

By: Representative Denny

To: Public Utilities

HOUSE BILL NO. 61

1 AN ACT TO AMEND SECTION 77-3-703, MISSISSIPPI CODE OF 1972,
 2 TO ADD FACSIMILE COMMUNICATIONS TO THE MISSISSIPPI TELEPHONE
 3 SOLICITATION ACT AS A PROHIBITED SOLICITATION FOR RESIDENTIAL
 4 SUBSCRIBERS WHO HAVE GIVEN NOTICE OF THEIR OBJECTION TO SUCH
 5 FACSIMILE COMMUNICATIONS; TO AMEND SECTION 77-3-705, MISSISSIPPI
 6 CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTIONS 77-3-707,
 7 77-3-709, 77-3-711, 77-3-713, 77-3-715, 77-3-717, 77-3-719,
 8 77-3-723, 77-3-725, 77-3-727, 77-3-729 AND 77-3-731, MISSISSIPPI
 9 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 77-3-703, Mississippi Code of 1972, is
 12 amended as follows:

13 77-3-703. (1) 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 and
 16 telephone facsimile machine solicitations as these communications
 17 can amount to a nuisance, an invasion of privacy, and can create a
 18 health and safety risk for certain consumers who maintain their
 19 phone service primarily for emergency medical situations.

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

22 **SECTION 2.** Section 77-3-705, Mississippi Code of 1972, is
 23 amended as follows:

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

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

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

35 (c) "Telephone facsimile machine" means equipment which
36 has the capacity: (a) to transcribe text or images, or both, from
37 paper into an electronic signal and to transmit that signal over a
38 regular telephone line, or (b) to transcribe text or images, or
39 both, from an electronic signal received over a regular telephone
40 line onto paper.

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

49 (e) "Telephone solicitation" means any voice
50 communication or facsimile machine communication over the
51 telephone line of a consumer for the purpose of:

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

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

57 (f) "Commission" means the Mississippi Public Service
58 Commission.

59 (g) "Doing business in this state" refers to businesses
60 which conduct telephone or facsimile solicitations from any
61 location to consumers located in this state.

62 (h) "Consumer goods or services" means any real
63 property or any tangible or intangible personal property which is

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

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

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

91 **SECTION 3.** Section 77-3-707, Mississippi Code of 1972, is
92 amended as follows:

93 77-3-707. (1) Except as otherwise provided pursuant to
94 Section 77-3-709 or 77-3-711, a telephone solicitor may not make
95 or cause to be made any telephone or facsimile solicitation to any
96 consumer in this state unless the telephone solicitor has

97 purchased the "no-calls" database, and if a telephone solicitor
98 uses a telephone facsimile machine at any time, the "do-not-fax"
99 database from the commission or the entity under contract with the
100 commission.

101 (2) Except as otherwise provided pursuant to Section
102 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
103 to be made any telephone or facsimile solicitation to any consumer
104 in this state who has given notice to the commission, or the
105 entity under contract with the commission, of his or her objection
106 to receiving telephone or facsimile solicitations.

107 (3) The commission, or an entity under contract with the
108 commission, shall establish and operate a "no-calls" database and
109 a "do-not-fax" database that is composed of a list of telephone
110 numbers of consumers who have given notice of their objection to
111 receiving telephone or facsimile solicitations. The "no-calls"
112 database and the "do-not-fax" database may be operated by the
113 commission or by another entity under contract with the
114 commission.

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

126 **SECTION 4.** Section 77-3-709, Mississippi Code of 1972, is
127 amended as follows:

128 77-3-709. The commission, in its discretion, may allow
129 telephone solicitors to make telephone or facsimile solicitations

130 without requiring them to purchase the "no-calls" database or the
131 "do-not-fax" database, and regardless of whether a telephone or
132 facsimile solicitation may be made to a consumer who has given
133 notice of his objection to receiving such solicitations, provided
134 that it adopts a written policy incorporating the following
135 criteria:

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

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

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

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

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

163 facsimile solicitations under this section, notwithstanding that
164 any of the criteria set forth in this section have been met.

165 **SECTION 5.** Section 77-3-711, Mississippi Code of 1972, is
166 amended as follows:

167 77-3-711. The provisions of this article shall not apply to:

168 (a) A person soliciting:

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

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

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

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

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

194 (d) An agent as that term is defined in Section 83-17-1
195 whose telephone or facsimile solicitation is for the sole purpose

196 of soliciting, consulting, advising, or adjusting in the business
197 of insurance.

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

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

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

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

224 (i) A person calling or sending a facsimile on behalf
225 of a funeral establishment licensed under Section 73-11-41,
226 cemetery or monument dealer, if the sole purpose of the telephone
227 or facsimile solicitation relates to services provided by the

228 funeral or death related establishments in the course of its
229 ordinary business.

230 (j) Any telephone solicitor who solicits, by telephone
231 or by facsimile a consumer with whom he has an established
232 business relationship.

