

By: Representative West

To: Public Utilities

HOUSE BILL NO. 977

1 AN ACT TO REQUIRE THE ATTORNEY GENERAL TO MAINTAIN A "NO
2 SALES SOLICITATION CALLS" LIST OF TELEPHONE CUSTOMERS FOR THE
3 PURPOSE OF RESTRICTING UNSOLICITED TELEPHONIC SALES CALLS TO THOSE
4 TELEPHONE CUSTOMERS; TO REQUIRE THE ATTORNEY GENERAL TO ADOPT
5 RULES AND REGULATIONS TO CARRY OUT THIS ACT; TO REQUIRE THAT THOSE
6 RULES AND REGULATIONS INCLUDE PROVISIONS ABOUT HOW TELEPHONE
7 CUSTOMERS MAY BE INCLUDED ON THE LIST, AND FEES TO BE CHARGED FOR
8 INCLUSION ON OR OBTAINING THE LIST; TO CREATE A SPECIAL FUND IN
9 THE STATE TREASURY FOR DEPOSIT OF THE FEES COLLECTED UNDER THIS
10 ACT; TO PROHIBIT TELEPHONE SOLICITORS FROM MAKING UNSOLICITED
11 TELEPHONIC SALES CALLS TO TELEPHONE CUSTOMERS WHO APPEAR ON THE NO
12 SALES SOLICITATION CALLS LIST; TO MAKE A VIOLATION BY A TELEPHONE
13 SOLICITOR AN UNFAIR OR DECEPTIVE TRADE PRACTICE; TO PROVIDE FOR A
14 PRIVATE CAUSE OF ACTION FOR VIOLATION OF THIS ACT; TO AMEND
15 SECTION 75-24-5, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
16 PRECEDING PROVISIONS; TO BRING FORWARD SECTION 77-3-603,
17 MISSISSIPPI CODE OF 1972, WHICH REGULATES THE GENERAL CONDUCT OF
18 TELEPHONE SOLICITORS; TO BRING FORWARD SECTION 77-3-605,
19 MISSISSIPPI CODE OF 1972, WHICH REQUIRES TELEPHONE SOLICITORS TO
20 REGISTER WITH THE ATTORNEY GENERAL'S OFFICE AND TO OBTAIN A SURETY
21 BOND; AND FOR RELATED PURPOSES.

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

23 SECTION 1. As used in this act:

24 (a) "Goods or services" means any real property or any
25 tangible or intangible personal property, or services of any kind
26 provided or offered to a person, and includes advertising, labor
27 performed for the benefit of a person, personal property intended
28 to be attached to or installed in any real property regardless of
29 whether it is so attached or installed, timeshare estates or
30 licenses, and extended service contracts.

31 (b) "Telephone customer" means a residential, mobile,
32 or paging device customer of telephonic services.

33 (c) "Telephone solicitor" means any person that makes
34 or causes to be made a telephonic sales call either from a
35 location in this state or from a location outside of this state to

36 a person in this state. "Telephone solicitor" includes any person
37 that is an owner, operator, or director of, a partner in, or any
38 other individual engaged in the management activities of, a
39 business.

40 (d) "Telephonic sales call" means a telephone call made
41 by a telephone solicitor to a telephone customer for purposes of
42 any of the following:

- 43 (i) Soliciting the sale of goods or services;
- 44 (ii) Soliciting an extension of credit;
- 45 (iii) Obtaining information for the direct
46 solicitation of a sale of goods or services or an extension of
47 credit.

48 (e) "Unsolicited telephonic sales call" means a
49 telephonic sales call other than a call made in any of the
50 following situations:

- 51 (i) In response to an express request of the
52 person telephoned;
- 53 (ii) In connection with an existing debt payment
54 or performance of a debt payment that has not been completed at
55 the time of the telephone call;
- 56 (iii) To any person with whom the telephone
57 solicitor has an existing business relationship;
- 58 (iv) To any person solely for religious or
59 political purposes;
- 60 (v) To any person by a charitable organization,
61 fund-raising counsel, or professional solicitor that is in
62 compliance with Section 79-11-501 et seq. For purposes of this
63 paragraph, "charitable organization," "fund-raising counsel," and
64 "professional solicitor" have the same meanings as in Section
65 79-11-501.

