

SECOND REGULAR SESSION

SENATE BILL NO. 693

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS MAXWELL, DePASCO AND BENTLEY.

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2930S.011

TERRY L. SPIELER, Secretary.

AN ACT

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

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 407.1070, 407.1073, 407.1076, 407.1079, 407.1082, 407.1085 and 407.1088, to read as follows:

407.1070. As used in sections 407.1070 to 407.1088, the following terms shall mean:

- (1) "Consumer" or "purchaser", a person who is or may be required to pay for goods or services offered by a telemarketer through telemarketing;**
- (2) "Goods or services", any real property or any tangible or intangible personal property or services of any kind provided or offered to a person;**
- (3) "Investment opportunity", anything tangible or intangible that is offered for sale, sold or traded based wholly or in part on representations, either express or implied, about past, present or future income, profit or appreciation;**
- (4) "Material aspect or element", any factor likely to affect a person's choice of, or conduct regarding, goods or services, including currency values and comparative expressions of value including, but not limited to, percentages or multiples;**
- (5) "Prize", anything offered or purportedly offered and given or purportedly given to a person by chance;**
- (6) "Seller", any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration;**
- (7) "Solicitation", a written or oral notification or advertisement that meets any**

one of the following criteria:

(a) The notification or advertisement is transmitted by or on behalf of the seller and by any printed, audio, video, cinematic, telephonic or electronic means; or

(b) In the case of a notification or advertisement other than by telephone when either of the following conditions is met:

a. The notification or advertisement is followed by a telephone call from a telemarketer or seller; or

b. The notification or advertisement invites a response by telephone, and through that response, a telemarketer attempts to make a sale of goods or services;

(8) "Telemarketing", a plan, program or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one telephone call;

(9) "Telemarketer", any person who in connection with telemarketing, initiates or receives telephone calls to or from a consumer in the state, or when the person acting in connection with telemarketing is located within this state when such calls are initiated or received. A telemarketer includes, but is not limited to, any such person that is an owner, operator, officer, director or partner to the management activities of a business.

407.1073. 1. A telemarketer shall provide all of the following when contacting a consumer:

(1) Within the first minute of the call and prior to any sales pitch:

(a) That the purpose of the telephone call is to make a sale;

(b) The telemarketer's true name and the company on whose behalf the solicitation is being made; and

(c) The identity of the goods or services being sold;

(2) The total cost of the goods or services that are the subject of the telemarketing sales call;

(3) Any restriction, limitations or conditions to purchase the goods or services that are the subject of a telemarketing sales call;

(4) Any material aspect of the performance, quality, efficacy, nature or basic characteristics of goods or services that are the subject of a telemarketing sales call;

(5) Any material aspect of the nature or terms of the refund, cancellation, exchange or repurchase policies;

(6) Any material aspect of an investment opportunity being offered, including benefits, the price of the land or other investment, the location of the investment, and the reasonable likelihood of success of the investment opportunity;

(7) Any material elements of a prize promotion, including:

(a) A description of the prize;

- (b) Its market value;**
- (c) All material conditions to receive or redeem the prize;**
- (d) The actual number of each prize to be awarded;**
- (e) The odds of being able to receive the prize and, if the odds are not calculable in advance, the factors and methods used in calculating the odds;**
- (f) That no purchase or payment of any kind is required to win a prize or to participate in a prize promotion; and**
- (g) The no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate.**

2. (1) The telemarketer's sales transaction shall only be considered final after the customer has received a notice as required by subdivision (2) of this subsection.

(2) The telemarketer shall furnish the purchaser, in the same language as that principally used in the sales presentation, a written notice, which shall contain in not less than ten-point boldface type, a statement in substantially the following form:

"You, the purchaser, may cancel this transaction without any penalty or obligation at any time prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made by you under the sale will be returned within ten business days following receipt by the seller of your written notice of cancellation and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract of sale; or you may, if you wish, comply with the instruction of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, or agree to pay the expense for their return, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a written notice of cancellation or send a telegram to (name of seller) at the following address (address of seller)."

