MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Representatives Dedeaux, Banks, Chism, Creel, Evans, Fillingane, Fleming, Formby, Green, Ishee, Livingston, Malone, Mayo, Montgomery (15th), Myers, Nicholson, Peranich, Robinson (84th), Rushing, Ryals, Simpson, Straughter, Stringer, Ward, Whittington, Woods, Zuber

To: Public Utilities

HOUSE BILL NO. 289

AN ACT TO AMEND SECTIONS 77-3-601, 77-3-605, 77-3-611, 77-3-615, 77-3-617 AND 77-3-619, MISSISSIPPI CODE OF 1972, TO TRANSFER THE ENFORCEMENT OF THE TELEPHONE SOLICITATION LAWS FROM THE OFFICE OF THE ATTORNEY GENERAL TO THE PUBLIC SERVICE COMMISSION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 77-3-601, Mississippi Code of 1972, is amended as follows:

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

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

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

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

(i) In response to an express request of the person called;
(ii) In connection with an existing debt or contract, payment or performance which has not been completed at the time of the call; or

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

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

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

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

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

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

(i) "Commission" means the Mississippi Public Service Commission.

SECTION 2. Section 77-3-605, Mississippi Code of 1972, is amended as follows:

77-3-605. Any telephone solicitor shall apply for a certificate of registration from the Public Service Commission as a condition for doing business in this state. The certificate of registration shall be in a form as prescribed by the commission.
The application for a certificate of registration shall be accompanied by a surety bond in the penal sum of Seventy-five Thousand Dollars ($75,000.00) with conditions and in a form prescribed by the commission. The bond shall provide for the indemnification of any person suffering loss as the result of any fraud, misrepresentation or violation of this article by the principal. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the commission, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice. The notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended. Any person required pursuant to this section to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Seventy-five Thousand Dollars ($75,000.00). Such deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

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

77-3-611. The Public Service Commission shall investigate any complaints received concerning violations of this article. If, after investigating any complaint, the commission finds that there has been a violation of this article, the commission may bring an action to impose a civil penalty and to seek other
relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed Ten Thousand Dollars ($10,000.00) per violation and shall be deposited in the State General Fund, unallocated. This civil penalty may be recovered in any action brought under this article by the commission. Alternatively, the commission may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The commission or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

SECTION 4. Section 77-3-615, Mississippi Code of 1972, is amended as follows:

77-3-615. (1) In any civil litigation resulting from a transaction involving a violation of this article, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his reasonable attorney’s fees and costs from the nonprevailing party.

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

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

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

(5) In any civil litigation initiated by the Public Service Commission, the court may award to the prevailing party reasonable attorney’s fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact.
raised by the losing party, or if the court finds bad faith on the part of the losing party.

SECTION 5. Section 77-3-617, Mississippi Code of 1972, is amended as follows:

77-3-617. The Public Service Commission shall by rule ensure that telecommunications companies inform their customers of the provisions of this article. The notification may be made by:

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

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

SECTION 6. Section 77-3-619, Mississippi Code of 1972, is amended as follows:

77-3-619. The Public Service Commission is authorized to issue any necessary rules and regulations in order to carry out the provisions of this article.

SECTION 7. The Office of the Attorney General shall transfer all documents, records and any other information related to the registration of telephone solicitors, investigations of violations of this article, actions to impose civil penalties or other relief related to this article, and any rules and regulations that the Attorney General has issued relating to this article, to the Public Service Commission no later than September 1, 2003.

SECTION 8. This act shall take effect and be in force from and after July 1, 2003.