

By: Representative Denny

To: Public Utilities

HOUSE BILL NO. 806

1 AN ACT TO PROHIBIT TELEPHONE SOLICITATIONS TO RESIDENTIAL
 2 SUBSCRIBERS WHO HAVE GIVEN NOTICE OF THEIR OBJECTION TO SUCH CALLS
 3 TO THE PUBLIC SERVICE COMMISSION; TO REQUIRE THE PUBLIC SERVICE
 4 COMMISSION TO ESTABLISH A "NO-CALLS" DATABASE TO COLLECT SUCH
 5 OBJECTIONS; TO RESTRICT THE USE OF INFORMATION CONTAINED IN THE
 6 DATABASE; TO REQUIRE ALL TELEPHONE SOLICITORS TO REGISTER WITH THE
 7 PUBLIC SERVICE COMMISSION BEFORE CONDUCTING TELEPHONIC
 8 SOLICITATIONS AND TO PURCHASE THE "NO-CALLS" DATABASE FROM THE
 9 COMMISSION; TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO
 10 PROMULGATE RULES NECESSARY TO EFFECTUATE THIS ACT; TO PROHIBIT
 11 TELEPHONE SOLICITORS FROM BLOCKING RESIDENTIAL SUBSCRIBERS' USE OF
 12 CALLER IDENTIFICATION SERVICES; TO PROVIDE CIVIL PENALTIES FOR
 13 VIOLATIONS OF THIS ACT; TO BRING FORWARD SECTIONS 77-3-601 THROUGH
 14 77-3-619, MISSISSIPPI CODE 1972, WHICH REGULATE THE GENERAL
 15 CONDUCT OF TELEPHONE SOLICITORS AND REQUIRE TELEPHONE SOLICITORS
 16 TO REGISTER WITH THE ATTORNEY GENERAL'S OFFICE; AND FOR RELATED
 17 PURPOSES.

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

19 **SECTION 1.** For the purposes of this article, the following
 20 words and phrases have the meanings ascribed in this section
 21 unless the context clearly indicates otherwise:

22 (a) "Consumer" means any person to whom has been
 23 assigned in the State of Mississippi any residential telephone
 24 line and corresponding telephone number, who uses the residential
 25 line primarily for residential purposes.

26 (b) "Caller Identification Service" means a type of
 27 telephone service that permits telephone subscribers to see the
 28 telephone number and name of the person or entity to whom that
 29 telephone number is assigned of incoming telephone calls.

30 (c) "Telephone solicitor" means any person, firm,
 31 entity, organization, partnership, association, corporation,
 32 charitable entity, or a subsidiary or affiliate thereof, who
 33 engages in any type of telephone solicitation on his or her own



34 behalf or through representatives, independent contractors,
35 salespersons, agents, automated dialing machines or others.

36 (d) "Telephone solicitation" means any telephonic
37 communication to a consumer for the purpose of persuading,
38 enticing, requesting, petitioning or otherwise seeking to induce a
39 consumer to take some action. Telephone solicitation includes,
40 but is not limited to, communications with a person where:

41 (i) A gift, award or prize is offered to a
42 consumer;

43 (ii) A telephone call response is invited from the
44 consumer;

45 (iii) The salesperson intends to complete a sale
46 or a consumer is invited to enter into an agreement to purchase
47 during the course of the telephone call; or

48 (iv) The communication involves the representation
49 of a price, quality or availability of consumer goods and
50 services, and such communication invites a response by telephone
51 or is followed by a call to the consumer by a salesperson.

52 (e) "Commission" means the Mississippi Public Service
53 Commission.

54 (f) "Doing business in this state" refers to a business
55 that conducts telephonic sales calls from a location in the State
56 of Mississippi or from other states or nations to consumers
57 located in this state.

58 **SECTION 2.** (1) A telephone solicitor may not make or cause
59 to be made any telephone solicitation to a consumer in this state
60 unless the telephone solicitor has purchased the most current
61 "no-calls" database from the commission.

62 (2) A telephone solicitor may not make or cause to be made
63 any telephone solicitation to a consumer in this state who has
64 given notice to the commission of his or her objection to
65 receiving telephone solicitations.



66 (3) The commission shall establish and operate a "no-calls"
67 database composed of a list of telephone numbers of consumers who
68 have given notice of their objection to receiving telephone
69 solicitations.

70 (4) Each local exchange company and each competing local
71 exchange carrier shall provide written notification on a
72 semiannual basis to each of its consumers of the opportunity to
73 provide notification to the commission that the consumer objects
74 to receiving telephone solicitations.

