

By: Representatives Warren, Denny

To: Public Utilities

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 538

1 AN ACT TO REENACT SECTIONS 77-3-701 THROUGH 77-3-735,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE MISSISSIPPI TELEPHONE  
3 SOLICITATION ACT; TO AMEND SECTION 77-3-737, MISSISSIPPI CODE OF  
4 1972, TO EXTEND THE DATE OF REPEAL ON THOSE REENACTED SECTIONS  
5 FROM JULY 1, 2005, TO JULY 1, 2008; TO AMEND REENACTED SECTION  
6 77-3-703, MISSISSIPPI CODE OF 1972, TO ADD FACSIMILE  
7 COMMUNICATIONS TO THE MISSISSIPPI TELEPHONE SOLICITATION ACT AS A  
8 PROHIBITED SOLICITATION FOR RESIDENTIAL SUBSCRIBERS WHO HAVE GIVEN  
9 NOTICE OF THEIR OBJECTION TO SUCH FACSIMILE COMMUNICATIONS; TO  
10 AMEND REENACTED SECTION 77-3-705, MISSISSIPPI CODE OF 1972, TO  
11 DEFINE CERTAIN TERMS; TO AMEND REENACTED SECTIONS 77-3-707,  
12 77-3-709, 77-3-711, 77-3-713, 77-3-715, 77-3-717, 77-3-719,  
13 77-3-723, 77-3-727, 77-3-729 AND 77-3-731, MISSISSIPPI CODE OF  
14 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

18 77-3-701. This article shall be known and may be cited as  
19 the "Mississippi Telephone Solicitation Act."

20 **SECTION 2.** Section 77-3-703, Mississippi Code of 1972, is  
21 reenacted and amended as follows:

22 77-3-703. The use of the telephone to make all types of  
23 solicitations to consumers is pervasive. This article gives  
24 consumers a tool by which to object to telemarketing calls and  
25 telephone facsimile machine solicitations as these communications  
26 can amount to a nuisance, an invasion of privacy, and can create a  
27 health and safety risk for certain consumers who maintain their  
28 phone service primarily for emergency medical situations.

29 **SECTION 3.** Section 77-3-705, Mississippi Code of 1972, is  
30 reenacted and amended as follows:

31 77-3-705. For the purposes of this article, the following  
32 words and terms shall have the meanings ascribed in this section  
33 unless the context clearly indicates otherwise:

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

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

42           (c) "Telephone facsimile machine" means equipment which  
43 has the capacity: (a) to transcribe text or images, or both, from  
44 paper into an electronic signal and to transmit that signal over a  
45 regular telephone line, or (b) to transcribe text or images, or  
46 both, from an electronic signal received over a regular telephone  
47 line onto paper.

48           (d) "Telephone solicitor" means any person, firm,  
49 entity, organization, partnership, association, corporation,  
50 charitable entity, or a subsidiary or affiliate thereof, who  
51 engages in any type of telephone or facsimile solicitation on his  
52 or her own behalf or through representatives, independent  
53 contractors, salespersons, agents, automated dialing systems,  
54 telephone facsimile machine or any other machines or other  
55 individuals or systems.

56           (e) "Telephone solicitation" means any voice  
57 communication or facsimile machine communication over the  
58 telephone line of a consumer for the purpose of:

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

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

64           (f) "Commission" means the Mississippi Public Service  
65 Commission.

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

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

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

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

98           **SECTION 4.** Section 77-3-707, Mississippi Code of 1972, is  
99 reenacted and amended as follows:

100           77-3-707. (1) Except as otherwise provided pursuant to  
101 Section 77-3-709 or 77-3-711, a telephone solicitor may not make  
102 or cause to be made any telephone or facsimile solicitation to any  
103 consumer in this state unless the telephone solicitor has  
104 purchased the "no-calls" database or "do-not-fax" database from  
105 the commission or the entity under contract with the commission.

106           (2) Except as otherwise provided pursuant to Section  
107 77-3-709 or 77-3-711, a telephone solicitor may not make or cause  
108 to be made any telephone or facsimile solicitation to any consumer  
109 in this state who has given notice to the commission, or the  
110 entity under contract with the commission, of his or her objection  
111 to receiving telephone or facsimile solicitations.

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

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

131           **SECTION 5.** Section 77-3-709, Mississippi Code of 1972, is  
132 reenacted and amended as follows:

133           77-3-709. The commission, in its discretion, may allow  
134 telephone solicitors to make telephone or facsimile solicitations  
135 without requiring them to purchase the "no-calls" database or the  
136 "do-not-fax" database, and regardless of whether a telephone or  
137 facsimile solicitation may be made to a consumer who has given  
138 notice of his objection to receiving such solicitations, provided  
139 that it adopts a written policy incorporating the following  
140 criteria:

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

147           (b) The telephone or facsimile solicitation is to be  
148 made by a person or entity for the purpose of soliciting a  
149 contribution or donation to a bona fide nonprofit corporation,  
150 regardless of whether consumer goods or services will be provided  
151 to the consumer in return for the contribution or donation; or

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

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

162           In making its determination of whether to allow a telephone  
163 or facsimile 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 or facsimile 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 and amended 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 or facsimile solicitation;

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

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone or facsimile 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 or facsimile 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 or facsimile 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 or facsimile 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 or facsimile 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 or facsimile 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 or facsimile 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 or sending a facsimile 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.

