

SECOND REGULAR SESSION

SENATE BILL NO. 763

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOWARD.

Pre-filed January 3, 2000, and 1,000 copies ordered printed.

3153S.011

TERRY L. SPIELER, Secretary.

AN ACT

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

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

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104 and 407.1107, 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 a prior or current business or personal relationship; or

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

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 public service commission, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone

solicitations.

407.1101. 1. The public service commission shall establish and provide for the operation of a data base to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. The commission shall have such data base in operation no later than January 1, 2001.

2. The data base may be operated by the commission or by another entity under contract with the commission.

3. No later than January 1, 2001, the commission shall promulgate regulations which:

(1) Require each local exchange telecommunications company to inform its residential subscribers of the opportunity to provide notification to the commission 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 commission or its contractor of his or her objection to receiving such solicitations or revocation of such notice;

(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 data base;

(5) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the data base as required to avoid calling the telephone numbers of residential subscribers included in the data base;

(6) Specify such other matters relating to the data base that the commission deems desirable.

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

5. A residential subscriber shall be charged a fee of five dollars payable to the commission, for each notice for inclusion in the data base established pursuant to this section. A person or entity desiring to make telephone solicitations shall be charged a fee of ten dollars per year payable to the commission for access to or for paper or electronic copies of the data base established pursuant to this section.

6. Information contained in the data base 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 subsection 1 or 2 of section 407.1107. Such information shall not be subject to public inspection or disclosure pursuant to chapter

610, RSMo.

407.1104. 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.

407.1107. 1. The attorney general may initiate proceedings relating to a knowing violation or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings may include, without limitation, proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars for each knowing violation and to seek additional relief in any court of competent jurisdiction. Such actions shall be brought in the name of the state. 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 407.1104.

2. 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 407.1104 may either bring an action to enjoin such violation; bring an action to recover for actual monetary loss from such knowing violation or to receive up to two thousand dollars in damages for each such knowing violation, whichever is greater; or bring both such actions.

3. 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 407.1104.

4. 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 by the state of Missouri, whichever is later.

5. 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.

6. 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.

7. No provider of telephone caller identification service shall be held liable for

violations of section 407.1098 or 407.1104 committed by other persons or entities.

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