

By: Representatives Warren, Denny

To: Public Utilities

HOUSE BILL NO. 538
(As Passed the House)

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 PROVIDE THAT THE PROVISIONS OF THIS ACT SHALL APPLY TO BUSINESS
11 TELEPHONES; TO PROHIBIT CERTAIN POLITICAL CALLS UNDER THE ACT; TO
12 AMEND REENACTED SECTION 77-3-705, MISSISSIPPI CODE OF 1972, TO
13 DEFINE CERTAIN TERMS; TO AMEND REENACTED SECTIONS 77-3-707,
14 77-3-709, 77-3-711, 77-3-713, 77-3-715, 77-3-717, 77-3-719,
15 77-3-723, 77-3-727, 77-3-729 AND 77-3-731, MISSISSIPPI CODE OF
16 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

20 77-3-701. This article shall be known and may be cited as
21 the "Mississippi Telephone Solicitation Act."

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

24 77-3-703. (1) The use of the telephone to make all types of
25 solicitations to consumers is pervasive. This article gives
26 consumers a tool by which to object to telemarketing calls and
27 telephone facsimile machine solicitations as these communications
28 can amount to a nuisance, an invasion of privacy, and can create a
29 health and safety risk for certain consumers who maintain their
30 phone service primarily for emergency medical situations.

31 (2) The use of the telephone to knowingly communicate false
32 statements against a candidate for public office or a public
33 official is prohibited.

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

36 77-3-705. For the purposes of this article, the following
37 words and terms shall have the meanings ascribed in this section
38 unless the context clearly indicates otherwise:

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

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

47 (c) "Telephone facsimile machine" means equipment which
48 has the capacity: (i) to transcribe text or images, or both, from
49 paper into an electronic signal and to transmit that signal over a
50 regular telephone line, or (ii) to transcribe text or images, or
51 both, from an electronic signal received over a regular telephone
52 line onto paper.

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

61 (e) "Telephone solicitation" means any voice
62 communication or facsimile machine communication over the
63 telephone line of a consumer for the purpose of:

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

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

69 (f) "Commission" means the Mississippi Public Service
70 Commission.

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

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

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

95 (j) "Charitable organization" means any person or
96 entity holding itself out to be established for any benevolent,
97 educational, philanthropic, humane, scientific, patriotic, social
98 welfare or advocacy, public health, environmental or conservation,

99 civic or other eleemosynary purpose or for the benefit of law
100 enforcement personnel, fire fighters, or any other persons who
101 protect the public safety, or for any other purpose where a
102 charitable appeal is the basis of the solicitation.

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

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

111 (2) Except as otherwise provided pursuant to Section
112 77-3-709 or 77-3-711, a telephone solicitor may not make or cause
113 to be made any telephone or facsimile solicitation to any consumer
114 in this state who has given notice to the commission, or the
115 entity under contract with the commission, of his or her objection
116 to receiving telephone or facsimile solicitations.

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

125 (4) Each local exchange company and each competing local
126 exchange carrier shall provide written notification on a
127 semiannual basis to each of its consumers of the opportunity to
128 provide notification to the commission or the entity under
129 contract with the commission, that the consumer objects to
130 receiving telephone or facsimile solicitations. The notification
131 must be disseminated at the option of the carrier, by television,

132 radio or newspaper advertisements, written correspondence, bill
133 inserts or messages, a publication in the consumer information
134 pages of the local telephone directory, or any other method not
135 expressly prohibited by the commission.

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

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

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

152 (b) The telephone or facsimile solicitation is to be
153 made by a person or entity for the purpose of soliciting a
154 contribution or donation to a bona fide nonprofit corporation,
155 regardless of whether consumer goods or services will be provided
156 to the consumer in return for the contribution or donation; or

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

163 In all cases, the telephone solicitor must demonstrate that
164 it will not use an automated dialing system or a method that will

165 block or otherwise circumvent the consumer's use of a caller
166 identification service.

167 In making its determination of whether to allow a telephone
168 or facsimile solicitation to be made under the policy which will
169 include the limitations set forth in this section, the commission
170 shall exercise due care in investigating previous conduct of the
171 telephone solicitor seeking such authority. The commission may
172 deny any telephone solicitor the privilege of making telephone or
173 facsimile solicitations under this section, notwithstanding that
174 any of the criteria set forth in this section have been met.

175 **SECTION 6.** Section 77-3-711, Mississippi Code of 1972, is
176 reenacted and amended as follows:

177 77-3-711. The provisions of this article shall not apply to:

178 (a) A person soliciting:

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

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

184 (iii) Without the intent to complete, and who does
185 not complete, the sales presentation during the telephone or
186 facsimile solicitation, but who completes the sales presentation
187 at a later face-to-face meeting between the person soliciting and
188 the prospective purchaser or consumer.

189 (b) A person who is a licensee under Chapter 35, Title
190 73, Mississippi Code of 1972, who is a resident of the State of
191 Mississippi, and whose telephone or facsimile solicitation is for
192 the sole purpose of selling, exchanging, purchasing, renting,
193 listing for sale or rent or leasing real estate in connection with
194 his real estate license and not in conjunction with any other
195 offer.

196 (c) A motor vehicle dealer as that term is defined in
197 Section 63-17-55, who is a resident of the State of Mississippi

198 and who maintains a current motor vehicle dealer's license issued
199 by the Mississippi Motor Vehicle Commission, whose telephone or
200 facsimile solicitation is for the sole purpose of selling,
201 offering to sell, soliciting or advertising the sale of motor
202 vehicles in connection with his motor vehicle dealer's license and
203 not in conjunction with any other offer.

