FIRST REGULAR SESSION

SENATE BILL NO. 210

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Pre-filed December 28, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0111S.01I

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, and 570.223, RSMo, and to enact in lieu thereof eight new sections relating to telephone communication, with penalty provisions and an emergency clause for certain sections.

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Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, and 570.223, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1099, 407.1101, 407.1104, 407.1142, 570.222, and 570.223, to read as follows:

407.1095. As used in sections 407.1095 to 407.1110, 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 **any** residential telephone **or facsimile** service **[**from a local exchange company**]**, **including wireless telephone service,** or the other persons living or residing with such person;

(3) **"Subscriber", wireless business subscriber or a residential subscriber;**

(4) "Telephone solicitation", any voice **[**communication over a telephone line from a live operator, through the use of ADAD equipment or by other means**]**, **facsimile, graphic imaging, or data communication, including text messaging communications,** for the purpose of encouraging the purchase or

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

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

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

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

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

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

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

(5) "Wireless business subscriber", a person who, primarily for business use, has subscribed to any wireless telephone service.

407.1098. [1.] 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.

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

407.1099. Upon the written request of a residential subscriber, as defined in section 407.1095, RSMo, a wireless telephone provider shall not issue the wireless phone records of the subscriber via any electronic means. Such provider shall only transmit such records

through United States mail to the registered address of the subscriber.

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 July 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) 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. There shall be no cost to the subscriber for joining the database;

(2) 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;

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

(4) 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;

(5) 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 407.1107. Such information shall not be considered a public record pursuant to chapter 610, RSMo.

5. In April, July, October and January of each year, the attorney general

shall be encouraged to obtain subscription listings of [consumers] **subscribers** in this state who have arranged to be included on any national do-not-call list and add those [names] **telephone numbers** to the state do-not-call list.

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

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

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] **solicitation**, state clearly the identity of the person or entity initiating the [call] **solicitation**.

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] **any** subscriber's use of a caller identification service.

407.1142. 1. This section may be cited as the "RFID Right to Know Act of 2007".

2. A consumer commodity or package that contains or bears a radio frequency identification tag or bar code shall bear a label as provided in subsection 4 of this section.

3. For purposes of this section, the following terms mean:

(1) "Radio frequency identification" or "RFID", technologies that use radio waves to automatically identify individual items;

(2) "Tag", a microchip that is attached to an antenna and is able to transmit identification information.

4. A label required by subsection 2 of this section shall:

(1) State, at a minimum, that the consumer commodity or

package contains or bears a radio frequency identification tag, and that the tag can transmit unique identification information to an independent reader both before and after purchase; and

(2) Be in a conspicuous type-size and location and in print that contrasts with the background against which it appears.

570.222. 1. As used in this section the following terms shall mean:

(1) "Procure", in regard to a telephone record, to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration;

(2) "Telecommunications carrier", any corporation providing telecommunications service as defined in section 386.020, RSMo. For purposes of this section only, the definition of telecommunications carrier includes a commercial mobile radio service provider defined in 47 U.S.C. 332(d);

(3) "Telephone record", any information retained by a telecommunications carrier that relates to the telephone numbers dialed by the customer or the incoming numbers of calls directed to a customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of calls, the time of day calls were made and any charges applied. For purposes of this section, any information collected and retained by or on behalf of customers utilizing Caller I.D., or other similar technology, does not constitute a telephone record.

2. A person commits the crime of obtaining, receiving, or selling a telephone record without consent of the customer if such person:

(1) Knowingly procures, attempts to procure, solicits, or conspires with another to procure, a telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

(2) By fraudulent, deceptive, or false means:

(a) Knowingly sells, or attempts to sell, a telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

(b) Receives a telephone record of any resident of this state knowing that such record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent,

deceptive, or false means.

3. Obtaining, receiving, or selling a telephone record without consent of the customer is a felony punishable as follows:

(1) A fine of not less than five hundred dollars nor more than one thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment if the violation of subsection 2 of this section involves a single telephone record of a resident of this state;

(2) A fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for not more than five years, or both such fine and imprisonment if the violation of subsection 2 of this section involves two to ten telephone records of a resident of this state;

(3) A fine of not less than five thousand dollars and not more than ten thousand dollars or imprisonment for not more than ten years, or both such fine and imprisonment if the violation of subsection 2 of this section involves more than ten telephone records of a resident of this state.