75 **SECTION 3.** All telephone solicitors shall register with the
76 commission before conducting any telephonic solicitations in the
77 State of Mississippi.

78 **SECTION 4.** The commission may promulgate rules necessary to
79 effectuate this article, including, but not limited to, the
80 following:

81 (a) Methods by which consumers may give notice to the
82 commission of their objection to receiving solicitations and
83 revocation of the objection;

84 (b) Methods by which a notice of objection becomes
85 effective and the effect of a change of telephone number on the
86 notice;

87 (c) Methods by which objections and revocations are
88 collected and added to the database;

89 (d) Methods by which a person or entity desiring to
90 make telephone solicitations may obtain access to the database as
91 required to avoid calling the telephone number of consumers
92 included in the database;

93 (e) The process by which the database is updated and
94 the frequency of updates;

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



98 (g) Establishment of fees to be charged by the
99 commission to telephone solicitors for access to or for paper or
100 electronic copies of the database on an annual basis; and

101 (h) All other matters relating to the database that the
102 commission deems necessary.

103 **SECTION 5.** If the Federal Communications Commission
104 establishes a single national database of telephone numbers of
105 consumers who object to receiving telephone solicitations, the
106 commission shall include the portion of the single national
107 database that relates to the State of Mississippi in the database
108 established under this article.

109 **SECTION 6.** Information contained in the database established
110 pursuant to this article may be used and accessed only for the
111 purpose of compliance with this article and shall not be otherwise
112 subject to public inspection or disclosure. Such information
113 shall be exempt from the Mississippi Public Records Act of 1983.

114 **SECTION 7.** A special fund is created in the State Treasury
115 into which all fees collected under this article must be deposited
116 to be expended by the commission for the implementation and
117 administration of this article. At the end of each fiscal year,
118 unexpended monies remaining in the fund will not revert to any
119 other fund of the state, but must remain available for
120 appropriations to administer this article. The Legislature shall
121 appropriate annually from the fund the amount necessary for the
122 administration of this article to the commission.

123 **SECTION 8.** Any person or entity who makes a telephone
124 solicitation to a consumer in this state who is not listed on the
125 most current "no-calls" database shall announce clearly, at the
126 beginning of each call, his or her name, the company he or she
127 represents and the purpose of the call. Such calls may only be
128 made between the hours of 9:00 a.m. and 8:00 p.m. No telephone
129 solicitation may be made on a Sunday.



130 A person or entity who makes a telephone solicitation to a
131 consumer in this state may not utilize any method that blocks or
132 otherwise circumvents the use of Caller Identification Service by
133 the consumer.

134 **SECTION 9.** The commission may investigate alleged violations
135 and initiate proceedings relative to a violation of this article
136 or any rules and regulations promulgated pursuant to this article.
137 Such proceedings include, without limitation, proceedings to issue
138 a cease and desist order and to issue an order imposing a civil
139 penalty, not to exceed Five Thousand Dollars (\$5,000.00), for each
140 violation. The commission shall afford an opportunity for a fair
141 hearing to the alleged violator or violators after giving written
142 notice of the time and place for the hearing. Failure to appear
143 at any such hearing may result in the commission finding the
144 alleged violator or violators liable by default. Any telephone
145 solicitor found to have violated this article, pursuant to a
146 hearing or by default, may be subject to a civil penalty, not to
147 exceed Five Thousand Dollars (\$5,000.00), for each violation to be
148 assessed and collected by the commission. Each telephonic
149 communication constitutes a separate violation.

150 All penalties collected by the commission must be deposited
151 in the special fund created under Section 7 for the administration
152 of this article.

153 The commission may issue subpoenas, require the production of
154 relevant documents, administer oaths, conduct hearings and do all
155 things necessary in the course of investigating, determining and
156 adjudicating an alleged violation.

157 The remedies, duties, prohibitions and penalties set forth
158 under this article are not exclusive and are in addition to all
159 other causes of action, remedies and penalties provided by law,
160 including, but not limited to, the penalties provided by Section
161 77-1-53.



162 **SECTION 10.** Any person who has received a telephone
163 solicitation in violation of this article or any rules and
164 regulations promulgated pursuant to this article may file a
165 complaint with the commission. The complaint will be processed
166 pursuant to complaint procedures established by the commission.

