

FIRST REGULAR SESSION

SENATE BILL NO. 165

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Pre-filed December 12, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0490S.011

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, and to enact in lieu thereof five new sections relating to automated telephone calls, with penalty provisions.

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

Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, to read as follows: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 407.1110, the following words and phrases mean:

(1) "Automated call", any prerecorded or synthesized voice message resulting from the use of an automatic dialing-announcing device but does not include communication:

(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 one hundred eighty days or a current business or personal relationship;

(c) When the message is preceded by a live operator who obtains the subscriber's consent before the automated message is delivered;

(2) "Automatic dialing-announcing device", a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called;

(3) "Caller identification service", a type of telephone service which

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 permits telephone subscribers to see the telephone number of incoming telephone
19 calls;

20 ~~[(2)]~~ (4) "Residential subscriber", a person who has subscribed to
21 residential telephone service from a local exchange company or the other persons
22 living or residing with such person;

23 ~~[(3)]~~ (5) "Telephone solicitation", any voice communication over a
24 telephone line from a live operator, through the use of ADAD equipment or by
25 other means for the purpose of encouraging the purchase or rental of, or
26 investment in, property, goods or services, but does not include communications:

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

29 (b) By or on behalf of any person or entity with whom a residential
30 subscriber has had a business contact within the past one hundred eighty days
31 or a current business or personal relationship;

32 (c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3)
33 of the United States Internal Revenue Code, while such entity is engaged in
34 fund-raising to support the charitable purpose for which the entity was
35 established provided that a bona fide member of such exempt organization makes
36 the voice communication;

37 (d) By or on behalf of any entity over which a federal agency has
38 regulatory authority to the extent that:

39 a. Subject to such authority, the entity is required to maintain a license,
40 permit or certificate to sell or provide the merchandise being offered through
41 telemarketing; and

42 b. The entity is required by law or rule to develop and maintain a no-call
43 list;

44 (e) By a natural person responding to a referral, or working from his or
45 her primary residence, or a person licensed by the state of Missouri to carry out
46 a trade, occupation or profession who is setting or attempting to set an
47 appointment for actions relating to that licensed trade, occupation or profession
48 within the state or counties contiguous to the state.

407.1098. [1.] No person or entity shall make or cause to be made any
2 telephone solicitation **or automated call** to the telephone line of any residential
3 subscriber in this state who has given notice to the attorney general, in
4 accordance with rules promulgated pursuant to section 407.1101 of such
5 subscriber's objection to receiving telephone solicitations **and automated calls**.

6 [2. This section shall take effect on July 1, 2001.]

407.1101. 1. The attorney general shall establish and provide for the
2 operation of a database to compile a list of telephone numbers of residential
3 subscribers who object to receiving telephone solicitations **and automated**
4 **calls**. [The attorney general shall have such database in operation no later than
5 July 1, 2001.]

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

11 (1) Specify the methods by which each residential subscriber may give
12 notice to the attorney general or its contractor of his or her objection to receiving
13 such solicitations **and calls** or revocation of such notice. There shall be no cost
14 to the subscriber for joining the database;

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

17 (3) Specify the methods by which such objections and revocations shall be
18 collected and added to the database;

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

24 (5) Specify such other matters relating to the database that the attorney
25 general deems desirable.

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

31 4. Information contained in the database established pursuant to this
32 section shall be used only for the purpose of compliance with section 407.1098 and
33 this section or in a proceeding or action pursuant to section 407.1107. Such
34 information shall not be considered a public record pursuant to chapter 610,
35 RSMo.

36 5. In April, July, October and January of each year, the attorney general
37 shall be encouraged to obtain subscription listings of consumers in this state who
38 have arranged to be included on any national do-not-call list and add those names
39 to the state do-not-call list.

40 6. The attorney general may utilize moneys appropriated from general
41 revenue and moneys appropriated from the merchandising practices revolving
42 fund established in section 407.140 for the purposes of establishing and operating
43 the state no-call database.

44 7. Any rule or portion of a rule, as that term is defined in section 536.010,
45 RSMo, that is created under the authority delegated in sections 407.1095 to
46 407.1110 shall become effective only if it complies with and is subject to all of the
47 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
48 section and chapter 536, RSMo, are nonseverable and if any of the powers vested
49 with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
50 effective date or to disapprove and annul a rule are subsequently held
51 unconstitutional, then the grant of rulemaking authority and any rule proposed
52 or adopted after August 28, 2000, shall be invalid and void.

407.1104. 1. Any person or entity who makes a telephone solicitation to
2 the telephone line of any residential subscriber in this state shall, at the
3 beginning of such call, state clearly the identity of the person or entity initiating
4 the call.

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

407.1107. 1. The attorney general may initiate proceedings relating to a
2 knowing violation or threatened knowing violation of section 407.1098 or
3 407.1104. Such proceedings may include, without limitation, an injunction, a civil
4 penalty up to a maximum of five thousand dollars for each knowing violation and
5 additional relief in any court of competent jurisdiction. The attorney general may
6 issue investigative demands, issue subpoenas, administer oaths and conduct
7 hearings in the course of investigating a violation of section 407.1098 or 407.1104.

8 2. In addition to the penalties provided in subsection 1 of this section, any
9 person or entity that violates section 407.1104 shall be subject to all penalties,
10 remedies and procedures provided in sections 407.010 to 407.130. The remedies
11 available in this section are cumulative and in addition to any other remedies

12 available by law.

13 3. Any person who has received more than one telephone solicitation **or**
14 **automated call** within any twelve-month period by or on behalf of the same
15 person or entity in violation of section 407.1098 or 407.1104 may either:

16 (1) Bring an action to enjoin such violation;

17 (2) Bring an action to recover for actual monetary loss from such knowing
18 violation or to receive up to five thousand dollars in damages for each such
19 knowing violation, whichever is greater; or

20 (3) Bring both such actions.

21 4. It shall be a defense in any action or proceeding brought pursuant to
22 this section that the defendant has established and implemented, with due care,
23 reasonable practices and procedures to effectively prevent telephone solicitations
24 **or automated calls** in violation of section 407.1098 or 407.1104.

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

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

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

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

34 7. The remedies, duties, prohibitions and penalties of sections 407.1095
35 to 407.1104 are not exclusive and are in addition to all other causes of action,
36 remedies and penalties provided by law.

37 8. No provider of telephone caller identification service shall be held liable
38 for violations of section 407.1098 or 407.1104 committed by other persons or
39 entities.

40 [9. Section 407.1104 and this section shall take effect on July 1, 2001.]

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