

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 65 & 43
95TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 5, 2009, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bills Nos. 65 and 43, adopted March 24, 2009.

Taken up for Perfection March 24, 2009. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0503S.03P

AN ACT

To repeal sections 130.047, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, and to enact in lieu thereof nine new sections relating to telephone calls.

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

Section A. Sections 130.047, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 130.047, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, 407.1112, 407.1113, and 407.1115, to read as follows:

130.047. Any person who is not a defined committee who makes an expenditure or expenditures aggregating five hundred dollars or more in support of, or opposition to, one or more candidates or in support of, or in opposition to, the qualification or passage of one or more ballot measures, other than a contribution made directly to a candidate or committee, shall file a report signed by the person making the expenditures, or that person's authorized agent. The report shall include the name and address of the person making the expenditure, the date and amount of the expenditure or expenditures, the name and address of the payee, and a description of the nature and purpose of each expenditure. **Except as otherwise required under subsection 5 of section 407.1112, RSMo**, such report shall be filed with the appropriate officer having jurisdiction over the election of the candidate or ballot measure in question as set forth in section 130.026 no later than fourteen days after the date of making an

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

14 expenditure which by itself or when added to all other such expenditures during
15 the same campaign equals five hundred dollars or more. If, after filing such
16 report, additional expenditures are made, a further report shall be filed no later
17 than fourteen days after the date of making the additional expenditures; except
18 that, if any such expenditure is made within fourteen days prior to an election,
19 the report shall be filed no later than forty-eight hours after the date of such
20 expenditure. The provisions of this subsection shall not apply to a person who
21 uses only the person's funds or resources to make an expenditure or expenditures
22 in support of or in coordination or consultation with a candidate or committee;
23 provided that, any such expenditure is recorded as a contribution to such
24 candidate or committee and so reported by the candidate or committee being
25 supported by the expenditure or expenditures.

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

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

6 (a) **To any residential subscriber with that subscriber's prior**
7 **express invitation or permission;**

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

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

13 (d) **From a public safety agency or other entity notifying a**
14 **person of an emergency. Such calls may include Amber alert**
15 **notification issued under section 210.1012, RSMo;**

16 (e) **From school districts to students, parents, or employees;**

17 (f) **From employers to employees regarding employment-related**
18 **matters;**

19 (g) **From a telecommunications company, as defined in section**
20 **386.020, RSMo, or the directory publisher affiliates of any such**
21 **company, calling solely for the purpose of verifying the delivery of**
22 **products or services that were provided at no charge to the residential**
23 **subscriber; or**

24 (h) **From a person or entity requesting the residential**

25 subscriber's personal opinion regarding a public policy matter, political
26 candidate, or issue before the voters or which may come before the
27 voters, where the request for an opinion is made for a bona fide
28 information-gathering purpose and is not considered a push poll;

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

33 (3) "Caller identification service", a type of telephone service which
34 permits telephone subscribers to see the telephone number of incoming telephone
35 calls;

36 (4) "Political solicitation", any voice communication from a live
37 operator or through the use of an automatic dialing-announcing device
38 for the purpose of promoting, advertising, or campaigning for or
39 against a political candidate or political issue;

40 (5) "Push poll", a paid telephone survey, or series of similar
41 telephone surveys, that reference a candidate or group of candidates
42 other than in a basic preference question, and in which:

43 (a) A list or directory is used, exclusively or in part, to select
44 respondents belonging to a particular subset or combination of subsets
45 of the population, based on demographic or political characteristics
46 such as race, sex, age, ethnicity, party affiliation, or similar types of
47 characteristics;

48 (b) The survey fails to make demographic inquiries on factors
49 such as age, household income, or status as a likely voter sufficient to
50 allow for the tabulation of results based on a relevant subset of the
51 population consistent with standard polling industry practices;

52 (c) The pollster or polling organization does not collect or
53 tabulate the survey results;

54 (d) The survey prefaces a question regarding support for a
55 candidate on the basis of an untrue statement; and

56 (e) The survey is primarily for the purpose of suppressing or
57 changing the voting position of the call recipient;

58 [(2)] (6) "Residential subscriber", a person who, for primarily personal
59 and familial use, has subscribed to residential telephone service [from a local
60 exchange company], wireless service or similar service, or the other persons
61 living or residing with such person;

62 [(3)] (7) "Telephone solicitation", any voice [communication over a
63 telephone line from a live operator, through the use of ADAD equipment or by
64 other means], **facsimile, graphic imaging, or data communication,**
65 **including text messaging communications**, for the purpose of encouraging
66 the purchase or rental of, or investment in, property, goods or services, but does
67 not include communications;

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

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

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

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

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

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

85 (e) By a natural person responding to a referral, or working from his or
86 her primary residence, or a person licensed by the state of Missouri to carry out
87 a trade, occupation or profession who is setting or attempting to set an
88 appointment for actions relating to that licensed trade, occupation or profession
89 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
3 residential subscriber in this state who has given notice to the attorney general,
4 in 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.] **Such list is not intended to include any telephone number**
6 **primarily used for business or commercial purposes.**

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

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

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

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

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

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

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

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

37 5. In April, July, October and January of each year, the attorney general
38 shall be encouraged to obtain subscription listings of **[consumers] residential**

39 **subscribers** in this state who have arranged to be included on any national
40 do-not-call list and add those [names] **telephone numbers** to the state
41 do-not-call list.