167 **SECTION 11.** The commission has personal jurisdiction over
168 any telephone solicitor, whether a resident or a nonresident,
169 notwithstanding that telephone solicitors are not deemed to be a
170 public utility, for the purpose of administering this article.
171 The commission has personal jurisdiction over any nonresident
172 telephone solicitor, its executor, administrator, receiver,
173 trustee or any other appointed representative of such nonresident
174 as to an action or proceeding authorized by this article or any
175 rules and regulations promulgated pursuant to this article as
176 authorized by Section 13-3-57, and also upon any nonresident, his
177 or her executor, administrator, receiver, trustee or any other
178 appointed representative of such nonresident who has qualified
179 under the laws of this state to do business in Mississippi.
180 Service of summons and process upon the alleged violator of this
181 article must be had or made in the manner provided by the
182 Mississippi Rules of Civil Procedure.

183 **SECTION 12.** Any party aggrieved by any final order of the
184 commission pursuant to this article, or any rules and regulations
185 promulgated pursuant to this article, has the right of appeal to
186 the Chancery Court the First Judicial District of Hinds County,
187 Mississippi.

188 **SECTION 13.** A provider of telephonic Caller Identification
189 Service, local exchange telephone company or long distance company
190 certificated by the commission may not be held liable for
191 violations of this article committed by other persons or entities.

192 **SECTION 14.** If any section, paragraph, sentence, phrase or
193 any part of this article is held invalid or unconstitutional, such
194 holding will not affect any other section, paragraph, sentence,



195 clause, phrase or part of this article which is not in and of
196 itself invalid or unconstitutional. Moreover, if the application
197 of this article, or any portion of it, to any person or
198 circumstance is held invalid, the invalidity will not affect the
199 application of this article to other persons or circumstances
200 which can be given effect without the invalid provision or
201 application.

202 **SECTION 15.** Sections 1 through 14 of this act shall be
203 codified as a new article within Chapter 3, Title 77, Mississippi
204 Code of 1972.

205 **SECTION 16.** Section 77-3-601, Mississippi Code of 1972, is
206 brought forward as follows:

207 77-3-601. As used in this article:

208 (a) "Telephonic sales call" means a call made by a
209 telephone solicitor to a consumer for the purpose of soliciting a
210 sale of any consumer goods or services, or for the purpose of
211 soliciting an extension of credit for consumer goods or services,
212 or for the purpose of obtaining information or an extension of
213 credit for these purposes.

214 (b) "Consumer goods or services" means any real
215 property or any tangible or intangible personal property which is
216 normally used for personal, family or household purposes,
217 including, without limitation, any property intended to be
218 attached to or installed in any real property regardless of
219 whether it is attached or installed, as well as cemetery lots and
220 time-share estates, and any services related to the property.

221 (c) "Unsolicited telephonic sales call" means a
222 telephonic sales call other than a call made:

223 (i) In response to an express request of the
224 person called;

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



228 (iii) To any person with whom the telephone
229 solicitor has an established business relationship.

230 (d) "Consumer" means an actual or prospective
231 purchaser, lessee or recipient of consumer goods or services.

232 (e) "Merchant" means a person who, directly or
233 indirectly, offers or makes available to consumers any consumer
234 goods or services.

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

239 (g) "Doing business in this state" refers to businesses
240 who conduct telephonic sales calls from a location in Mississippi
241 or from other states or nations to consumers located in
242 Mississippi.

243 (h) "Established business relationship" means a prior
244 or existing relationship formed by a voluntary two-way
245 communication between a person or entity and a consumer with or
246 without an exchange of consideration, on the basis of an inquiry,
247 application, purchase or transaction by such person or entity,
248 which relationship has not been previously terminated by either
249 party.

250 **SECTION 17.** Section 77-3-603, Mississippi Code of 1972, is
251 brought forward as follows:

252 77-3-603. Any telephone solicitor who makes an unsolicited
253 telephonic sales call to a residential telephone number shall:

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

258 (b) Identify himself or herself by his or her true
259 first and last names and the business on whose behalf he or she is



260 soliciting immediately upon making contact by telephone with the
261 person who is the object of the telephone solicitation; and

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

265 **SECTION 18.** Section 77-3-605, Mississippi Code of 1972, is
266 brought forward as follows:

267 77-3-605. Any telephone solicitor shall apply for a
268 certificate of registration from the Office of the Attorney
269 General as a condition for doing business in this state. The
270 certificate of registration shall be in a form as prescribed by
271 the Attorney General.