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

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

214 (f) A person calling on behalf of a charitable
215 organization which is registered under Chapter 11, Title 79,
216 Mississippi Code of 1972, whose telephone or facsimile
217 solicitation is for the sole purpose of soliciting for the
218 charitable organization and who receives no compensation for his
219 activities on behalf of the organization.

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

224 (h) A person calling or sending a facsimile on behalf
225 of any supervised financial institution or parent, subsidiary or
226 affiliate thereof. As used in this section, "supervised financial
227 institution" means any commercial bank, trust company, savings and
228 loan association, mutual savings bank, credit union, industrial
229 loan company, small loan company, consumer finance lender,
230 commercial finance lender or insurer, provided that the

231 institution has a physical office located in the State of
232 Mississippi and is subject to supervision by an official or agency
233 of the State of Mississippi or of the United States.

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

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

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

243 77-3-713. All telephone solicitors and those who solicit
244 using facsimile machines must register with the commission before
245 conducting any telephone or facsimile solicitations in the State
246 of Mississippi.

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

249 77-3-715. The commission may promulgate rules and
250 regulations necessary to effectuate this article including, but
251 not limited to, the following:

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

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

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

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

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

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

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

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

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

279 **SECTION 9.** Section 77-3-717, Mississippi Code of 1972, is
280 reenacted and amended as follows:

281 77-3-717. If the Federal Trade Commission establishes a
282 single national database of telephone numbers of consumers who
283 object to receiving telephone or facsimile solicitations, the
284 commission must include the portion of the single national
285 database that relates to the State of Mississippi in the database
286 established under this article.

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

289 77-3-719. Information contained in the databases established
290 under this article may be used and accessed only for the purpose
291 of compliance with this article and shall not be otherwise subject
292 to public inspection or disclosure.

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

295 77-3-721. All fees collected under the provisions of this
296 article shall be deposited into a special fund which is created in

297 the State Treasury to be expended by the commission for the
298 implementation and administration of this article. At the end of
299 each fiscal year, earned interest and unexpended monies remaining
300 in the fund may not revert to any other fund of the state, but
301 shall remain available for appropriations to administer this
302 article. The Legislature shall appropriate annually from the fund
303 the amount necessary for the administration of this article to the
304 commission.

305 **SECTION 12.** Section 77-3-723, Mississippi Code of 1972, is
306 reenacted and amended as follows:

307 77-3-723. (1) Any person or entity who makes an authorized
308 telephone or facsimile solicitation to a consumer in this state
309 shall announce clearly, at the beginning of each call, or indicate
310 clearly on the first page of the facsimile solicitation, his or
311 her name, the company he or she represents, the geographical
312 location from which the call is placed and the purpose of the
313 call. Such calls or facsimile solicitations may only be made
314 between the hours of 8:00 a.m. and 8:00 p.m. Central Standard
315 Time. No telephone or facsimile solicitations may be made on a
316 Sunday. For purposes of this provision, an "authorized telephone
317 or facsimile solicitation" means a solicitation that is made: (a)
318 to a consumer who is not listed on the most current "no-calls"
319 database or "do-not-fax" database; (b) by a telephone solicitor
320 who has been authorized to make such solicitations under the
321 provisions of Section 77-3-709; or (c) by a telephone solicitor
322 who is exempt from this article under the provisions of Section
323 77-3-711.

324 (2) A person or entity who makes a telephone or facsimile
325 solicitation to a consumer in this state may not utilize knowingly
326 any method that blocks or otherwise circumvents the consumer's use
327 of a caller identification service, nor may the person or entity
328 use an automated dialing system or any like system that uses a
329 recorded voice message to communicate with the consumer unless the

330 person or entity has an established business relationship with the
331 consumer and uses the recorded voice message to inform the
332 consumer about a new product or service.

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

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

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

354 The commission may issue subpoenas, require the production of
355 relevant documents, administer oaths, conduct hearings, and do all
356 things necessary in the course of investigating, determining and
357 adjudicating an alleged violation.

358 The remedies, duties, prohibitions and penalties set forth
359 under this article shall not be exclusive and shall be in addition
360 to all other causes of action, remedies and penalties provided by
361 law, including, but not limited to, the penalties provided by
362 Section 77-1-53.

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

365 77-3-727. Any person who has received a telephone or
366 facsimile solicitation in violation of this article, or any rules
367 and regulations promulgated pursuant to this article, may file a
368 complaint with the commission. The complaint will be processed
369 pursuant to complaint procedures established by the commission.

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

372 77-3-729. It shall be a defense in any action or proceeding
373 brought under Section 77-3-725 or 77-3-727 that the defendant has
374 established and implemented, with due care, reasonable practices
375 and procedures to effectively prevent telephone or facsimile
376 solicitations in violation of this article.

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

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

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

397 77-3-733. Any party aggrieved by any final order of the
398 commission pursuant to this article, or any rules and regulations
399 promulgated pursuant to this article, shall have the right of
400 appeal to the Chancery Court of Hinds County, Mississippi, First
401 Judicial District.

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

404 77-3-735. No provider of telephonic caller identification
405 service, local exchange telephone company or long distance company
406 certificated by the commission may be held liable for violations
407 of this article committed by other persons or entities.

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

410 77-3-737. Sections 77-3-701 through 77-3-737 shall stand
411 repealed from and after July 1, 2008.

412 **SECTION 20.** The provisions of this act shall apply to all
413 business telephones.

414 **SECTION 21.** This act shall take effect and be in force from
415 and after July 1, 2005.