66 SECTION 2. (1) The Attorney General shall maintain a "no
67 sales solicitation calls" list of telephone customers for the

68 purpose of restricting unsolicited telephonic sales calls to those
69 telephone customers in accordance with this act.

70 (2) Not later than January 1, 2002, the Attorney General
71 shall adopt rules and regulations to ensure that unsolicited
72 telephonic sales calls are restricted in accordance with this act.
73 These rules and regulations shall include provisions that specify
74 all of the following:

75 (a) The methods by which telephone customers may
76 request that the Attorney General include those telephone
77 customers on or delete those telephone customers from the "no
78 sales solicitation calls" list;

79 (b) How often a request for inclusion by a telephone
80 customer on the "no sales solicitation calls" list must be
81 renewed;

82 (c) The effect of a telephone customer's change of
83 telephone number on the "no sales solicitation calls" list;

84 (d) The methods by which telephone customer requests
85 will be collected and information added to or deleted from the "no
86 sales solicitation calls" list;

87 (e) The methods by which the "no sales solicitation
88 calls" list may be obtained by telephone solicitors;

89 (f) A reasonable fee, if any, that a telephone
90 solicitor must pay to the Attorney General to obtain a copy of the
91 "no sales solicitation calls" list, which fee, beginning July 1
92 2002, shall not exceed Five Hundred Dollars (\$500.00) annually;

93 (g) A reasonable fee, if any and not exceeding Ten
94 Dollars (\$10.00), that a telephone customer must pay to the
95 Attorney General for initial inclusion of the telephone customer's
96 listing on the "no sales solicitation calls" list;

97 (h) A reasonable fee, if any and not exceeding Five
98 Dollars (\$5.00), that a telephone customer must pay to the
99 Attorney General for annual renewal of that telephone customer's
100 listing on the "no sales solicitation calls" list.

101 (3) The Attorney General shall update the "no sales
102 solicitation calls" list periodically, but at a minimum quarterly,
103 upon compliance by a telephone customer with the rules and
104 regulations adopted under this section for initial inclusion or
105 renewal of a listing on the "no sales solicitation calls" list.

106 (4) All fees collected under this section shall be deposited
107 into the State Treasury to the credit of the Regulation of
108 Unsolicited Telephonic Sales Calls Fund established in Section 3
109 of this act.

110 SECTION 3. There is created in the State Treasury a special
111 fund to be known as the Regulation Of Unsolicited Telephonic Sales
112 Calls Fund. The Attorney General shall deposit into the fund any
113 fees collected under Section 2 of this act. The Office of
114 Consumer Protection of the Office of the Attorney General shall
115 use the moneys in the fund, upon appropriation of the Legislature,
116 for the administration and enforcement of this act and for
117 providing public education about this act.

118 SECTION 4. (1) (a) No telephone solicitor shall make or
119 cause to be made any unsolicited telephonic sales call to any
120 telephone customer that appears on the most current "no sales
121 solicitation calls" list maintained by the Attorney General.

122 (b) No telephone solicitor or person that offers for
123 sale any consumer information that includes residential, mobile,
124 or paging device telephone numbers, except directory assistance or
125 telephone directories sold by telephone companies, shall include
126 those telephone customer numbers that appear on the most current
127 "no sales solicitation calls" list.

128 (c) No telephone solicitor shall knowingly block or
129 otherwise circumvent a telephone customer's use of a caller
130 identification service.

131 (2) A violation of subsection (1) of this section is an
132 unfair or deceptive trade practice in violation of Section
133 75-24-5.

134 (3) In addition to any remedy or penalty provided under law,
135 including subsection (2) of this section, a telephone customer
136 that has received a telephone call within any twelve-month period
137 by or on behalf of a telephone solicitor in violation of this
138 section or rules and regulations adopted under Section 2 of this
139 act may do either or both of the following:

140 (a) Bring a civil action based on a violation of
141 subsection (1) of this section, requesting a court of competent
142 jurisdiction to enjoin the violation;

143 (b) Bring a civil action to collect damages of up to
144 Five Hundred Dollars (\$500.00) for each violation of subsection
145 (1) of this section.

146 SECTION 5. Section 75-24-5, Mississippi Code of 1972, is
147 amended as follows:

148 75-24-5. (1) Unfair methods of competition affecting
149 commerce and unfair or deceptive trade practices in or affecting
150 commerce are prohibited. Action may be brought under Section
151 75-24-5(1) only under the provisions of Section 75-24-9.