272 The application for a certificate of registration shall be
273 accompanied by a surety bond in the penal sum of Seventy-five
274 Thousand Dollars (\$75,000.00) with conditions and in a form
275 prescribed by the Attorney General. The bond shall provide for
276 the indemnification of any person suffering loss as the result of
277 any fraud, misrepresentation or violation of Sections 77-3-601
278 through 77-3-619 by the principal. The term of the bond shall be
279 continuous, but it shall be subject to cancellation by the surety
280 in the manner described in this section. The surety may terminate
281 the bond upon giving a sixty-day written notice to the principal
282 and to the Attorney General, but the liability of the surety for
283 acts of the principal and its agents shall continue during the
284 sixty (60) days of cancellation notice. The notice does not
285 absolve the surety from liability which accrues before the
286 cancellation becomes final but which is discovered after that date
287 and which may have arisen at any time during the term of the bond.
288 Unless the bond is replaced by that of another surety before the
289 expiration of the sixty (60) days' notice of cancellation, the
290 certificate of registration shall be suspended. Any person
291 required pursuant to this section to file a bond with an
292 application for a certificate of registration may file, in lieu



293 thereof, cash, a certificate of deposit, or government bonds in
294 the amount of Seventy-five Thousand Dollars (\$75,000.00). Such
295 deposit is subject to the same terms and conditions as are
296 provided for in the surety bond required herein. Any interest or
297 earnings on such deposits are payable to the depositor.

298 **SECTION 19.** Section 77-3-607, Mississippi Code of 1972, is
299 brought forward as follows:

300 77-3-607. (1) A contract made pursuant to a telephonic
301 sales call is not valid and enforceable against a consumer unless
302 made in compliance with this section.

303 (2) A contract made pursuant to a telephonic sales call
304 shall:

305 (a) Be reduced to writing and signed by the consumer.

306 (b) Comply with all other applicable laws and rules.

307 (c) Match the description of goods or services as
308 principally used in the telephone solicitations.

309 (d) Contain the name, address, and telephone number of
310 the seller, the total price of the contract and a detailed
311 description of the goods or services being sold.

312 (e) Contain, in bold, conspicuous type, immediately
313 preceding the signature, the following statement:

314 **"YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS**
315 **CONTRACT AND RETURN IT TO THE SELLER."**

316 (f) Include in its terms any oral or written
317 representations made by the telephone solicitor to the consumer in
318 connection with the transaction.

319 (3) The provisions of this section do not apply to
320 contractual sales regulated under other sections of the
321 Mississippi statutes and to contractual sales of companies which
322 provide telecommunication services and reach binding agreements by
323 telephone for these services.

324 (4) A merchant who engages a telephone solicitor to make or
325 cause to be made a telephonic sales call shall not make or submit



326 any charge to the consumer's credit card account until after the
327 merchant receives from the consumer a copy of the contract which
328 complies with this section.

329 (5) The provisions of this section do not apply to a
330 transaction:

331 (a) Made in accordance with prior negotiations in the
332 course of a visit by the consumer to a merchant operating a retail
333 business establishment which has a fixed permanent location and
334 where consumer goods are displayed or offered for sale on a
335 continuing basis;

336 (b) In which the consumer may obtain a full refund for
337 the return of undamaged and unused goods or a cancellation of
338 services notice to the seller within seven (7) days after receipt
339 by the consumer, and the seller will process the refund within
340 thirty (30) days after receipt of the returned merchandise by the
341 consumer;

342 (c) In which the consumer purchases goods or services
343 after an examination of a television, radio, or print
344 advertisement or a sample, brochure, or catalog of the merchant
345 that contains the name, address and telephone number of the
346 merchant; a description of the goods or services being sold; and
347 any limitations or restrictions that apply to the offer; or

348 (d) In which the merchant is a bona fide charitable
349 organization ruled tax-exempt by the Internal Revenue Service.

350 **SECTION 20.** Section 77-3-609, Mississippi Code of 1972, is
351 brought forward as follows:

352 77-3-609. The provisions of Sections 77-3-601 through
353 77-3-619 shall not apply to:

354 (a) A person engaging in commercial telephone
355 solicitation where the solicitation is an isolated transaction and
356 not done in the course of a pattern of repeated transactions of
357 like nature.



358 (b) A person making calls for religious, charitable,
359 political, education or other noncommercial purposes, or a person
360 soliciting for a nonprofit corporation if that corporation is
361 properly registered as such with the Secretary of State and is
362 included within the exemption of S.501(c)(3) or S.501(c)(6) of the
363 Internal Revenue Code.