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

46 7. Any rule or portion of a rule, as that term is defined in section 536.010,
47 RSMo, that is created under the authority delegated in sections 407.1095 to
48 407.1110 shall become effective only if it complies with and is subject to all of the
49 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
50 section and chapter 536, RSMo, are nonseverable and if any of the powers vested
51 with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
52 effective date or to disapprove and annul a rule are subsequently held
53 unconstitutional, then the grant of rulemaking authority and any rule proposed
54 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] **solicitation**, state clearly the identity of the person or
4 entity initiating the [call] **solicitation**.

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

9 **3. No person or entity shall call a residential subscriber using an**
10 **automatic dialing announcing device unless the device is designed and**
11 **operated to disconnect within ten seconds after the subscriber**
12 **terminates the telephone call.**

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] **407.1107** are not exclusive and are in addition to all other causes
36 of action, 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.]
41 **When a residential subscriber does not answer a call defined in**
42 **paragraph (c) of subdivision (1) of section 407.1095, it shall not be**
43 **considered a violation of section 407.1098 or 407.1104 for the automated**
44 **message to be left on such residential subscriber's answering machine**

45 or voice mail message system, provided such automated message is
46 preceded by an announcement of such message by the live operator.

407.1112. 1. Any person or entity making a political solicitation
2 to any residential subscriber in this state shall clearly state who paid
3 for the solicitation by using the words "This message is paid for by"
4 followed by the proper identification of the sponsor.

5 (1) In regard to any political solicitation paid for by a candidate,
6 as defined in section 130.011, RSMo, from the candidate's personal
7 funds, it shall be sufficient identification to state the first and last
8 name by which the candidate is known.

9 (2) In regard to any political solicitation paid for by a committee,
10 it shall be sufficient identification to state the name of the committee
11 as required to be registered by subsection 5 of section 130.021, RSMo,
12 and the name and title of the committee treasurer serving at the time
13 the solicitation is made, and the political affiliation of the committee,
14 if any.

15 (3) In regard to any political solicitation paid for by a
16 corporation or other business entity, labor organization, or any other
17 organization not defined to be a committee by subdivision (7) of section
18 130.011, RSMo, and not organized especially for influencing one or more
19 elections, it shall be sufficient identification to state the name of the
20 entity.

21 (4) In regard to any solicitation paid for by an individual or
22 individuals, it shall be sufficient identification to state the name of the
23 individual or individuals.

24 2. No person or entity shall agree to make a political solicitation
25 or make such solicitation until the solicitation meets the requirements
26 of this section. Such person or entity shall maintain a record of the
27 name and address of the person or entity who purchased or requested
28 such services and the amount paid for such services. The record
29 required by this subsection shall be kept for a period of two years after
30 the date upon which payment was received for such services.

31 3. Notwithstanding the provisions of sections 105.955 and 105.957,
32 RSMo, to the contrary, any residential subscriber who receives a
33 political solicitation in violation of this section may file a complaint
34 with the Missouri ethics commission. The Missouri ethics commission
35 shall address any complaint filed under this section in the same

36 manner as it addresses violations of subsection 8 of section 130.031,
37 RSMo.

38 4. Any committee making a political solicitation under the
39 provisions of this section shall be registered with the Missouri ethics
40 commission.

41 5. Any entity described in subdivision (3) of subsection 1 of this
42 section making an automated call for the purpose of making a political
43 solicitation, as the terms "automated call" and "political solicitation" are
44 defined in section 407.1095, the cost of which individually or in
45 aggregate exceeds five hundred dollars, shall register with the
46 secretary of state and the Missouri ethics commission prior to making
47 any such automated political solicitation. Any such solicitation by the
48 entity shall additionally state who engaged the organization to make
49 the solicitation.

407.1113. In addition to any other information provided to a
2 candidate at the time such candidate files for an elective office with the
3 secretary of state, the secretary of state shall provide a summary of the
4 provisions of section 407.1112 to the candidate.

407.1115. Any entity making a radio advertisement that is made
2 for the purpose of promoting, advertising, or campaigning for or
3 against a political candidate or political issue that gives out the phone
4 number of an elected official and requests that listeners contact the
5 official by telephone shall register with the Missouri ethics commission
6 and shall disclose the identity of the entity or person paying for such
7 advertisement.

[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.]

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Bill

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