

FIRST REGULAR SESSION

SENATE BILL NO. 43

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PEARCE.

Pre-filed December 1, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0442S.011

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, and to enact in lieu thereof six new sections relating to the telemarketing no-call list.

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, 407.1107, and
2 407.1110, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 407.1095, 407.1098, 407.1100, 407.1101, 407.1104, and
4 407.1107, to read as follows:

407.1095. As used in sections 407.1095 to [407.1110] **407.1107**, the
2 following words and phrases mean:

3 (1) **"Automatic dialing announcing device" or "ADAD", a device or**
4 **system of devices which is used, whether alone or in conjunction with**
5 **other equipment, for the purposes of automatically selecting or dialing**
6 **telephone numbers and disseminating recorded messages to the**
7 **numbers selected or dialed;**

8 (2) **"Caller", a person, corporation, firm, partnership, association,**
9 **or legal or commercial entity who contacts or attempts to contact a**
10 **subscriber in this state by using a live operator or an automatic dialing**
11 **announcing device;**

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

15 [(2)] (4) **"Residential subscriber", a person who has subscribed to any**
16 **residential telephone service [from a local exchange company], including**

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

17 **wireless telephone service primarily for personal and familial use, or**
18 **the other persons living or residing with such person;**

19 **[(3)] (5) "Subscriber", a residential subscriber;**

20 **(6) "Telephone solicitation", any voice [communication over a telephone**
21 **line from a live operator, through the use of ADAD equipment or by other means**
22 **for the purpose of encouraging the purchase or rental of, or investment in,**
23 **property, goods or services, but does not include communications], telefacsimile,**
24 **graphic imaging, or data communication, including text messaging**
25 **communications for the purpose of encouraging the purchase or rental**
26 **of, or investment in, property, goods or services, but does not include**
27 **communications:**

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

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

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

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

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

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

45 (e) By a natural person responding to a referral, or working from his or
46 her primary residence, or a person licensed by the state of Missouri to carry out
47 a trade, occupation or profession who is setting or attempting to set an
48 appointment for actions relating to that licensed trade, occupation or profession
49 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 to [the telephone line of] any [residential] subscriber in
3 this state who has given notice to the attorney general, in accordance with rules

4 promulgated pursuant to section 407.1101 of such subscriber's objection to
5 receiving telephone solicitations.

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

7 **407.1100. 1. A caller shall not use an automatic dialing**
8 **announcing device in making any telephone call to a residential**
9 **subscriber who has provided notice to the attorney general of such**
10 **subscriber's objection to receiving telephone solicitations unless:**

11 (1) The subscriber has knowingly or voluntarily requested,
12 consented to, permitted, or authorized receipt of the message; or

13 (2) The message is immediately preceded by a live operator who
14 obtains the subscriber's consent before the message is delivered and
15 where the operator at the beginning of the message discloses:

16 (a) The name of the business, firm, organization, association,
17 partnership, or entity for which the message is being made, including,
18 if applicable, the political candidate or candidates whom the message
19 is being made in support of or in opposition to;

20 (b) The purpose of the message and whether it intends to solicit
21 payment or commitment of funds; and

22 (c) If applicable, the identity or kinds of goods or service the
23 message is promoting.

24 2. A caller shall not use an automatic dialing announcing device
25 unless the device is designed and operated to disconnect within ten
26 seconds after the subscriber terminates the telephone call.

27 3. The provisions of this section shall not apply to:

28 (1) Telephone calls from school districts to students, parents, or
29 employees;

30 (2) Telephone calls to subscribers with whom the caller has a
31 current business or personal relationship;

32 (3) Telephone calls from a telecommunications company, as
33 defined in section 386.020, RSMo, or the directory publisher affiliates
34 of any such company, calling solely for the purposes of verifying the
delivery of products or services that were provided at no charge to the
residential subscriber;

(4) Telephone calls from a person or entity requesting the
residential subscriber's personal opinion regarding a public policy
matter, political candidate, or issue before the voters or which may
come before the voters, where the request for an opinion is made for a

35 **bona fide information-gathering purpose;**

36 **(5) Telephone calls advising employees of work schedules; or**

37 **(6) Telephone calls from a public safety agency or other entity**
38 **notifying a person of an emergency. Such calls may include Amber**
39 **alert notification issued under section 210.1012, RSMo.**

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. [The attorney general
4 shall have such database in operation no later than July 1, 2001.]