364 (c) A person soliciting:

365 (i) Without the intent to complete or obtain
366 provisional acceptance of a sale during the telephone
367 solicitation;

368 (ii) Who does not make the major sales
369 presentation during the telephone solicitation; or

370 (iii) Without the intent to complete, and who does
371 not complete, the sales presentation during the telephone
372 solicitation, but who completes the sales presentation at a later
373 face-to-face meeting between the seller and the prospective
374 purchaser. However, if a seller, directly following a telephone
375 solicitation, causes an individual whose primary purpose it is to
376 go to the prospective purchaser to collect the payment or deliver
377 any item purchased, this exemption does not apply.

378 (d) Any licensed securities, commodities, or
379 investments broker, dealer or investment advisor, when soliciting
380 within the scope of his license. As used in this section,
381 "licensed securities, commodities, or investments broker, dealer
382 or investment advisor" means a person subject to license or
383 registration as such by the Securities and Exchange Commission, by
384 the National Association of Securities Dealers or other
385 self-regulatory organization as defined by the Securities Exchange
386 Act of 1934 (15 USCS Sec. 781), or by an official or agency of
387 this state or of any state of the United States.

388 (e) Any licensed associated person of a securities,
389 commodities, or investments broker, dealer or investment advisor,
390 when soliciting within the scope of his license. As used in this



391 section, "licensed associated person of a securities, commodities,
392 or investment broker, dealer or investment advisor" means any
393 associated person registered or licensed by the National
394 Association of Securities Dealers or other self-regulatory
395 organization as defined by the Securities Exchange Act of 1934 (15
396 USCS Sec. 781) or by an official or agency of this state or of any
397 state of the United States.

398 (f) A person primarily soliciting the sale of a
399 newspaper, magazine or periodical of general circulation by its
400 publisher, or by the publisher's agent through written agreement.

401 (g) A book, video or record club or contractual plan or
402 arrangement:

403 (i) Under which the seller provides the consumer
404 with a form which the consumer may use to instruct the seller not
405 to ship the offered merchandise;

406 (ii) Which is regulated by the Federal Trade
407 Commission trade regulation concerning "use of negative option
408 plans by sellers in commerce"; or

409 (iii) Which provides for the sale of books,
410 records or videos which are not covered under paragraphs (i) or
411 (ii), including continuity plans, subscription arrangements,
412 standing order arrangements, supplements and series arrangements
413 under which the seller periodically ships merchandise to a
414 consumer who has consented in advance to receive such merchandise
415 on a periodic basis.

416 (h) Any supervised financial institution or parent,
417 subsidiary or affiliate thereof. As used in this section,
418 "supervised financial institution" means any commercial bank,
419 trust company, savings and loan association, mutual savings bank,
420 credit union, industrial loan company, consumer finance lender,
421 commercial finance lender or insurer, provided that the
422 institution is subject to supervision by an official or agency of
423 this state, of any state or of the United States.



424 (i) Any licensed insurance or real estate broker,
425 agent, customer representative or solicitor when soliciting within
426 the scope of his license. As used in this section, "licensed
427 insurance or real estate broker, agent, customer representative or
428 solicitor" means any insurance or real estate broker, agent,
429 customer representative or solicitor licensed by an official or
430 agency of this state or of any state of the United States.

431 (j) A person soliciting the sale of services provided
432 by a cable television system operating under authority of a
433 franchise or permit.

434 (k) A person who solicits sales by periodically
435 publishing and delivering a catalog of the seller's merchandise to
436 prospective purchasers, if the catalog:

437 (i) Contains a written description or illustration
438 of each item offered for sale;

439 (ii) Includes the business address or home office
440 address of the seller;

441 (iii) Includes at least twenty-four (24) pages of
442 written material and illustrations and is distributed in more than
443 one (1) state; or

444 (iv) Has an annual circulation by mailing of not
445 less than two hundred fifty thousand (250,000).

446 (l) A person who solicits contracts for the maintenance
447 or repair of goods previously purchased from the person making the
448 solicitation or on whose behalf the solicitation is made.

449 (m) A telephone company, or its subsidiary or agents,
450 or a business which is regulated by the Mississippi Public Service
451 Commission, or a Federal Communications Commission licensed
452 cellular telephone company or other bona fide radio
453 telecommunication services provider.

454 (n) Any publicly traded corporation which has
455 securities registered with the Securities and Exchange Commission
456 which are a reported security within the meaning of subparagraph



457 (4) of Regulation Section 240.11a3-1, (a), under the Securities
458 Exchange Act of 1934, or which is exempt from registration under
459 subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2)
460 of subsection (g) of Section 12 of the Securities Exchange Act of
461 1934 (15 USCS Section 781), or any subsidiary of such a
462 corporation.