233 **SECTION 6.** Section 77-3-713, Mississippi Code of 1972, is
234 amended as follows:

235 77-3-713. All telephone solicitors and those who solicit
236 using facsimile machines must register with the commission before
237 conducting any telephone or facsimile solicitations in the State
238 of Mississippi.

239 **SECTION 7.** Section 77-3-715, Mississippi Code of 1972, is
240 amended as follows:

241 77-3-715. The commission may promulgate rules and
242 regulations necessary to effectuate this article, including, but
243 not limited to, the following:

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

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

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

252 (d) The methods by which a person or entity desiring to
253 make telephone or facsimile solicitations may obtain access to the
254 databases as required to avoid calling the telephone numbers of
255 consumers included in the databases;

256 (e) The process by which the databases are updated, and
257 the frequency of updates;

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

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

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

269 (i) All other matters relating to the databases that
270 the commission deems necessary.

271 **SECTION 8.** Section 77-3-717, Mississippi Code of 1972, is
272 amended as follows:

273 77-3-717. If the Federal Trade Commission establishes a
274 single national database of telephone numbers of consumers who
275 object to receiving telephone or facsimile solicitations, the
276 commission must include the portion of the single national
277 database that relates to the State of Mississippi in the database
278 established under this article. Likewise, the commission shall
279 make available the state's database to the Federal Trade
280 Commission for inclusion in the national database.

281 **SECTION 9.** Section 77-3-719, Mississippi Code of 1972, is
282 amended as follows:

283 77-3-719. Information contained in the databases established
284 under this article may be used and accessed only for the purpose
285 of compliance with this article and shall not be otherwise subject
286 to public inspection or disclosure.

287 **SECTION 10.** Section 77-3-723, Mississippi Code of 1972, is
288 amended as follows:

289 77-3-723. (1) Any person or entity who makes an authorized
290 telephone or facsimile solicitation to a consumer in this state
291 shall announce clearly, at the beginning of each call, or indicate
292 clearly on the first page of the facsimile solicitation, his or
293 her name, the company he or she represents and the purpose of the

294 call. Such calls or facsimile solicitations may only be made
295 between the hours of 8:00 a.m. and 8:00 p.m. Central Standard
296 Time. No telephone or facsimile solicitations may be made on a
297 Sunday. For purposes of this provision, an "authorized telephone
298 or facsimile solicitation" means a solicitation that is made: (a)
299 to a consumer who is not listed on the most current "no-calls"
300 database or "do-not-fax" database; (b) by a telephone solicitor
301 who has been authorized to make such solicitations under the
302 provisions of Section 77-3-709; or (c) by a telephone solicitor
303 who is exempt from this article under the provisions of Section
304 77-3-711.

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

314 **SECTION 11.** Section 77-3-725, Mississippi Code of 1972, is
315 amended as follows:

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

327 have violated this article, pursuant to a hearing or by default,
328 may be subject to a civil penalty not to exceed Five Thousand
329 Dollars (\$5,000.00) for each violation to be assessed and
330 collected by the commission. Each telephonic or facsimile
331 communication shall constitute a separate violation.

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

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

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

344 **SECTION 12.** Section 77-3-727, Mississippi Code of 1972, is
345 amended as follows:

346 77-3-727. Any person who has received a telephone or
347 facsimile solicitation in violation of this article, or any rules
348 and regulations promulgated pursuant to this article, may file a
349 complaint with the commission. The complaint will be processed
350 pursuant to complaint procedures established by the commission.

351 **SECTION 13.** Section 77-3-729, Mississippi Code of 1972, is
352 amended as follows:

353 77-3-729. It shall be a defense in any action or proceeding
354 brought under Section 77-3-725 or 77-3-727 that the defendant has
355 established and implemented, with due care, reasonable practices
356 and procedures to effectively prevent telephone or facsimile
357 solicitations in violation of this article.

358 **SECTION 14.** Section 77-3-731, Mississippi Code of 1972, is
359 amended as follows:

360 77-3-731. The commission is granted personal jurisdiction
361 over any telephone or facsimile solicitor, whether a resident or a
362 nonresident, notwithstanding that telephone or facsimile
363 solicitors are not deemed to be a public utility, for the purpose
364 of administering this article. The commission is granted personal
365 jurisdiction over any nonresident telephone or facsimile
366 solicitor, its executor, administrator, receiver, trustee or any
367 other appointed representative of such nonresident as to an action
368 or proceeding authorized by this article or any rules and
369 regulations promulgated pursuant to this article as authorized by
370 Section 13-3-57, and also upon any nonresident, his or her
371 executor, administrator, receiver, trustee or any other appointed
372 representative of such nonresident who has qualified under the
373 laws of this state to do business herein. Service of summons and
374 process upon the alleged violator of this article shall be had or
375 made as is provided by the Mississippi Rules of Civil Procedure.

376 **SECTION 15.** This act shall take effect and be in force from
377 and after July 1, 2006.