4. No provision of this section shall be construed so as to prevent any action by a law enforcement agency or state agency with jurisdiction over telecommunications companies as defined in section 386.020, RSMo, or any officer, employee, or agent of such agency, to obtain telephone records in connection with the performance of the official duties of the agency.

5. No provision of this section shall be construed to prohibit a telecommunications carrier from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly through its agents:

(1) As otherwise authorized by law;

(2) With the lawful consent of the customer or subscriber;

(3) As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(4) To a governmental entity, if the telecommunications carrier reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

(5) To the National Center for Missing and Exploited Children, in connection with a report submitted thereto under Section 227 of the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. 13032 and regulations promulgated thereunder.

6. No provision of this section shall apply to or expand upon the obligations and duties of any telephone company, its agents, employees or contractors to protect telephone records beyond those otherwise established by federal or state law, including but not limited to provisions governing customer proprietary network information in Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222 and regulations promulgated thereunder.

7. In a civil action, a customer or telecommunications carrier or both whose telephone records were procured, sold, or received in violation of subsection 2 of this section may recover from the person or entity that violated subsection 2 of this section such relief as may be appropriate including, but not limited to, the following:

(1) Such preliminary and other equitable or declaratory relief as may be appropriate;

(2) Damages as described in subsection 8 of this section; and

(3) Reasonable attorney fees and other litigation costs reasonably incurred.

8. The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the claimant and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of one thousand dollars. The court may assess as punitive damages an amount not to exceed ten times the amount awarded for actual damages and illicit profit. In the case of a successful action to enforce liability under this section, the court may assess costs of the action, together with reasonable attorney fees determined by the court.

9. A civil action under this section shall not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

10. Telecommunications carriers that maintain telephone records of a resident of this state shall establish reasonable procedures to protect against unauthorized or fraudulent disclosure of such records which could result in substantial harm or inconvenience to any

customer. For purposes of this section, a telecommunications carrier's procedures shall be deemed reasonable if the telecommunications carrier complies with the provisions governing customer proprietary network information in Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222 and regulations promulgated thereunder.

11. No private right of action is authorized under subsection 10 of this section.

12. No provision of this section shall apply to a telecommunications carrier, its agents and representatives or agents or representatives, who reasonably and in good faith acts under subsection 5 or 10 of this section, notwithstanding any later determination that such action was not in fact authorized.

570.223. 1. A person commits the crime of identity theft if he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his or her use.

2. The term "means of identification" as used in this section includes, but is not limited to, the following:

(1) Social Security numbers;

(2) Drivers license numbers;

(3) Checking account numbers;

(4) Savings account numbers;

(5) Credit card numbers;

(6) Debit card numbers;

(7) Personal identification (PIN) code;

(8) Electronic identification numbers;

(9) Digital signatures;

(10) Any other numbers or information that can be used to access a person's financial resources;

(11) Biometric data;

(12) Fingerprints;

(13) Passwords;

(14) Parent's legal surname prior to marriage;

(15) Passports; **[**or**]**

(16) Birth certificates**; or**

(17) Telephone record as defined in section 570.222.

3. A person found guilty of identity theft shall be punished as follows:

(1) Identity theft or attempted identity theft which does not result in the theft or appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding five thousand dollars in value is a class C felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five thousand dollars and not exceeding fifty thousand dollars in value is a class B felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding fifty thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection 3 of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

(1) In clearing the credit history or credit rating of the victim; and

(2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the plaintiff.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. Civil actions under this section must be brought within five years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. This section and section 570.224 shall not apply to the following activities:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors. Nothing in this subdivision shall affect the provisions of subsection 10 of this section;

(2) A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so;

(5) A person is otherwise authorized by law to engage in the conduct that is the subject of the prosecution.

10. Any person who obtains, transfers, or uses any means of identification for the purpose of manufacturing and providing or selling a false identification card to a person under the age of twenty-one for the purpose of purchasing or obtaining alcohol shall be guilty of a class A misdemeanor.

11. Notwithstanding the provisions of subdivision (1) or (2) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft or attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft or attempted identity theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

12. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to, market value within the community, actual value, or replacement value.

13. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

Section B. Because of the need to protect the consumers of the state of Missouri, the enactment of section 570.222 and the repeal and reenactment of section 570.223 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the enactment of section 570.222 and the repeal and reenactment of section 570.223 of this act shall be in full force and effect upon its passage and approval.

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