3/7 10:47a

Chapter No. 322
13/SS02/R488
CRL / BW/SG

SENATE BILL NO. 2787

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2787

AN ACT TO REENACT SECTIONS 77-3-701 THROUGH 77-3-735, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE MISSISSIPPI TELEPHONE SOLICITATION ACT; TO AMEND SECTION 77-3-737, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON THE MISSISSIPPI TELEPHONE SOLICITATION ACT; AND FOR RELATED PURPOSES.

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

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

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

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

77-3-703. (1) The use of the telephone to make all types of solicitations to consumers is pervasive. This article gives consumers a tool by which to object to telemarketing calls as these communications can amount to a nuisance, an invasion of privacy, and can create a health and safety risk for certain consumers who maintain their phone service primarily for emergency medical situations.

(2) Any calls made for political purposes shall be governed by Section 23-15-875.

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

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

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

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

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

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

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

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

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

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

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

(h) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer, which relationship is currently existing or was terminated within six (6) months of the telephone solicitation; however, the act of purchasing consumer goods or services under an extension of credit does not create an existing business relationship between the

consumer and the entity extending credit to the consumer for such purchase. The term does not include the situation wherein the consumer has merely been subject to a telephone solicitation by or at the behest of the telephone solicitor within the six (6) months immediately preceding the contemplated telephone solicitation.

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

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

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

(2) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the commission, or the entity under

contract with the commission, of his or her objection to receiving telephone solicitations.

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

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

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

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

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

(a) The telephone solicitor must demonstrate to the commission that its proposed telephone solicitation is reasonably related to an established business relationship as defined in Section 77-3-705(h), or is being made in response to an invitation or notice from a consumer which clearly signifies that he is open 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 solicitation, but who completes the sales presentation at a later face-to-face meeting between the person soliciting and the prospective purchaser or consumer.

(b) A person who is a licensee under Chapter 35, Title 73, Mississippi Code of 1972, who is a resident of the State of Mississippi, and whose telephone solicitation is for the sole

purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in connection with his real estate license and not in conjunction with any other offer.

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

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

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

(f) A person calling on behalf of a charitable organization which is registered under Chapter 11, Title 79, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of soliciting for the charitable organization and who

receives no compensation for his activities on behalf of the 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, cemetery or monument dealer, if the sole purpose of the telephone solicitation relates to services provided by the funeral or death related establishments 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;

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

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

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

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

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

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

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

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

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

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

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

77-3-719. Information contained in the database established under this article may be used and accessed only for the purpose

of compliance with this article and shall not be otherwise subject to public inspection or disclosure.

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

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

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

77-3-723. (1) Any person or entity who makes an authorized telephone solicitation to a consumer in this state shall announce clearly, at the beginning of each call, his or her name, the company he or she represents and the purpose of the call. Such calls may only be made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard Time. No telephone solicitations may be made on a Sunday. For purposes of this provision, an "authorized telephone solicitation" means a solicitation that is made: (a) to a consumer who is not listed on the most current "no-calls"

database; (b) by a telephone solicitor who has been authorized to make such solicitations under the provisions of Section 77-3-709; or (c) by a telephone solicitor who is exempt from this article 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 nonresident, his or her executor, administrator, receiver, trustee or any other appointed representative of such nonresident who has qualified under the laws of this state to do business herein. Service of summons and process upon the alleged violator of this article shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

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

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

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

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

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

77-3-737. Sections 77-3-701 through 77-3-737 shall stand repealed from and after July 1, * * * 2017.

SECTION 20. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE SENATE
February 6, 2013

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
February 28, 2013

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

10:47 a.m
3/7/13