152 (2) Without limiting the scope of subsection (1) of this
153 section, the following unfair methods of competition and unfair or
154 deceptive trade practices or acts in the conduct of any trade or
155 commerce are * * * prohibited:

156 (a) Passing off goods or services as those of another;

157 (b) Misrepresentation of the source, sponsorship,
158 approval, or certification of goods or services;

159 (c) Misrepresentation of affiliation, connection, or
160 association with, or certification by another;

161 (d) Misrepresentation of designations of geographic
162 origin in connection with goods or services;

163 (e) Representing that goods or services have
164 sponsorship, approval, characteristics, ingredients, uses,
165 benefits, or quantities that they do not have or that a person has

166 a sponsorship, approval, status, affiliation, or connection that
167 he does not have;

168 (f) Representing that goods are original or new if they
169 are reconditioned, reclaimed, used, or secondhand;

170 (g) Representing that goods or services are of a
171 particular standard, quality, or grade, or that goods are of a
172 particular style or model, if they are of another;

173 (h) Disparaging the goods, services, or business of
174 another by false or misleading representation of fact;

175 (i) Advertising goods or services with intent not to
176 sell them as advertised;

177 (j) Advertising goods or services with intent not to
178 supply reasonably expectable public demand, unless the
179 advertisement discloses a limitation of quantity;

180 (k) Misrepresentations of fact concerning the reasons
181 for, existence of, or amounts of price reductions;

182 (l) Actions by telephone solicitors in violation of
183 Section 4(1) of this act.

184 SECTION 6. Section 77-3-603, Mississippi Code of 1972, is
185 brought forward as follows:

186 77-3-603. Any telephone solicitor who makes an unsolicited
187 telephonic sales call to a residential telephone number shall:

188 (a) Make calls between the hours of 8:00 a.m. and 9:00
189 p.m., Central Standard Time, Monday through Friday, and between
190 the hours of 8:00 a.m. and 9:00 p.m. on Saturdays (no calls shall
191 be made on Sundays);

192 (b) Identify himself or herself by his or her true
193 first and last names and the business on whose behalf he or she is
194 soliciting immediately upon making contact by telephone with the
195 person who is the object of the telephone solicitation; and

196 (c) Discontinue the call immediately if at any time
197 during the conversation the person being solicited expresses
198 disinterest in continuing the call or sales presentation.

199 SECTION 7. Section 77-3-605, Mississippi Code of 1972, is
200 brought forward as follows:

201 77-3-605. Any telephone solicitor shall apply for a
202 certificate of registration from the Office of the Attorney
203 General as a condition for doing business in this state. The
204 certificate of registration shall be in a form as prescribed by
205 the Attorney General.

206 The application for a certificate of registration shall be
207 accompanied by a surety bond in the penal sum of Seventy-five
208 Thousand Dollars (\$75,000.00) with conditions and in a form
209 prescribed by the Attorney General. The bond shall provide for
210 the indemnification of any person suffering loss as the result of
211 any fraud, misrepresentation or violation of Sections 77-3-601
212 through 77-3-619 by the principal. The term of the bond shall be
213 continuous, but it shall be subject to cancellation by the surety
214 in the manner described in this section. The surety may terminate
215 the bond upon giving a sixty-day written notice to the principal
216 and to the Attorney General, but the liability of the surety for
217 acts of the principal and its agents shall continue during the
218 sixty (60) days of cancellation notice. The notice does not
219 absolve the surety from liability which accrues before the
220 cancellation becomes final but which is discovered after that date
221 and which may have arisen at any time during the term of the bond.
222 Unless the bond is replaced by that of another surety before the
223 expiration of the sixty (60) days' notice of cancellation, the
224 certificate of registration shall be suspended. Any person
225 required pursuant to this section to file a bond with an
226 application for a certificate of registration may file, in lieu
227 thereof, cash, a certificate of deposit, or government bonds in
228 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such
229 deposit is subject to the same terms and conditions as are
230 provided for in the surety bond required herein. Any interest or
231 earnings on such deposits are payable to the depositor.

232 SECTION 8. This act shall take effect and be in force from
233 and after July 1, 2001.