

FIRST REGULAR SESSION

SENATE BILL NO. 199

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 27, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0425S.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 telephone calls.

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Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, to read as follows: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 message is delivered;

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

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

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

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

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

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 [(2)] (4) "Residential subscriber", a person who, **for primarily personal**
37 **and familial use**, has subscribed to residential telephone service [from a local
38 exchange company], **wireless service or similar service**, or the other persons
39 living or residing with such person;

40 [(3)] (5) "Telephone solicitation", any voice [communication over a
41 telephone line from a live operator, through the use of ADAD equipment or by
42 other means], **facsimile, graphic imaging, or data communication,**
43 **including text messaging communications**, for the purpose of encouraging
44 the purchase or rental of, or investment in, property, goods or services, but does
45 not include communications:

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

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

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

55 the voice communication;

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

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

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

63 (e) By a natural person responding to a referral, or working from his or
64 her primary residence, or a person licensed by the state of Missouri to carry out
65 a trade, occupation or profession who is setting or attempting to set an
66 appointment for actions relating to that licensed trade, occupation or profession
67 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] **or automated call to** 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 **or automated**
6 **call** to [the telephone line of] a residential subscriber 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.**

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