

By: Representative Bourdeaux

To: Public Utilities

HOUSE BILL NO. 1015

1 AN ACT TO CREATE NEW SECTION 77-3-621, MISSISSIPPI CODE OF
2 1972, TO PROHIBIT UNSOLICITED TELEPHONIC SALES CALLS TO
3 RESIDENTIAL SUBSCRIBERS WHO HAVE GIVEN NOTICE OF THEIR OBJECTION
4 TO SUCH CALLS TO THE PUBLIC SERVICE COMMISSION, TO REQUIRE THE
5 PUBLIC SERVICE COMMISSION TO ESTABLISH A DATA BASE TO COLLECT SUCH
6 OBJECTIONS, TO REQUIRE THE COMMISSION TO CHARGE FEES TO
7 RESIDENTIAL SUBSCRIBERS INCLUDED IN THE DATA BASE AND TO TELEPHONE
8 SOLICITORS ACCESSING THE DATA BASE AND TO RESTRICT THE USE OF
9 INFORMATION CONTAINED IN THE DATA BASE; TO CREATE NEW SECTION
10 77-3-623, MISSISSIPPI CODE OF 1972, TO PROHIBIT TELEPHONE
11 SOLICITORS MAKING UNSOLICITED CALLS FROM BLOCKING RESIDENTIAL
12 SUBSCRIBERS' USE OF CALLER IDENTIFICATION SERVICES; TO AMEND
13 SECTION 77-3-601, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN
14 TERMS USED IN THIS ACT; TO AMEND SECTION 77-3-611, MISSISSIPPI
15 CODE OF 1972, TO AUTHORIZE THE ATTORNEY GENERAL AND INDIVIDUALS TO
16 BRING CIVIL ACTIONS FOR ALLEGED VIOLATIONS OF THIS ACT; TO AMEND
17 SECTION 77-3-615, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
18 PREVAILING PARTY TO RECEIVE ATTORNEY'S FEES IN CASES INVOLVING
19 VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

21 SECTION 1. The following shall be codified as Section
22 77-3-621, Mississippi Code of 1972:

23 77-3-621. (1) No telephone solicitor shall make or cause to
24 be made any unsolicited telephonic sales call to the telephone
25 line of any residential subscriber in this state who has given
26 notice to the Public Service Commission of the subscriber's
27 objection to receiving unsolicited telephonic sales calls.

28 (2) The Public Service Commission shall establish and
29 provide for the operation of a data base to compile a list of
30 telephone numbers of residential subscribers who object to
31 receiving unsolicited telephonic sales calls. The commission
32 shall have the data base in operation beginning on January 1,
33 2000.

34 (3) Before January 1, 2000, the commission shall promulgate

35 regulations which require each telecommunications company to
36 inform its residential subscribers of the opportunity to provide
37 notification to the commission that the subscriber objects to
38 receiving unsolicited telephonic sales calls. The regulations
39 shall specify the following:

40 (a) The methods by which each residential subscriber
41 may give notice to the commission of the subscriber's objection to
42 receiving unsolicited telephonic sales calls or revocation of such
43 notice.

44 (b) The length of time for which a notice of objection
45 shall be effective, and the effect of a change of telephone number
46 on such notice.

47 (c) The methods by which such objections and
48 revocations shall be collected and added to the data base.

49 (d) The methods by which any telephone solicitor
50 desiring to make unsolicited telephonic sales calls may obtain
51 access to the data base as required to avoid calling the telephone
52 numbers of residential subscribers included in the data base.

53 (e) Such other matters relating to the data base that
54 the commission deems desirable.

55 (4) If the Federal Communications Commission establishes a
56 single national data base of telephone numbers of subscribers who
57 object to receiving unsolicited telephonic sales calls, the
58 commission shall include the part of the national data base which
59 relates to Mississippi in the data base established under this
60 section.

61 (5) A residential subscriber shall be charged a fee of Five
62 Dollars (\$5.00), payable to the commission, for each notice for
63 inclusion in the data base established under this section. A
64 telephone solicitor desiring to make unsolicited telephonic sales
65 calls shall be charged a fee of Ten Dollars (\$10.00), payable to
66 the commission, for access to or for paper or electronic copies of
67 the data base established under this section.

68 (6) Information contained in the data base established under
69 this section shall be used only for the purpose of compliance with
70 this section or in a proceeding or action under Section 77-3-611.

71 Such information shall be exempt from the provisions of the
72 Mississippi Public Records Act of 1983.

73 (7) Telephone solicitors making unsolicited telephonic sales
74 calls for nonprofit charitable and religious organizations shall
75 be exempt from the requirements of this section.

76 SECTION 2. The following shall be codified as Section
77 77-3-623, Mississippi Code of 1972:

78 77-3-623. (1) A telephone solicitor who makes an
79 unsolicited telephonic sales call to the telephone line of a
80 residential subscriber in this state may not knowingly utilize any
81 method to block or otherwise circumvent the subscriber's use of a
82 caller identification service.

83 (2) A provider of telephone caller identification services
84 shall not be held liable for violations of this section committed
85 by other persons or entities.

86 SECTION 3. Section 77-3-601, Mississippi Code of 1972, is
87 amended as follows:

88 77-3-601. As used in this article:

89 (a) "Telephonic sales call" means a call made by a
90 telephone solicitor to a consumer for the purpose of soliciting a
91 sale of any consumer goods or services, or for the purpose of
92 soliciting an extension of credit for consumer goods or services,
93 or for the purpose of obtaining information or an extension of
94 credit for these purposes.