5 2. [No later than January 1, 2001,] The attorney general shall promulgate
6 rules and regulations governing the establishment of a state no-call database as
7 he or she deems necessary and appropriate to fully implement the provisions of
8 sections 407.1095 to [407.1110] **407.1107**. The rules and regulations shall
9 include those which:

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

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

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

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

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

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

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

32 this section or in a proceeding or action pursuant to section 407.1107. Such
33 information shall not be considered a public record pursuant to chapter 610,
34 RSMo.

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

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

43 7. Any rule or portion of a rule, as that term is defined in section 536.010,
44 RSMo, that is created under the authority delegated in sections 407.1095 to
45 [407.1110] **407.1107** shall become effective only if it complies with and is subject
46 to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
47 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the
48 powers vested with the general assembly pursuant to chapter 536, RSMo, to
49 review, to delay the effective date or to disapprove and annul a rule are
50 subsequently held unconstitutional, then the grant of rulemaking authority and
51 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
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 [to the
6 telephone line of a residential subscriber] in this state shall knowingly use any
7 method to block or otherwise circumvent [such] **any** 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] **sections 407.1095 to 407.1107**. Such proceedings may include,
4 without limitation, an injunction, a civil penalty up to a maximum of five
5 thousand dollars for each knowing violation and additional relief in any court of
6 competent jurisdiction. The attorney general may issue investigative demands,
7 issue subpoenas, administer oaths and conduct hearings in the course of
8 investigating a violation of [section 407.1098 or 407.1104] **sections 407.1095 to**

9 **407.1107.**

10 2. In addition to the penalties provided in subsection 1 of this section, any
11 person or entity that violates [section 407.1104] **sections 407.1095 to 407.1107**
12 shall be subject to all penalties, remedies and procedures provided in sections
13 407.010 to 407.130. The remedies available in this section are cumulative and
14 in addition to any other remedies available by law.

15 3. Any person who has received more than one telephone solicitation **or**
16 **call** within any twelve-month period by or on behalf of the same person or entity
17 in violation of [section 407.1098 or 407.1104] **sections 407.1095 to 407.1107**
18 may either:

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

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

23 (3) Bring both such actions.

24 4. It shall be a defense in any action or proceeding brought pursuant to
25 this section that the defendant has established and implemented, with due care,
26 reasonable practices and procedures to effectively prevent telephone solicitations
27 in violation of [section 407.1098 or 407.1104] **sections 407.1095 to 407.1107.**

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

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

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

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

37 7. The remedies, duties, prohibitions and penalties of sections 407.1095
38 to [407.1104] **407.1107** are not exclusive and are in addition to all other causes
39 of action, remedies and penalties provided by law.

40 8. No provider of telephone caller identification service shall be held liable
41 for violations of [section 407.1098 or 407.1104] **sections 407.1095 to 407.1107**
42 committed by other persons or entities.

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

[407.1110. The attorney general shall establish an advisory

2 group composed of government entities, local telecommunications
3 companies, businesses, and senior citizen and other community
4 advocates to compile and promote a list of educational literature to
5 help consumers understand their options with regard to telephone
6 solicitations. The attorney general shall work with local exchange
7 telecommunications companies to disseminate to their residential
8 subscribers information about the availability of and instructions
9 about how to request educational literature from the attorney
10 general. The attorney general may enter into agreements with
11 those companies for the purpose of dissemination of the educational
12 literature. The attorney general shall include on his or her
13 Internet web site information that informs residential subscribers
14 of their rights to be placed on a no-call list and the various
15 methods, including notice to the attorney general, of placing their
16 names on this no-call list. The attorney general shall have this
17 literature developed for dissemination to the public no later than
18 January 1, 2001.]

Bill ✓

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