(3) Pursuant to subdivision (2) of this subsection, the seller is required to furnish the purchaser with the seller's name, and the name of the person to whom any notice of cancellation is to be given if different from the seller's name, the legal name of the company for whom the seller is soliciting, the seller's street address and the seller's phone number. The seller is additionally required to furnish the purchaser with the

date of the telephone solicitation and a description of the telephone solicitation.

3. It is an unfair and deceptive act or practice to misrepresent the requirements of this section.

4. It is a violation of sections 407.1070 to 407.1085 for any seller or telemarketer to engage in any other unfair or deceptive conduct which will create a likelihood of confusion or misunderstanding to any reasonable consumer.

5. Failure to comply with the provisions of this section is a class A misdemeanor.

407.1076. 1. It is a prohibited telemarketing act or practice and a violation of sections 407.1070 to 407.1085 for any seller or telemarketer to engage in the following conduct:

(1) Assist, support or provide substantial assistance to any telemarketer when the seller knew or should have known that the telemarketer was engaged in any act in violation of sections 407.1070 to 407.1085;

(2) Request a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

(3) Request or receive payment in advance from a person, to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telemarketing transaction;

(4) Obtain or submit for payment a check, draft or other form of negotiable paper drawn on a person's checking, savings or bankcard account without the consumer's express written authorization; or

(5) Procure the services of any professional delivery, courier or other pick-up service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected.

2. A violation of the provisions of this section shall constitute a class A misdemeanor.

407.1079. 1. It is an abusive telemarketing act or practice and a violation of sections 407.1070 to 407.1085 for any seller or telemarketer to engage in the following conduct:

(1) Threaten, intimidate or use profane or obscene language;

(2) Cause the telephone to ring more than five times in an intended telemarketing call;

(3) Engage any person repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive or harassing;

(4) Initiate a telemarketing call to a person, when that person has stated previously that he or she does not wish to receive solicitation calls from that seller;

(5) Engage in telemarketing to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time, at the called person's location; or

(6) Engage in any other conduct which would be considered abusive to any reasonable consumer.

2. The state may seek injunctive or declaratory relief for any violations of this section.

407.1082. 1. A telemarketer shall keep for a period of twenty-four months from the date the record is produced, records of all financial transactions, written notices, disclosures and acknowledgments, in the form, manner, format or place as they keep such records in the ordinary course of business, including but not limited to:

(1) All substantially different advertising, brochures, telemarketing scripts and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided and the amount paid by the customer for the goods or services;

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales, provided, that if the seller permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All written authorizations required to be provided or received pursuant to sections 407.1070 to 407.1085.

2. In the event of any dissolution or termination of the telemarketer's business, the principal of that telemarketer shall maintain all records as required pursuant to this section. In the event of any sale, assignment or other change in ownership of the seller's business, the successor shall maintain all records required pursuant to this section.

407.1085. In addition to the remedies already provided in sections 407.1070 to 407.1082:

(1) Any consumer that suffers a loss or harm as a result of an unfair and deceptive act or practice pursuant to section 407.1073 shall recover actual and punitive damages, attorney's fees, court costs and any other remedies provided by law;

(2) Any consumer that suffers a loss or harm as a result of a prohibited act or practice pursuant to section 407.1076 shall recover actual and punitive damages, attorney's fees, court costs and any other remedies provided by law;

(3) Any consumer that suffers harm as a result of an abusive act or practice pursuant to section 407.1079 shall receive injunctive or declaratory relief;

(4) The attorney general may, on behalf of residents of this state who have

suffered a loss or harm as a result of a violation of sections 407.1070 to 407.1085, seek actual and punitive damages.

407.1088. The provisions of sections 407.1070 to 407.1085 shall not apply to:

(1) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telemarketer; and

(2) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer.

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