95 (b) "Consumer goods or services" means any real
96 property or any tangible or intangible personal property which is
97 normally used for personal, family or household purposes,
98 including, without limitation, any property intended to be
99 attached to or installed in any real property regardless of
100 whether it is attached or installed, as well as cemetery lots and

101 time-share estates, and any services related to the property.

102 (c) "Unsolicited telephonic sales call" means a
103 telephonic sales call other than a call made:

104 (i) In response to an express request of the
105 person called;

106 (ii) In connection with an existing debt or
107 contract, payment or performance which has not been completed at
108 the time of the call; or

109 (iii) To any person with whom the telephone
110 solicitor has an established business or personal relationship.

111 (d) "Consumer" means an actual or prospective
112 purchaser, lessee or recipient of or investor in consumer goods or
113 services.

114 (e) "Merchant" means a person who, directly or
115 indirectly, offers or makes available to consumers any consumer
116 goods or services.

117 (f) "Telephone solicitor" means any natural person,
118 firm, organization, partnership, association, corporation, or a
119 subsidiary or affiliate thereof, doing business in this state, who
120 makes or causes to be made a telephonic sales call.

121 (g) "Doing business in this state" refers to businesses
122 who conduct telephonic sales calls from a location in Mississippi
123 or from other states or nations to consumers located in
124 Mississippi.

125 (h) "Established business relationship" means a prior
126 or existing relationship formed by a voluntary two-way
127 communication between a person or entity and a consumer with or
128 without an exchange of consideration, on the basis of an inquiry,
129 application, purchase or transaction by such person or entity,
130 which relationship has not been previously terminated by either
131 party.

132 (i) "Residential subscriber" means a person who has
133 subscribed to residential telephone service from a

134 telecommunications company.

135 (j) "Caller identification service" means a type of
136 telephone service that permits telephone subscribers to view the
137 telephone number of incoming telephone calls.

138 SECTION 4. Section 77-3-611, Mississippi Code of 1972, is
139 amended as follows:

140 77-3-611. (1) The Attorney General shall investigate any
141 complaints received concerning violations of Sections 77-3-601
142 through 77-3-623, including any complaints referred to the
143 Attorney General by the Public Service Commission. If, after
144 investigating any complaint, the Attorney General finds that there
145 has been a violation of Sections 77-3-601 through 77-3-623, the
146 Attorney General may bring an action to impose a civil penalty and
147 to seek other relief, including injunctive relief, as the court
148 deems appropriate against the telephone solicitor. The civil
149 penalty shall not exceed Ten Thousand Dollars (\$10,000.00) per
150 violation and shall be deposited in the State General Fund,
151 unallocated. This civil penalty may be recovered in any action
152 brought under Sections 77-3-601 through 77-3-623 by the Attorney
153 General. Alternatively, the Attorney General may terminate any
154 investigation or action upon agreement by the person to pay a
155 stipulated civil penalty. The Attorney General or the court may
156 waive any civil penalty if the person has previously made full
157 restitution or reimbursement or has paid actual damages to the
158 consumers who have been injured by the violation.

159 (2) Any person who has received more than one (1)
160 unsolicited telephonic sales call within a period of twelve (12)
161 months by or on behalf of the same entity in violation of Section
162 77-3-621 or 77-3-623 may bring an action seeking injunctive relief
163 and to recover actual monetary loss or Two Thousand Dollars
164 (\$2,000.00) in damages for each knowing violation, whichever is
165 greater.

166 (3) It shall be a defense in any action or proceeding

167 brought under this section that the defendant has established and
168 implemented, with due care, reasonable practices and procedures to
169 effectively prevent unsolicited telephonic sales calls in
170 violation of Sections 77-3-621 and 77-3-623.

171 (4) No action or proceeding may be brought under this
172 section for an alleged violation of Section 77-3-621 or 77-3-623
173 more than two (2) years after the person bringing the action knew
174 or should have known of the occurrence of the alleged violation or
175 more than two (2) years after the termination of any proceeding or
176 action by the State of Mississippi, whichever is later.

177 SECTION 5. Section 77-3-615, Mississippi Code of 1972, is
178 amended as follows:

179 77-3-615. (1) In any civil litigation resulting from a
180 transaction involving a violation of Sections 77-3-601 through
181 77-3-623, the prevailing party, after judgment in the trial court
182 and exhaustion of all appeals, if any, shall receive his
183 reasonable attorney's fees and costs from the nonprevailing party.

184 (2) The attorney for the prevailing party shall submit a
185 sworn affidavit of his time spent on the case and his costs
186 incurred for all the motions, hearings, and appeals to the trial
187 judge who presided over the civil case.

188 (3) The trial judge shall award the prevailing party the sum
189 of reasonable costs incurred in the action plus a reasonable legal
190 fee for the hours actually spent on the case as sworn to in an
191 affidavit.

192 (4) Any award of attorney's fees or costs shall become a
193 part of the judgment and subject to execution as the law allows.

194 (5) In any civil litigation initiated by the Attorney
195 General, the court may award to the prevailing party reasonable
196 attorney's fees and costs if the court finds that there was a
197 complete absence of a justiciable issue of either law or fact
198 raised by the losing party, or if the court finds bad faith on the
199 part of the losing party.

200 SECTION 6. This act shall take effect and be in force from
201 and after July 1, 1999.