

By: Senator(s) Posey

To: Public Utilities

SENATE BILL NO. 2111

1 AN ACT TO PROHIBIT UNSOLICITED FACSIMILE ADVERTISEMENTS; TO
2 REQUIRE CERTAIN INFORMATION ON ANY TRANSMISSION BY FACSIMILE
3 MACHINES; TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO PROMULGATE
4 RULES AND REGULATIONS NECESSARY TO IMPLEMENT THIS ACT; TO
5 AUTHORIZE THE PUBLIC SERVICE COMMISSION TO INITIATE PROCEEDINGS
6 RELATIVE TO VIOLATIONS OF THIS ACT; TO PRESCRIBE PENALTIES FOR
7 VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

9 SECTION 1. As used in this act, unless the context otherwise
10 requires:

11 (a) "Commission" means the Public Service Commission of
12 the State of Mississippi.

13 (b) "Fax" or "facsimile" means:

14 (i) Every process in which electronic signals are
15 transmitted by telephone lines for conversion into written text or
16 other graphic images; however,

17 (ii) "Fax" or "facsimile" does not include:

18 1. Electronic mail or "e-mail"; or

19 2. Any transmission of electronic signals by
20 a local exchange company to the extent that the local exchange
21 company merely carries that transmission over its network.

22 (c) "Person" means a natural person, individual,
23 partnership, trust, estate, incorporated or unincorporated
24 association, any corporation, parent, subsidiary or affiliate
25 thereof, or any other legal or commercial entity however organized
26 and wherever located.

27 (i) "Affiliate" of a specific person means a
28 person that directly or indirectly, through one or more

29 intermediaries, controls or is controlled by, or is under common
30 control with, the person specified;

31 (ii) "Parent" means a company owning more than
32 fifty percent (50%) of voting shares, or otherwise a controlling
33 interest, of another company; and

34 (iii) "Subsidiary" means a corporation with more
35 than fifty percent (50%) of its outstanding voting shares being
36 owned by its parent or the parent's other subsidiaries.

37 (d) "Unsolicited facsimile advertisement" means any
38 material advertising the commercial availability or quality of any
39 property, goods or services, that is transmitted by fax to any
40 person located within the State of Mississippi without such
41 person's prior express invitation or permission, and is
42 transmitted from Mississippi or elsewhere for the purpose of
43 offering the extension of credit or encouraging the purchase or
44 rental of, or investment in, property, goods or services.

45 **SECTION 2.** (1) No person shall transmit or cause another
46 person to transmit an unsolicited facsimile advertisement.

47 (2) Any transmission by facsimile machine shall include in a
48 margin at the top or bottom of each transmitted page or on the
49 first page of the transmission the date and time of the
50 transmission; an identification of the business, other entity or
51 individual sending the message; and the telephone number of the
52 sending machine or of such business, other entity or individual.

53 **SECTION 3.** The commission is authorized to promulgate any
54 rules and regulations necessary to implement and effectuate this
55 act.

56 **SECTION 4.** (1) The commission is authorized to initiate
57 proceedings relative to a violation of this act or any rules and
58 regulations promulgated pursuant to this act. Such proceedings
59 include, without limitation, proceedings to: issue a cease and
60 desist order; issue an order imposing a civil penalty up to a
61 maximum of Two Thousand Dollars (\$2,000.00) for each violation;

62 and to seek additional relief in any court of competent
63 jurisdiction. Violations shall be calculated in a liberal manner
64 to deter violators and to protect consumers. Each page of each
65 unsolicited facsimile advertisement may constitute a separate
66 violation.

67 (2) In the course of investigating an alleged violation of
68 this act, the authority is authorized to issue investigative
69 demands, issue subpoenas, administer oaths and conduct hearings.
70 After proper notice, any such hearing shall be conducted in
71 conformity with commission rules and the Administrative Procedures
72 Act.

73 **SECTION 5.** (1) The provisions of this act shall not be
74 construed to limit any person's right to pursue any additional
75 civil remedy otherwise allowed by law.

76 (2) The provisions of this act shall not be construed to
77 restrict or apply to communications to and from citizens and their
78 elected representatives.

79 **SECTION 6.** (1) A violation of this act also constitutes a
80 violation of the Mississippi Consumer Protection Act, Sections
81 75-24-1 through 75-24-175.

82 (2) For the purpose of application of the Mississippi
83 Consumer Protection Act, any violation of the provisions of this
84 act shall be construed to constitute an unfair or deceptive act or
85 practice affecting trade or commerce and subject to the penalties
86 and remedies as provided in that act, in addition to the penalties
87 and remedies set forth in this act as well as that of 47 USC
88 Section 227, or any other cause of action, civil remedy or penalty
89 provided by law.

90 **SECTION 7.** This act shall take effect and be in force from
91 and after July 1, 2006.