (iv) Soliciting a charitable contribution of money
45 or property.

46 (e) "Commission" means the Mississippi Public Service
47 Commission.



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

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

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

71 (i) "Charitable organization" means any person or
72 entity holding itself out to be established for any benevolent,



73 educational, philanthropic, humane, scientific, patriotic, social
74 welfare or advocacy, public health, environmental or conservation,
75 civic or other eleemosynary purpose or for the benefit of law
76 enforcement personnel, firefighters, or any other persons who
77 protect the public safety, or for any other purpose where a
78 charitable appeal is the basis of the solicitation.

79 (j) "Sales presentation" means attempting to obtain
80 something of value, pecuniary or otherwise, regardless of whether
81 consideration is or is expected to be exchanged.

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

84 77-3-711. The provisions of this article shall not apply to:

85 (a) A person soliciting:

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

88 (ii) Without the intent to complete or obtain
89 provisional acceptance of a sale, a charitable contribution, or
90 the payment of some other item of value, pecuniary or otherwise,
91 during the telephone solicitation; or

92 (iii) Without the intent to complete, and who does
93 not complete, the sales presentation during the telephone
94 solicitation, but who completes the sales presentation at a later
95 face-to-face meeting between the person soliciting and the
96 prospective purchaser or consumer.



97 (b) A person who is a licensee under Chapter 35, Title
98 73, Mississippi Code of 1972, who is a resident of the State of
99 Mississippi, and whose telephone solicitation is for the sole
100 purpose of selling, exchanging, purchasing, renting, listing for
101 sale or rent or leasing real estate in connection with his real
102 estate license and not in conjunction with any other offer.

103 (c) A motor vehicle dealer as that term is defined in
104 Section 63-17-55, who is a resident of the State of Mississippi
105 and who maintains a current motor vehicle dealer's license issued
106 by the Mississippi Motor Vehicle Commission, whose telephone
107 solicitation is for the sole purpose of selling, offering to sell,
108 soliciting or advertising the sale of motor vehicles in connection
109 with his motor vehicle dealer's license and not in conjunction
110 with any other offer.

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

115 (e) A broker-dealer, agent, or investment advisor
116 registered under Chapter 71, Title 75, Mississippi Code of 1972,
117 whose telephone solicitation is for the sole purpose of effecting
118 or attempting to effect the purchase or sale of securities or has
119 the purpose of providing or seeking to provide investment or
120 financial advice.



121 (f) A person calling on behalf of a charitable
122 organization which is registered under Chapter 11, Title 79,
123 Mississippi Code of 1972, whose telephone solicitation is for the
124 sole purpose of soliciting for the charitable organization and who
125 receives no compensation for his activities on behalf of the
126 organization.

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

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

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



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

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

150 77-3-725. The commission may investigate alleged violations
151 and initiate proceedings relative to a violation of this article
152 or any rules and regulations promulgated pursuant to this article.
153 Such proceedings include, without limitation, proceedings to issue
154 a cease and desist order, and to issue an order imposing a civil
155 penalty not to exceed * * * Ten Thousand Dollars (\$10,000.00) for
156 each violation. The commission shall afford an opportunity for a
157 fair hearing to the alleged violator(s) after giving written
158 notice of the time and place for said hearing. Failure to appear
159 at any such hearing may result in the commission finding the
160 alleged violator(s) liable by default. Any telephone solicitor
161 found to have violated this article, pursuant to a hearing or by
162 default, may be subject to a civil penalty not to exceed * * * Ten
163 Thousand Dollars (\$10,000.00) for each violation to be assessed
164 and collected by the commission. Each telephonic communication
165 shall constitute a separate violation.

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

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



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

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

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

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

