

By: Compretta

To: Public Utilities

HOUSE BILL NO. 1036

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 2001.

34 (3) Before January 1, 2001, the commission shall promulgate

35 regulations that specify the following:

36 (a) A requirement that each telecommunications company
37 inform its residential subscribers on a semiannual basis of the
38 opportunity to provide notification to the commission that the
39 subscriber objects to receiving unsolicited telephonic sales
40 calls. The notice to the company's residential subscribers shall
41 be disseminated, at the option of the carrier, by television,
42 radio or newspaper advertisement, written correspondence, bill
43 inserts or messages, publication in the consumer information pages
44 of the local telephone directory or any other method not expressly
45 prohibited by the commission.

46 (b) The methods by which each residential subscriber
47 may give notice to the commission of the subscriber's objection to
48 receiving unsolicited telephonic sales calls or revocation of such
49 notice.

50 (c) The length of time for which a notice of objection
51 shall be effective, and the effect of a change of telephone number
52 on such notice.

53 (d) The methods by which such objections and
54 revocations shall be collected and added to the data base.

55 (e) The methods by which any telephone solicitor
56 desiring to make unsolicited telephonic sales calls may obtain
57 access to the data base as required to avoid calling the telephone
58 numbers of residential subscribers included in the data base.

59 (f) Such other matters relating to the administration
60 of the data base that the commission deems desirable.

61 (4) If the Federal Communications Commission establishes a
62 single national data base of telephone numbers of subscribers who
63 object to receiving unsolicited telephonic sales calls, the
64 commission shall include the part of the national data base which
65 relates to Mississippi in the data base established under this
66 section.

67 (5) A residential subscriber shall be charged a fee of Five

68 Dollars (\$5.00), payable to the commission, for each notice for
69 inclusion in the data base established under this section. A
70 telephone solicitor desiring to make unsolicited telephonic sales
71 calls shall be charged a fee of Ten Dollars (\$10.00), payable to
72 the commission, for access to or for paper or electronic copies of
73 the data base established under this section.

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

77 Such information shall be exempt from the provisions of the
78 Mississippi Public Records Act of 1983.

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

82 SECTION 2. The following shall be codified as Section
83 77-3-623, Mississippi Code of 1972:

84 77-3-623. (1) A telephone solicitor who makes an
85 unsolicited telephonic sales call to the telephone line of a
86 residential subscriber in this state may not knowingly utilize any
87 method to block or otherwise circumvent the subscriber's use of a
88 caller identification service.

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

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

94 77-3-601. As used in this article:

95 (a) "Telephonic sales call" means a call made by a
96 telephone solicitor to a consumer for the purpose of soliciting a
97 sale of any consumer goods or services, or for the purpose of
98 soliciting an extension of credit for consumer goods or services,
99 or for the purpose of obtaining information or an extension of
100 credit for these purposes.

101 (b) "Consumer goods or services" means any real
102 property or any tangible or intangible personal property which is
103 normally used for personal, family or household purposes,
104 including, without limitation, any property intended to be
105 attached to or installed in any real property regardless of
106 whether it is attached or installed, as well as cemetery lots and
107 time-share estates, and any services related to the property.

108 (c) "Unsolicited telephonic sales call" means a
109 telephonic sales call other than a call made:

110 (i) In response to an express request of the
111 person called;

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

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

117 (d) "Consumer" means an actual or prospective
118 purchaser, lessee or recipient of or investor in consumer goods or
119 services.

120 (e) "Merchant" means a person who, directly or
121 indirectly, offers or makes available to consumers any consumer
122 goods or services.

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

127 (g) "Doing business in this state" refers to businesses
128 who conduct telephonic sales calls from a location in Mississippi
129 or from other states or nations to consumers located in
130 Mississippi.

131 (h) "Established business relationship" means a prior
132 or existing relationship formed by a voluntary two-way
133 communication between a person or entity and a consumer with or

134 without an exchange of consideration, on the basis of an inquiry,
135 application, purchase or transaction by such person or entity.

136 (i) "Residential subscriber" means a consumer who has
137 subscribed to residential telephone service from a
138 telecommunications company.

139 (j) "Caller identification service" means a type of
140 telephone service that permits telephone subscribers to view the
141 telephone number of incoming telephone calls.

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

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

163 (2) Any person who has received more than one (1)
164 unsolicited telephonic sales call within a period of twelve (12)
165 months by or on behalf of the same entity in violation of Section
166 77-3-621 or 77-3-623 may bring an action seeking injunctive relief

167 and to recover actual monetary loss or Two Thousand Dollars
168 (\$2,000.00) in damages for each knowing violation, whichever is
169 greater.

170 (3) It shall be a defense in any action or proceeding
171 brought under this section that the defendant has established and
172 implemented, with due care, reasonable practices and procedures to
173 effectively prevent unsolicited telephonic sales calls in
174 violation of Sections 77-3-621 and 77-3-623.

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

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

183 77-3-615. (1) In any civil litigation resulting from a
184 transaction involving a violation of Sections 77-3-601 through
185 77-3-623, the prevailing party, after judgment in the trial court
186 and exhaustion of all appeals, if any, shall receive his
187 reasonable attorney's fees and costs from the nonprevailing party.

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

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

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

198 (5) In any civil litigation initiated by the Attorney
199 General, the court may award to the prevailing party reasonable

200 attorney's fees and costs if the court finds that there was a
201 complete absence of a justiciable issue of either law or fact
202 raised by the losing party, or if the court finds bad faith on the
203 part of the losing party.

204 SECTION 6. This act shall take effect and be in force from
205 and after July 1, 2000.