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To: Public Utilities

HOUSE BILL NO. 289

1 AN ACT TO AMEND SECTIONS 77-3-601, 77-3-605, 77-3-611,
2 77-3-615, 77-3-617 AND 77-3-619, MISSISSIPPI CODE OF 1972, TO
3 TRANSFER THE ENFORCEMENT OF THE TELEPHONE SOLICITATION LAWS FROM
4 THE OFFICE OF THE ATTORNEY GENERAL TO THE PUBLIC SERVICE
5 COMMISSION; AND FOR RELATED PURPOSES.

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

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

9 77-3-601. As used in this article:

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

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

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

25 (i) In response to an express request of the
26 person called;



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

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

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

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

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

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

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

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

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

56 77-3-605. Any telephone solicitor shall apply for a
57 certificate of registration from the Public Service Commission as
58 a condition for doing business in this state. The certificate of
59 registration shall be in a form as prescribed by the commission.



60 The application for a certificate of registration shall be
61 accompanied by a surety bond in the penal sum of Seventy-five
62 Thousand Dollars (\$75,000.00) with conditions and in a form
63 prescribed by the commission. The bond shall provide for the
64 indemnification of any person suffering loss as the result of any
65 fraud, misrepresentation or violation of this article by the
66 principal. The term of the bond shall be continuous, but it shall
67 be subject to cancellation by the surety in the manner described
68 in this section. The surety may terminate the bond upon giving a
69 sixty-day written notice to the principal and to the commission,
70 but the liability of the surety for acts of the principal and its
71 agents shall continue during the sixty (60) days of cancellation
72 notice. The notice does not absolve the surety from liability
73 which accrues before the cancellation becomes final but which is
74 discovered after that date and which may have arisen at any time
75 during the term of the bond. Unless the bond is replaced by that
76 of another surety before the expiration of the sixty (60) days'
77 notice of cancellation, the certificate of registration shall be
78 suspended. Any person required pursuant to this section to file a
79 bond with an application for a certificate of registration may
80 file, in lieu thereof, cash, a certificate of deposit, or
81 government bonds in the amount of Seventy-five Thousand Dollars
82 (\$75,000.00). Such deposit is subject to the same terms and
83 conditions as are provided for in the surety bond required herein.
84 Any interest or earnings on such deposits are payable to the
85 depositor.

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

88 77-3-611. The Public Service Commission shall investigate
89 any complaints received concerning violations of this article.
90 If, after investigating any complaint, the commission finds that
91 there has been a violation of this article, the commission may
92 bring an action to impose a civil penalty and to seek other



93 relief, including injunctive relief, as the court deems
94 appropriate against the telephone solicitor. The civil penalty
95 shall not exceed Ten Thousand Dollars (\$10,000.00) per violation
96 and shall be deposited in the State General Fund, unallocated.
97 This civil penalty may be recovered in any action brought under
98 this article by the commission. Alternatively, the commission may
99 terminate any investigation or action upon agreement by the person
100 to pay a stipulated civil penalty. The commission or the court
101 may waive any civil penalty if the person has previously made full
102 restitution or reimbursement or has paid actual damages to the
103 consumers who have been injured by the violation.

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

106 77-3-615. (1) In any civil litigation resulting from a
107 transaction involving a violation of this article, the prevailing
108 party, after judgment in the trial court and exhaustion of all
109 appeals, if any, shall receive his reasonable attorney's fees and
110 costs from the nonprevailing party.

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

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

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

121 (5) In any civil litigation initiated by the Public Service
122 Commission, the court may award to the prevailing party reasonable
123 attorney's fees and costs if the court finds that there was a
124 complete absence of a justiciable issue of either law or fact



125 raised by the losing party, or if the court finds bad faith on the
126 part of the losing party.

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

129 77-3-617. The Public Service Commission shall by rule ensure
130 that telecommunications companies inform their customers of the
131 provisions of this article. The notification may be made by:

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

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

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

138 77-3-619. The Public Service Commission is authorized to
139 issue any necessary rules and regulations in order to carry out
140 the provisions of this article.

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

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