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

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

236       **SECTION 7.** Section 77-3-713, Mississippi Code of 1972, is  
237 reenacted and amended as follows:

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

242       **SECTION 8.** Section 77-3-715, Mississippi Code of 1972, is  
243 reenacted and amended as follows:

244       77-3-715. The commission may promulgate rules and  
245 regulations necessary to effectuate this article including, but  
246 not limited to, the following:

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

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

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

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

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



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

(g) The establishment of fees to be charged by the commission or its contractor to telephone or facsimile 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 and amended 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 or facsimile 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.

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

77-3-719. Information contained in the databases 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 and amended as follows:

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

327           **SECTION 13.** Section 77-3-725, Mississippi Code of 1972, is  
328 reenacted as follows:

329           77-3-725. The commission may investigate alleged violations  
330 and initiate proceedings relative to a violation of this article  
331 or any rules and regulations promulgated pursuant to this article.  
332 Such proceedings include, without limitation, proceedings to issue  
333 a cease and desist order, and to issue an order imposing a civil  
334 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each  
335 violation. The commission shall afford an opportunity for a fair  
336 hearing to the alleged violator(s) after giving written notice of  
337 the time and place for said hearing. Failure to appear at any  
338 such hearing may result in the commission finding the alleged  
339 violator(s) liable by default. Any telephone solicitor found to  
340 have violated this article, pursuant to a hearing or by default,  
341 may be subject to a civil penalty not to exceed Five Thousand  
342 Dollars (\$5,000.00) for each violation to be assessed and  
343 collected by the commission. Each telephonic communication shall  
344 constitute a separate violation.

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

348           The commission may issue subpoenas, require the production of  
349 relevant documents, administer oaths, conduct hearings, and do all  
350 things necessary in the course of investigating, determining and  
351 adjudicating an alleged violation.

352           The remedies, duties, prohibitions and penalties set forth  
353 under this article shall not be exclusive and shall be in addition  
354 to all other causes of action, remedies and penalties provided by  
355 law, including, but not limited to, the penalties provided by  
356 Section 77-1-53.

357           **SECTION 14.** Section 77-3-727, Mississippi Code of 1972, is  
358 reenacted and amended as follows:

359           77-3-727. Any person who has received a telephone or  
360 facsimile solicitation in violation of this article, or any rules  
361 and regulations promulgated pursuant to this article, may file a  
362 complaint with the commission. The complaint will be processed  
363 pursuant to complaint procedures established by the commission.

364           **SECTION 15.** Section 77-3-729, Mississippi Code of 1972, is  
365 reenacted and amended as follows:

366           77-3-729. It shall be a defense in any action or proceeding  
367 brought under Section 77-3-725 or 77-3-727 that the defendant has  
368 established and implemented, with due care, reasonable practices  
369 and procedures to effectively prevent telephone or facsimile  
370 solicitations in violation of this article.

371           **SECTION 16.** Section 77-3-731, Mississippi Code of 1972, is  
372 reenacted and amended as follows:

373           77-3-731. The commission is granted personal jurisdiction  
374 over any telephone or facsimile solicitor, whether a resident or a  
375 nonresident, notwithstanding that telephone or facsimile  
376 solicitors are not deemed to be a public utility, for the purpose  
377 of administering this article. The commission is granted personal  
378 jurisdiction over any nonresident telephone or facsimile  
379 solicitor, its executor, administrator, receiver, trustee or any  
380 other appointed representative of such nonresident as to an action  
381 or proceeding authorized by this article or any rules and  
382 regulations promulgated pursuant to this article as authorized by  
383 Section 13-3-57, and also upon any nonresident, his or her  
384 executor, administrator, receiver, trustee or any other appointed  
385 representative of such nonresident who has qualified under the  
386 laws of this state to do business herein. Service of summons and  
387 process upon the alleged violator of this article shall be had or  
388 made as is provided by the Mississippi Rules of Civil Procedure.

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

391           77-3-733. Any party aggrieved by any final order of the  
392 commission pursuant to this article, or any rules and regulations  
393 promulgated pursuant to this article, shall have the right of  
394 appeal to the Chancery Court of Hinds County, Mississippi, First  
395 Judicial District.

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

398           77-3-735. No provider of telephonic caller identification  
399 service, local exchange telephone company or long distance company  
400 certificated by the commission may be held liable for violations  
401 of this article committed by other persons or entities.

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

404           77-3-737. Sections 77-3-701 through 77-3-737 shall stand  
405 repealed from and after July 1, 2008.

406           **SECTION 20.** This act shall take effect and be in force from  
407 and after July 1, 2005.