

By: Representative Denny

To: Public Utilities

HOUSE BILL NO. 516

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

22 77-3-705. For the purposes of this article, the following
23 words and terms shall have the meanings ascribed in this section
24 unless the context clearly indicates otherwise:

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

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

31 telephone number and name of the person or entity making an
32 incoming telephone call.

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

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

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

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

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

55 (f) "Commission" means the Mississippi Public Service
56 Commission.

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

60 (h) "Consumer goods or services" means any real
61 property or any tangible or intangible personal property which is
62 normally used for personal, family or household purposes,
63 including, without limitation, any property intended to be

64 attached to, or installed in, any real property, and any services
65 related to the property.

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

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

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

91 77-3-707. (1) Except as otherwise provided pursuant to
92 Section 77-3-709 or 77-3-711 * * *, a telephone solicitor may not
93 make or cause to be made any telephone or facsimile solicitation
94 to any consumer in this state unless the telephone solicitor has
95 purchased the "no-calls" database, and if a telephone solicitor
96 uses a telephone facsimile machine at any time, the "do-not-fax"

97 database from the commission or the entity under contract with the
98 commission.

99 (2) Except as otherwise provided pursuant to Section
100 77-3-709 or 77-3-711 * * *, a telephone solicitor may not make or
101 cause to be made any telephone or facsimile solicitation to any
102 consumer in this state who has given notice to the commission, or
103 the entity under contract with the commission, of his or her
104 objection to receiving telephone or facsimile solicitations.

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

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

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

126 77-3-709. The commission, in its discretion, may allow
127 telephone solicitors to make telephone or facsimile solicitations
128 without requiring them to purchase the "no-calls" database or the
129 "do-not-fax" database, and regardless of whether a telephone or

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

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

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

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

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

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

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

165 77-3-711. The provisions of this article shall not apply to:

166 (a) A person soliciting:

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

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

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

177 (b) A person who is a licensee under Chapter 35, Title
178 73, Mississippi Code of 1972, who is a resident of the State of
179 Mississippi, and whose telephone or facsimile solicitation is for
180 the sole purpose of selling, exchanging, purchasing, renting,
181 listing for sale or rent or leasing real estate in connection with
182 his real estate license and not in conjunction with any other
183 offer.

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

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

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

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

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

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

222 (i) A person calling or sending a facsimile on behalf
223 of a funeral establishment licensed under Section 73-11-41, if the
224 sole purpose of the telephone or facsimile solicitation relates to
225 services provided by the funeral establishment in the course of
226 its ordinary business.

227 (j) Any telephone solicitor who solicits by telephone
228 or by facsimile a consumer with whom he has an established
229 business relationship.

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

232 77-3-713. All telephone solicitors and those who solicit
233 using facsimile machines must register with the commission before
234 conducting any telephone or facsimile solicitations in the State
235 of Mississippi.

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

238 77-3-715. The commission may promulgate rules and
239 regulations necessary to effectuate this article, including, but
240 not limited to, the following:

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

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

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

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

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

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

258 (g) The establishment of fees to be charged by the
259 commission or its contractor to telephone or facsimile solicitors

260 for access to or for paper or electronic copies of the databases
261 on an annual basis;

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

266 (i) All other matters relating to the databases that
267 the commission deems necessary.

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

270 77-3-717. If the Federal Trade Commission establishes a
271 single national database of telephone numbers of consumers who
272 object to receiving telephone or facsimile solicitations, the
273 commission must include the portion of the single national
274 database that relates to the State of Mississippi in the databases
275 established under this article.

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

278 77-3-719. Information contained in the databases established
279 under this article may be used and accessed only for the purpose
280 of compliance with this article and shall not be otherwise subject
281 to public inspection or disclosure.

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

284 77-3-723. (1) Any person or entity who makes an authorized
285 telephone or facsimile solicitation to a consumer in this state
286 shall announce clearly, at the beginning of each call, or indicate
287 clearly on the first page of the facsimile solicitation, his or
288 her name, the company he or she represents and the purpose of the
289 call. Such calls or facsimile solicitations may only be made
290 between the hours of 8:00 a.m. and 8:00 p.m. Central Standard
291 Time. No telephone or facsimile solicitations may be made on a
292 Sunday. For purposes of this provision, an "authorized telephone

293 or facsimile solicitation" means a solicitation that is made: (a)
294 to a consumer who is not listed on the most current "no-calls"
295 database or "do-not-fax" database; (b) by a telephone solicitor
296 who has been authorized to make such solicitations under the
297 provisions of Section 77-3-709 * * *; or (c) by a telephone
298 solicitor who is exempt from this article under the provisions of
299 Section 77-3-711 * * *.

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

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

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

325 assessed and collected by the commission. Each telephonic or
326 facsimile communication shall constitute a separate violation.

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

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

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

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

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

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

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

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

355 77-3-731. The commission is granted personal jurisdiction
356 over any telephone or facsimile solicitor, whether a resident or a
357 nonresident, notwithstanding that telephone or facsimile

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

371 **SECTION 15.** This act shall take effect and be in force from
372 and after July 1, 2005.