463 (o) A business soliciting exclusively the sale of
464 telephone answering services, provided that the telephone
465 answering services will be supplied by the solicitor.

466 (p) A person soliciting a transaction regulated by the
467 Commodity Futures Trading Commission if the person is registered
468 or temporarily licensed for this activity with the Commodity
469 Futures Trading Commission under the Commodity Exchange Act (7
470 USCS Section 1 et seq.) and the registration or license has not
471 expired or been suspended or revoked.

472 (q) A person soliciting the sale of food or produce if
473 the solicitation neither intends to result in, or actually results
474 in, a sale which costs the purchaser in excess of One Hundred
475 Dollars (\$100.00).

476 (r) A person soliciting business from prospective
477 consumers who have an established business relationship with, or
478 who have previously purchased from, the business enterprise for
479 which the solicitor is calling, if the solicitor is operating
480 under the same exact business name.

481 (s) A person who has been operating, for at least one
482 (1) year, a retail business establishment under the same name as
483 that used in connection with telemarketing, and both of the
484 following occur on a continuing basis:

485 (i) Either products are displayed and offered for
486 sale, or services are offered for sale and provided at the
487 business establishment; and



488 (ii) A majority of the seller's business involves
489 the buyer obtaining such products or services at the seller's
490 location.

491 (t) Any telephone marketing service company which
492 provides telemarketing sales services under contract to sellers
493 and has been operating continuously for at least five (5) years
494 under the same business name and seventy-five percent (75%) of its
495 contracts are performed on behalf of persons exempted from
496 Sections 77-3-601 through 77-3-619.

497 **SECTION 21.** Section 77-3-611, Mississippi Code of 1972, is
498 brought forward as follows:

499 77-3-611. The Attorney General shall investigate any
500 complaints received concerning violations of Sections 77-3-601
501 through 77-3-619. If, after investigating any complaint, the
502 Attorney General finds that there has been a violation of Sections
503 77-3-601 through 77-3-619, the Attorney General may bring an
504 action to impose a civil penalty and to seek other relief,
505 including injunctive relief, as the court deems appropriate
506 against the telephone solicitor. The civil penalty shall not
507 exceed Ten Thousand Dollars (\$10,000.00) per violation and shall
508 be deposited in the State General Fund, unallocated. This civil
509 penalty may be recovered in any action brought under Sections
510 77-3-601 through 77-3-619 by the Attorney General. Alternatively,
511 the Attorney General may terminate any investigation or action
512 upon agreement by the person to pay a stipulated civil penalty.
513 The Attorney General or the court may waive any civil penalty if
514 the person has previously made full restitution or reimbursement
515 or has paid actual damages to the consumers who have been injured
516 by the violation.

517 **SECTION 22.** Section 77-3-613, Mississippi Code of 1972, is
518 brought forward as follows:

519 77-3-613. In any civil proceeding alleging a violation of
520 Sections 77-3-601 through 77-3-619, the burden of proving an



521 exemption or an exemption from a definition is upon the person
522 claiming it.

523 **SECTION 23.** Section 77-3-615, Mississippi Code of 1972, is
524 brought forward as follows:

525 77-3-615. (1) In any civil litigation resulting from a
526 transaction involving a violation of Sections 77-3-601 through
527 77-3-619, the prevailing party, after judgment in the trial court
528 and exhaustion of all appeals, if any, shall receive his
529 reasonable attorney's fees and costs from the nonprevailing party.

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

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

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

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

546 **SECTION 24.** Section 77-3-617, Mississippi Code of 1972, is
547 brought forward as follows:

548 77-3-617. The Attorney General shall by rule ensure that
549 telecommunications companies inform their customers of the
550 provisions of Sections 77-3-601 through 77-3-619. The
551 notification may be made by:

552 (a) Annual inserts in the billing statements mailed to
553 customers; and



554 (b) Conspicuous publication of the notice in the
555 consumer information pages of the local telephone directories.

556 **SECTION 25.** Section 77-3-619, Mississippi Code of 1972, is
557 brought forward as follows:

558 77-3-619. The Attorney General is authorized to issue any
559 necessary rules and regulations in order to carry out the
560 provisions of Sections 77-3-601 through 77-3-619.

561 **SECTION 26.** This act shall take effect and be in force from
562 and after July 1, 2002.

