

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 763

## 90TH GENERAL ASSEMBLY

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Reported from the Committee on Aging, Families and Mental Health, February 17, 2000, with recommendation that the Senate Committee Substitute do pass.

3153S.05C

TERRY L. SPIELER, Secretary.

### AN ACT

To amend chapter 407, RSMo, by adding thereto seven new sections relating to telemarketing.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto seven new sections, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, 407.1110 and 407.1113, to read as follows:

**407.1095. As used in sections 407.1095 to 407.1107, the following words and phrases mean:**

**(1) "Caller identification service", a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;**

**(2) "Residential subscriber", a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person;**

**(3) "Telephone solicitation", any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, but does not include communications:**

**(a) To any residential subscriber with that subscriber's prior express invitation or permission;**

**(b) By or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past sixty days or a current business or personal relationship;**

**(c) By or on behalf of a tax-exempt nonprofit organization; or**

**(d) By or on behalf of any entity over which a state or federal agency has regulatory authority with respect to such entity's business practices and which**

**maintains a no call list.**

**407.1098. No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.**

**407.1101. 1. The attorney general shall establish and provide for the operation of a database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. The attorney general shall have such database in operation no later than February 1, 2001.**

**2. No later than January 1, 2001, the attorney general shall promulgate rules and regulations governing the establishment of a state no-call database as he or she deems necessary and appropriate to fully implement the provisions of sections 407.1095 to 407.1110. The rules and regulations shall include those which:**

**(1) Require each local exchange telecommunications company to inform its residential subscribers of the opportunity to provide notification to the attorney general or its contractor that such subscriber objects to receiving telephone solicitations;**

**(2) Specify the methods by which each residential subscriber may give notice to the attorney general or its contractor of his or her objection to receiving such solicitations or revocation of such notice, including the cost to the subscriber for joining the database;**

**(3) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;**

**(4) Specify the methods by which such objections and revocations shall be collected and added to the database;**

**(5) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the database as required to avoid calling the telephone numbers of residential subscribers included in the database, including the cost assessed to that person or entity for access to the database;**

**(6) Specify such other matters relating to the database that the attorney general deems desirable.**

**3. If the Federal Communications Commission establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C., Section 227(c)(3), the attorney general shall include that part of such single national database that relates to Missouri in the database established pursuant to this section.**

**4. Information contained in the database established pursuant to this section shall be used only for the purpose of compliance with section 407.1098 and this section**

or in a proceeding or action pursuant to section 407.1110. Such information shall not be considered a public record pursuant to chapter 610, RSMo.

5. No rule or portion of a rule promulgated pursuant to sections 407.1095 to 407.1110 shall take effect unless such rule has been promulgated pursuant to chapter 536, RSMo.

407.1104. 1. The "Telemarketing Database Revolving Fund" is hereby created in the state treasury, to be administered and used exclusively by the office of the attorney general pursuant to this section. Moneys deposited in the fund shall be used to promote, develop and maintain a no-call database pursuant to section 407.1101 and to enforce the other provisions of sections 407.1095 to 407.1110.

2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not be transferred to the credit of the general revenue fund at the end of the biennium.

407.1107. 1. Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of such call, state clearly the identity of the person or entity initiating the call.

2. No person or entity who makes a telephone solicitation to the telephone line of a residential subscriber in this state shall knowingly use any method to block or otherwise circumvent such subscriber's use of a caller identification service.

407.1110. 1. The attorney general may initiate proceedings relating to a knowing violation or threatened knowing violation of section 407.1098 or 407.1107. Such proceedings may include, without limitation, an injunction, a civil penalty up to a maximum of five thousand dollars for each knowing violation and additional relief in any court of competent jurisdiction. The attorney general may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of section 407.1098 or 407.1107.

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates section 407.1107 shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law.

3. Any person who has received more than one telephone solicitation within any twelve-month period by or on behalf of the same person or entity in violation of section 407.1098 or 407.1107 may either:

- (1) Bring an action to enjoin such violation;
- (2) Bring an action to recover for actual monetary loss from such knowing violation or to receive up to five thousand dollars in damages for each such knowing violation, whichever is greater; or
- (3) Bring both such actions.

**4. It shall be a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of section 407.1098 or 407.1107.**

**5. No action or proceeding may be brought pursuant to this section:**

**(1) More than two years after the person bringing the action knew or should have known of the occurrence of the alleged violation; or**

**(2) More than two years after the termination of any proceeding or action arising out of the same violation or violations by the state of Missouri, whichever is later.**

**6. A court of this state may exercise personal jurisdiction over any nonresident or his or her executor or administrator as to an action or proceeding authorized by this section in the manner otherwise provided by law.**

**7. The remedies, duties, prohibitions, and penalties of sections 407.1095 to 407.1107 are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.**

**8. No provider of telephone caller identification service shall be held liable for violations of section 407.1098 or 407.1107 committed by other persons or entities.**

**407.1113. The attorney general shall establish and provide for the operation of a telemarketing fraud and nuisance prevention commission composed of government entities, telephone companies, businesses, and senior citizen and other community advocates to compile and promote a list of educational tools to help consumers understand their options with regard to telephone solicitations. The attorney general shall also establish a toll-free telephone number and a website that residential subscribers may call or access to review their options with regard to telephone solicitations. The attorney general should have the commission established no later than January 1, 2001. The website and toll-free telephone number may be operated by the attorney general or by another entity pursuant to contract with the attorney general and should be operative not later than July 1, 2001. This provision shall expire on July 1, 2003.**

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